



**STUDY ON REDUCTION  
MEASURES TO COMBAT  
TRAFFICKING IN  
HUMAN BEINGS FOR  
THE PURPOSE OF  
LABOUR EXPLOITATION  
THROUGH  
ENGAGEMENT OF THE  
PRIVATE SECTOR**

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Council of Europe**



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*“Labour is not a commodity, poverty anywhere constitutes a danger to prosperity everywhere”*

ILO, 10 June, 2008

## 1. Introduction

The starting point of this study is that human trafficking is both a serious crime and a heinous human rights violation. For many years it was equated with forced prostitution. This inevitably led to the belief that the responsibility for combating trafficking rested within the state, supported by NGOs for prevention and primarily support for victims. However, it soon became clear that the range of abuse victims suffered was broader to include other forms of forced labour, and that this problem could not be effectively eliminated without the participation of the private sector, which on the one hand, can benefit from the labour of trafficked people, and, on the other, is an important actor of the socioeconomic life of all countries. The second important change that has taken place in the efforts to combat trafficking in human beings is a growing emphasis on measures concerning demand, instead of the long-term focus on the 'supply' of victims. Increasingly, the question is not why certain people became victims of trafficking, but how to structure the economic system so that it allows no space for forced labour. This in turn fundamentally changed expectations from the state as a watchdog of economic relations which fulfils its role essentially by passing sound legislation. Expectations from civil society have also changed, from being limited to providing assistance to victims, to leading the public debate on corporate social responsibility, including in the area of the respect of human rights and eliminating forced labour.

The Council of Europe and the European Union have addressed the question of trafficking in human beings through several actions. The *EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*<sup>1</sup> includes the reduction of demand for all forms of human trafficking among the priority actions. Recommended areas of action include public awareness campaigns targeting consumers and users of services, building a culture of corporate social responsibility, fostering codes of conduct, promotion of human rights, and developing initiatives aimed at eliminating human trafficking from the supply chains of businesses<sup>2</sup>. The Council of Europe supports governments in the implementation of the Convention on Action against Trafficking in Human Beings and the recommendations emerging from its monitoring process. The UN is also becoming active in this field. Very recently, on the occasion of the International Day for the Abolition of Slavery, the United Nations Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Ms Urmil Bhoola, stated that *“modern slavery may be hidden in supply chains, but it can be rooted out”*.<sup>3</sup> Ms Bhoola urged the international community to

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<sup>1</sup> The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, 19 June 2012, COM (2012) 286 final.

<sup>2</sup> Such as the IOM's *Buy Responsibly* Campaign <http://www.buyresponsibly.org>

<sup>3</sup> Sunday, November 27<sup>th</sup>, 2015.

utilise social dialogue and create multi-stakeholder platforms as part of increased efforts to end these human rights violations.<sup>4</sup>

In Poland, the above-mentioned actions targeting demand have taken place but the degree to which they have progressed is relatively low. The level of awareness regarding “social dialogue and multi-stakeholder platforms” to combat human rights violations is even lower. Organised (systemic) combating of trafficking in human beings has been ongoing in Poland for two decades, however, both the state and NGOs have devoted almost no attention to involving the private sector in eliminating this phenomenon. There are two main reasons for this. Firstly, the traditional legal definitions of human trafficking were formulated in such a way that they emphasised the exploitation of women in prostitution and/or children in the pornography industry. Until recently, anti-trafficking measures were, to a large extent, focussed on women's rights, public discussion on working in sexual services, and on criminal law. This situation changed in 2000, when the UN Palermo Protocol broadened the definition of trafficking in human beings to include all forms of forced labour and slavery-like practices in all sectors of the economy. Forced labour became the focus of public discussion, bringing in the labour market and labour law, as well as stakeholders connected to the labour market, i.e. trade unions and employers' associations. This trend of interest has been confirmed in the provisions of Directive 2011/36/EU.<sup>5</sup>

Nevertheless, in Poland, the "legacy" of considering human trafficking as a phenomenon associated with the sex industry is still strongly present in the collective consciousness, although police data shows that there are more investigations conducted in connection with allegations of forced labour than there are in relation to 'typical' human trafficking cases. For many people, including experts, human trafficking is a matter related to the criminal justice system, while the importance of issues such as workers' rights, control of the supply chain and exploitation is minimal. Meanwhile, in practice, trafficking for forced labour purposes is one of the most serious challenges faced by all EU Member States. Victims include third-country nationals and EU citizens, blue-collar and highly educated employees, men, women and children. Forms of enslavement are much more sophisticated than the mere confiscation of a passport or a threat. In order to force victims to work, perpetrators use deception, fraud, manipulation, as well as mental and physical coercion.

In this report, I attempt to identify several issues related to the broad problem of addressing demand, taking into account, however, that this work is a preliminary exploration. In order for this work to be comprehensive, time and a substantive team of experts are required. The level and scale of the project are confirmed by the fact that the preparation of a detailed analysis of Polish legislation is one of the main tasks stipulated in the National Action Plan in the area of business and human rights. However, at present it is not clear if such an action plan will be created.

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<sup>4</sup> <http://www.ohchr.org/EN/Issues/Slavery/SRSlavery/Pages/SRSlaveryIndex.aspx>

<sup>5</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.



The report was prepared on the basis of available data, including statistical data, as well as government reports, reports by NGOs, reports on the implementation of educational campaigns, materials available online and information presented by the media. In addition, I interviewed ten experts, whose data is included in the Annex.

## 2. Brief information about Poland

Poland (full name: the Republic of Poland) is a unitary state situated in Central Europe between the Baltic Sea to the north and the Sudetes and Carpathian Mountains to the south. Poland's administrative area is 312 679 km. Inhabited by almost 38.5 million people (2014), it is the 34th most-populated country in the world, and 6th in the European Union.

In accordance with the Constitution of the Republic of Poland of 1997, Poland is a parliamentary republic with a parliamentary-cabinet system based on a tripartite division of power. The head of state is the president, the legislative power is vested in a bicameral parliament (the Sejm and Senate) and executive power lies with the government, led by the prime minister.

Poland is a member of all major international organisations such as the UN, Council of Europe, NATO, EU, OSCE, OECD and Council of Baltic Sea States.

Poland's border situation is complex because to the north it borders Russia (Kaliningrad Oblast, a Russian exclave) and Lithuania, to the east Belarus and Ukraine, to the south Slovakia and the Czech Republic, and to the West Germany. Most of Poland's northern border is set by the coast of the Baltic Sea. The Polish Exclusive Economic Zone within the Baltic Sea borders with Denmark's and Sweden's zones. External borders of the EU form the majority of the border to the south and north of mainland Poland.

Poland is recognised by the UN as a highly developed country due to its HDI (Human Development Index). This indicator takes into account factors such as life expectancy, the average length of education completed by 25-year-olds and the expected duration of education of children of school age, as well as the GDP per capita when measured by purchasing power parity. In the ranking of countries by their HDI, Poland is 35th in the world. According to Eurostat, in 2013 Polish debt amounted to 57% of GDP, while the EU average was 87.1%.

The Polish population is nationally and ethnically homogeneous. According to the Central Statistical Office of Poland (2011 National Census), 97% declare Polish nationality. The most numerous national and ethnic minorities in Poland are Silesians (847 000), Kashubians (233 000), Germans (148 000), Ukrainians (51 000), Belarusians (47 000), Roma (17 000), Russians (13 000), Lemko (11 000), Lithuanians (8 000) and Jews (8 000).<sup>6</sup>

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<sup>6</sup> <http://stat.gov.pl/spisy-powszechne/nsp-2011/nsp-2011-wyniki/>

### 3. Sectors involved in the elimination of human trafficking in Poland

For the purposes of this document, it is important to note that similarly to many other European countries, in Poland the elimination of human trafficking is a holistic undertaking in which actors belonging to various areas of activity participate. Using classic sociological nomenclature, there are three main sectors involved, i.e. the public sector (state), private sector (business) and social sector, which is also called the 'third sector' or civil society. In Poland's case, the borders of these sectors are not always well defined and visible; however, if they properly define their mission, each of them has a specific role to fulfil in the process of eliminating human trafficking and forced labour.

The most obvious role belongs to the state - the public sector - as regulator of social and economic relations. However, this report will not address in detail the role of the public sector which is less important for the purpose of the report. The two other sectors will be the focus, especially the private sector, but also on the social sector (civil society), because there is a societal anchor when discussing the possibility of influencing demand. At the outset, however, it must be noted that a clear separation of the public and private sectors in Poland is not simple, because, as in other European countries, there are the so-called state-owned enterprises that are economic entities controlled by the state to a greater or lesser extent. On the other hand, the social organisation market in Poland also has so-called GoNGOs (government organised non-governmental organisations), BoNGOs (business oriented non-governmental organisations), and QuaNGOs (quasi-autonomous non-governmental organisations).<sup>7</sup> They will not be discussed here as they represent a small part of public life in Poland.

The history of the concept of civil society is very long<sup>8</sup> but, according to the latest concepts, it is any civic, voluntary, collective activity undertaken to reach common values, aimed at meeting needs and achieving socially desirable goals. The understanding of the concept of civil society presented here was strongly present in Polish history and Poland's national traditions for many centuries. In order to understand contemporary Poland, we must first be aware of the fact that in 1795-1918, the country disappeared from the map of Europe, being divided between three neighbouring countries: Russia, Germany and Austria (Habsburg Empire). During that time, all of the occupied territories had an intense social life organised by the Polish intelligentsia and aristocracy. The main purpose of these measures was to cultivate Polish culture and maintain Polishness and normal social relations between various social groups. During the Second World War (1939-1945), Poland was once again occupied by two neighbouring countries, Germany and Russia. The occupied territories had illegal socio-state structures, which, in addition to purely state-related functions (governance), fulfilled a number of civil society functions (information, education, welfare). After the war, Poland found itself in the Soviet sphere of influence and became a country with limited sovereignty. From the first years following the war, organisational structures whose main task was to cultivate Polish independence traditions provided access to reliable

<sup>7</sup> Wojciech Dec, BoNGOs and GoNGOs. Social pathology of civil society, Lublin 2011.

<sup>8</sup> A precursor of the concept of civil society is considered to be Aristotle, while the contemporary understanding of civil society was proposed by G.W. Hegel.

information and an alternative social fabric arose in Poland. This was the only alternative to break the information blockade and oppose the communist regime. As a result of the many years of efforts by successive generations of Poles, when Poland made a fundamental system change in 1989, civil society was ready to take over many of the duties that arose with the adoption of a democratic model of governance.

From the beginning of the political transformation, relations between these organisational structures followed a model typical of European democracies. The preferred model was the continental model, rather than the Anglo-Saxon model in which the activities of the third sector are largely the result of massive citizen involvement in social activities. In Poland, civil society activity was and still is the domain of a very small group of people. With the exception of the gigantic social movement SOLIDARNOŚĆ (1980-1982), a similar initiative could not be created in Poland after 1989. This is equally due to weak social structures and poor involvement of most classes, and the quality of political leadership. Despite such an impressive history of civic initiatives the majority of the population in Poland does not have a sense of participation and does not feel responsible for public affairs. Consequently, a number of social problems, including the problem of human trafficking and forced labour, are problems that are not of particular interest to the average citizen or many civil society actors.

The private sector is any production, commercial or service enterprise aimed at turning a profit. Poland's private sector has developed in the last 25 years, following the political transformation in 1989. During this time, many economic entities with complicated ownership relationships, structures and sizes arose. Entities operating in the Polish market are classified by various criteria, the most popular of which is the differentiation based on the number of employees. The first category is enterprises employing up to nine people (micro enterprises). In 2014, approximately 1 800 000 such enterprises conducted economic activity in Poland, with almost 3 900 000 officially registered in REGON system. A clear upward trend on the number of these entities is apparent. During the last five years, the number of micro enterprises increased by approximately 5%. The number of employees increased by slightly less (1.2% – approximately 40 000 people), while their collective revenue increased by 20% (i.e. by PLN 146 billion). The financial result of the smallest economic entities operating in Poland in 2014 reached PLN 108.5 billion and was 10% higher than the previous year.

The second category is business entities employing 10 or more people – Poland has approximately 100 000 of such companies registered, of which over 80 000 are active. This number is growing every year, although a similar percentage ceases or suspends activities. According to data from the Central Statistical Office, these businesses employ a total of approximately 5.4 million people. Similarly to micro enterprises, in recent years this sector has recorded a 50 000 increase in employment. Meanwhile, their revenue from sales of products, materials and services are PLN 2.8 trillion<sup>9</sup> and also show an upward trend.

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<sup>9</sup> Podmioty gospodarcze według rodzajów i miejsc prowadzenia działalności w 2013 roku, Central Statistical Office, 12.12.2014.

One of the characteristic features of the Polish economy is a strong state presence in the market, which manifests itself in the functioning of state-owned companies (the state is the owner or co-owner). Depending on the portfolio, there are companies in which the controlling interest belongs to the state and those where it is less than 50%. The State Treasury is responsible for the corporate governance of state-owned enterprises on behalf of the state. This covers approximately 500 companies of which 250 are operating. Less than 10% are companies with majority participation held by the state which are, in practice, controlled by the state. State-owned companies also include companies listed on the stock exchange. The state sector currently produces approximately 25% of GDP (major companies such as PKP, KGHM, PKN Orlen, PGNiG and many smaller companies remain in the hands of the state) and this level is comparable with countries such as France and Norway.

The state is also a major employer in the labour market. All state entities put together (including administration) employ approximately 3.1 million people, of which approximately 20% are employees of the commercial (business) sector. The number of people employed by the top 25 state-owned companies is approaching 350 000. The largest state-owned companies employ between 30 000 and 60 000 employees. Therefore, the state is an important actor in both the Polish market and the domestic labour market.

In summary: there is a total of approximately 4 million economic entities operating in Poland in the private sector employing a total of approximately 11.1 million people.<sup>10</sup>

The third sector, non-governmental organisations (NGOs), is relatively developed in Poland. Data shows that Poland has approximately 100 000 NGOs, with approximately 84 000 actively operating. These are mainly associations (80%), approximately 10% are foundations, while the remaining entities are economic self-government organisations, professional self-government organisations and employer confederations, as well as various social religious entities. Approximately one in ten NGOs in Poland has the status of a public benefit organisation, which means that they can receive 1% of citizens' personal income tax. This status entails a special regime of substantive and financial reporting. A register of public benefit organisations is kept by the Ministry of Labour and Social Policy.

Pursuant to the law, NGOs in Poland may conduct economic activity; however, in practice less than 10% of all entities do. The vast majority of NGOs in Poland provide free social services and operate on the basis of voluntary work by members. This is why the vast majority of organisations in Poland (about 2/3) do not employ paid workers.<sup>11</sup>

This does not mean, however, that NGOs in Poland do not receive funds – on the contrary, over 90% obtain such funds from various sources. For obvious reasons, this percentage is the highest in the category of public benefit organisations (nearly 100%) and the lowest is in the category of farmers' circles. In contrast, the total income of the third sector in Poland ranges from PLN 24 billion to PLN 28 billion.<sup>12</sup>

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<sup>10</sup> Central Statistical Office, Public Information Bulletin, Labour Market Report, Warsaw 2015.

<sup>11</sup> The Third Sector in Poland. Associations, Foundations, Faith-Based Charities, Professional and Business Associations, Employers' Organisations in 2012, Central Statistical Office, Warsaw 2014.

<sup>12</sup> Ibid. p. 111.

For the purposes of the report, the most important question is whether civil society is sufficiently well organised to meet one of the tasks of combating trafficking in human beings not only by providing assistance to identified victims of human trafficking, but by engaging in the process of addressing demand for human trafficking and forced labour. If civil society is to be effective in this new and difficult mission, the infrastructure of non-governmental, media and education organisations should be adapted to:

1. the scale of the phenomenon of human trafficking for forced labour,
2. the level of development of state and local government institutions,
3. the geographic size of the country,
4. the country's population.

Taking into account all these parameters, it can be tempting to hypothesise that the infrastructure of NGOs involved in human trafficking in Poland is insufficient and not flexible enough to adequately respond to the needs of a dynamically changing situation (new forms of human trafficking and enslavement). Such a research hypothesis can be verified in two ways: firstly, by evaluating the effectiveness of all organisations that deal with human trafficking, and secondly, by gathering opinions on this subject from experts from different environments and canvassing public opinion. The first method is time consuming and expensive, but significantly more justified, because the effects of such analyses refer directly to the issue at the heart of the study. The second method is less resource intensive; however, the results must be subjected to stricter verification, because the nature of the problem is determined indirectly by researching the awareness of participants in public life.<sup>13</sup>

In Poland, there are approximately a dozen organisations that to a greater or lesser extent deal with human trafficking. Some of these are typical intervention and support organisations, while others are organisations involved in promoting specific issues (advocacy), and others still are involved in systemic intervention and theoretical analyses. The best known and most active entities include the La Strada Foundation, the Nobody's Children Foundation, Caritas Poland, the H. Nieć Human Rights Association and its H. Nieć Legal Aid Centre in Kraków, the Centre for Women's Rights, the Mary Immaculate Association for Women and Children PoMOC in Katowice, the ITAKA Foundation, the Association for Legal Intervention, and the Helsinki Foundation for Human Rights. In addition, academic legal clinics deal with human trafficking.

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<sup>13</sup> Eliminating human trafficking in Poland. Analysis of the System, Zbigniew Lasocik (ed.), Warsaw 2011, Human Trafficking Studies Centre of the University of Warsaw.

## 4. Human trafficking and forced labour in Poland – basic facts

The most important phenomenon in the field of human trafficking over the last two decades is the country's transition from a country of origin of victims, to a destination and transit country.

When the phenomenon of human trafficking appeared in the early '90s, it was almost entirely 'trade' in women being transported from Poland to various western countries. Traffickers quickly realised that there exist bigger potential markets for recruitment of victims, i.e. in countries of the former Soviet Union, mainly Belarus and Ukraine. Rapid economic changes in Poland combined with an almost complete lack of reform in these countries and their disorganisation deepened the differences in wealth between neighbouring societies. Therefore, products and people started flowing through Poland's borders with its neighbours in the East (in both directions). This often included young women who wanted to work in Poland or Western Europe, including in the provision of sexual services. This is how Poland became a transit country as well as a destination country. After several years, the relatively simple route from countries of the former Soviet Union through Poland to Western Europe expanded to include countries in the Far East (Vietnam, China, North Korea, Thailand).

The size of the phenomenon of human trafficking changed dramatically when Poland joined the EU and later the Schengen Agreement. Poland's attractiveness as a transit and destination country increased significantly.

Thus Poland is now a country of origin, transit and destination of trafficked people. This enlarges the list of tasks of public authorities, because they need to effectively prevent exploitation of their own citizens abroad, protect potential victims of exploitation on their own territory, and monitor the flow of victims through the country. Numerous studies and analyses show that decision makers in Poland are not yet quite aware of this and that trafficking is still regarded as a phenomenon that affects only young, naive girls or poorly educated men who seek a better life abroad.

Available data shows that currently Poland is a country of origin of victims for countries such as Germany, the Netherlands, Belgium, Italy, Spain, Sweden and France; a destination country for victims from countries such as Ukraine, Bulgaria, Belarus, Latvia, Moldova, Russia, Lithuania, Vietnam, the Philippines, and North Korea; and a transit country for victims from Asia, as well as from Latvia, Lithuania, Ukraine, Russia, Moldova and Bulgaria.

The forms of the crime of human trafficking in Poland have also evolved. In 1995-2002, victims of human trafficking were usually relatively uneducated young women aged 17-25 years from Poland or neighbouring countries (the poorest countries in Europe). Perpetrators were usually organised criminal groups from Poland or from the country of origin of the victims. Albanian and Turkish groups were an exception in this regard.

The situation changed dramatically after 2004, when for the first time, a Polish court sentenced two Vietnamese men for the sale and exploitation of another Vietnamese citizen

for forced labour. The case was a milestone in the development of the Polish system of eliminating human trafficking as it made people realise that there are other forms of exploitation apart from the sex industry, and that debt bondage can also be a source of enslavement.

Another case that fundamentally changed the approach of law enforcement agencies (and to some degree awareness of the phenomenon of human trafficking) was the so-called *Terra Promesa* case which involved mass exploitation of Poles in southern Italy in 2006. Victims were forced to work and were housed in very primitive conditions in barracks or old farm buildings, sometimes without electricity or sanitation. They were guarded by their employers' brutal security forces equipped with firearms. This case revealed that the Polish legal system did not criminalise forced labour.

There have been several criminal cases that proved that even larger groups of foreigners were exploited in Poland. In 2009, a group of some 20 Bangladeshi men arrived to Poland. According to the arrangements made with a Polish employment agent, they were supposed to work as well-paid fish filleters, but instead ended up in difficult, poorly paid work in the shipbuilding industry. This case is important because it showed that Poles can not only be victims of trafficking, but also perpetrators. Victims are usually poor foreigners who must raise money to cover the costs of coming to Europe, and thus fall into the trap of dependency. New forms of human trafficking have recently been observed, including enslavement of people in order to exploit them to obtain loans, to make purchases in instalments, to cheat in order to receive undue social benefits, and to force them to commit crimes. The *modus operandi* of the perpetrators is very similar: members of criminal groups offer Poles enticing work abroad and, once there, they force them into illegal behaviours.

Another form of human trafficking is the illicit trafficking in human organs and tissues. Available data suggest that this issue has not yet appeared in Poland in its pure form. There have been no documented cases of illegal harvesting or transplant of organs. It must be noted that the applicable Polish legislation (the Transplant Act) establishes a system for recording and carrying out transplants. Despite demand, the system is so strict that it protects against commercialisation of the human body and organ trafficking.

Several phenomena related to child trafficking should also be highlighted. Although exploitation of children in the sex industry (prostitution and pornography) does exist in Poland, there have been no confirmed cases of exploitation of children in forced labour. The second phenomenon is illegal (private) adoption. Once again, the system is so strict that such cases are rare. The third phenomenon is surrogacy, or surrogate motherhood. It should be emphatically stressed that surrogate motherhood is not yet legally regulated in Poland, despite the fact that each party requires protection. However, there is information on the Internet about agencies operating abroad and offering services to interested couples.

As for the scale of the phenomenon of human trafficking in Poland, there are two levels of analysis. When it comes to data from the judiciary, the number of recorded new cases does not exceed 20-30 per year. However, the number of victims fluctuates around 150-200 per year. The situation looks different when looking at the estimates prepared by different institutions. The Polish government estimates that the number of victims of human

trafficking and forced labour in Poland does not exceed 10 000, while according to the Global Slavery Index, this number reaches up to 170 000 which, even if somewhat overestimated, seems closer to reality.

## 5. The framework for combating human trafficking and forced labour in Poland

As is evident from the preceding section, human trafficking in Poland is a dynamic phenomenon. Over the last 20 years, the list of forms of human trafficking has substantially expanded and the profile of the victim has changed significantly.

Taking into account the detailed evaluation by GRETA, the Council of Europe's anti-trafficking monitoring body, of the Polish framework for combating human trafficking in Poland, this section will only outline the most important elements. In the first place, there is a set of international and domestic legal regulations which provide the definition of human trafficking, the range of behaviours related to human trafficking and slavery which must be penalised, the responsibilities of the state, the rights of the victim and certain obligations related to prevention. Secondly, there are a set of institutions that implement the legal provisions in the areas of monitoring, analysing and combating the trafficking of Polish and foreign citizens. Thirdly, the system comprises measures for the effective investigation, prosecution and conviction of perpetrators of human trafficking and forced labour. The main actors are the Police, the Border Guard, the Public Prosecutor's Office, the Labour Inspectorate and the courts. Fourthly, a set of organisations provide care and support to victims of human trafficking, both at the national level (the so-called KCIK)<sup>14</sup> and local government levels. The question is if public entities are trained and organisationally prepared to meet the specific needs of victims of a serious infringement of human rights. Fifthly, the effectiveness of anti-trafficking action depends on initiatives, projects and campaigns resulting from the regular activity of civil society. These include actions in the area of legal aid, prevention and victim assistance by NGOs, but also by media participating in the process of raising social awareness. Sixthly, the anti-trafficking system should be supported by analytical and research infrastructure which implies a network of experts, research centres studying the subject and a variety of analytical and educational initiatives.

Research has revealed, however, that there are certain gaps in the Polish anti-trafficking framework.<sup>15</sup> Although there is EU long-term strategy for dealing with human trafficking, forced labour is still not adequately addressed in Poland and it is difficult to determine if any proposed solutions are reasonably consistent with the strategy or if they are in line with the priorities of the state.

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<sup>14</sup> National Consulting and Intervention Centre for the Victims of Trafficking, see: <http://www.kcik.pl/en/index.html>

<sup>15</sup> *Eliminowanie handlu ludźmi w Polsce. Analiza systemu, (On the system to combat human trafficking in Poland)* Z. Lasocik (ed.), Warsaw 2011, Human Trafficking Studies Centre UW.



Furthermore, the framework for combating human trafficking lacks leadership at the institutional level. The framework consists of three pillars at the national level, namely: 1. the Interdepartmental Team for Combating and Preventing Trafficking in Human Beings, 2. the Working Group created as part of that Team, and 3. the Human Trafficking Team at the Migration Policy Department of the Ministry of the Interior. None of these institutions is sufficiently independent and capable to successfully lead anti-trafficking action. The Interdepartmental Team is a bureaucratic entity which undertakes actions of only ritual nature. The Interdepartmental Team is operationally served by the Human Trafficking Team at the Migration Policy Department of the Ministry of the Interior, which is a highly unfortunate arrangement.

The legal framework is deficient too. The recently adopted definition of human trafficking lacks precision, and there is no provision in Polish criminal law penalising forced labour, which is of particular relevance for this report.

As for the investigation, although the legal definition of human trafficking is deficient, there are sufficient legal grounds on which state agencies are able to operate. Key agencies, such as the Police and the Border Guards, are trying to adapt their structures to the tasks they are facing. However, they are not training sufficiently their personnel in this area. The same can be said about the judiciary. Due to the unsatisfactory level of training of prosecutors and judges, the case-law has raised many controversies<sup>16</sup> essentially related to significantly different interpretations of the concept of human trafficking.

On the other hand, there are doubts concerning the capacity of local government institutions, in particular welfare institutions, to support victims. Since the funds allocated from the state budget are insufficient, the local government authorities are responsible for raising money to secure the needs of human trafficking victims. The most recent amendment to the Welfare Act<sup>17</sup> has imposed on provincial governors (*wojewoda*)<sup>18</sup> the obligation to co-ordinate local activities aimed at creating an effective system of assistance to victims. But in practice local institutions do very little in this respect due to their expectation of financial support from the state budget.

La Strada Foundation is still the only organisation providing assistance to victims of human trafficking and forced labour in Poland, which is not sufficient for a country with a population of almost 40 million people.

The part of the system which deals with education and social awareness is one of the weakest. There is a lack of a quality innovative programme for school education regarding enslavement and human trafficking. Poland also lacks a comprehensive programme to raise social awareness. Lately the media are increasingly devoting attention to the problem of

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<sup>16</sup> B. Namysłowska-Gabrysiak, Funkcjonowanie wymiaru sprawiedliwości w latach 1999-2009 w świetle badań spraw karnych dotyczących handlu ludźmi, (*On criminal justice system – in the light of human trafficking cases*), [in:] *Eliminowanie handlu ludźmi w Polsce. Analiza systemu*, (*On the system to combat human trafficking in Poland*) Z. Lasocik (ed.), Warsaw 2011, Human Trafficking Studies Centre UW.

<sup>17</sup> Act of 12 February 2010 on amendments to the Welfare Act and other acts (*Journal of Laws* 2010, No 40, item 229).

<sup>18</sup> A provincial governor (*wojewoda*) is a field representative of the central government, i.e. the highest-rank state official at the province level.

human trafficking, although coverage is essentially focused on criminal events or special operations of law enforcement agencies (prostitutes, irregular migrants, foreign employees).

The anti-trafficking framework is extending its coverage, although the process is relatively slow. Every change and every new element is a result of pressure from experts and NGOs. The key example is related to the issue of forced labour. Although the first cases were detected already in 2003-2004, the inertia of the system resulted in late reactions. Forced labour was included in the National Action Plan to Combat Human Trafficking only for the years 2007-2008. Two years were required to amend the Labour Inspectorate Act and to sign an agreement with the Border Guard on the mutual controls of legality of employment of migrants.<sup>19</sup>

To summarise, Poland has devised a framework to respond to human trafficking based on the assumption that it is central government that takes responsibility for crucial activities: it defines goals and assigns tasks which are implemented by the state executive bodies, supported by local government authorities and NGOs, and using assistance provided by the media. The system has a relatively solid legal base, both regarding the legal grounds for investigating human trafficking crimes and the institutional infrastructure. However, the state allocates insufficient funds for the fight against human trafficking, expecting that NGOs would collect funds themselves.

## 6. Instruments defining the state's policy against trafficking in human beings for the purpose of labour exploitation

The most important document defining the state policy against human trafficking is *the National Action Plan against Trafficking in Human Beings* (hereinafter 'the National Action Plan') adopted for a three-year period by the government. The current plan for 2013-2015 was adopted by the Council of Ministers on 20 May 2013.<sup>20</sup>

The first part of the National Action Plan summarises the laws and documents that define the obligations of the state in combating human trafficking. These include: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, the EU Strategy towards the Eradication of Trafficking in Human Beings (2012–2016), and the 2010 United Nations Global Plan of Action to Combat Trafficking in Persons. In contrast, the Plan does not specify any documents that relate to forced labour, particularly those that refer to impacting demand, and that create new obligations for government authorities.

When the National Action Plan defines the state's priorities in the fight against trafficking in human beings, there are no references to the demand aspect of the phenomenon. Traditionally, focus is on preventive measures targeting groups at risk of

<sup>19</sup> [http://www.pip.gov.pl/html/pl/doc/porozumienia/gjp\\_straz\\_graniczna.pdf](http://www.pip.gov.pl/html/pl/doc/porozumienia/gjp_straz_graniczna.pdf)

<sup>20</sup> <http://www.handelludzmi.eu/hl/baza-wiedzy/krajowy-plan-dzialan/6356,Krajowy-Plan-Dzialan-Przeciwko-Handlowi-Ludzmi-na-lata-2013-2015.html>

human trafficking. One of the priorities of the National Action Plan is the creation of voivodship teams for combating trafficking in human beings. These are expert bodies which deal with victim support and prevention. The voivodship teams have no business representatives, and government instructions do not include a recommendation to appoint such persons. An important area of state activity is also improving the support services for victims of human trafficking.

Only one out of 67 activities provided in the National Action Plan is to a certain extent oriented towards addressing demand for human trafficking, namely the promotion of the code of conduct to prevent sexual exploitation of children in tourism. This activity mainly concerns hotel chains and is conducted together with the Nobody's Children Foundation. The government does not foresee the participation of the business sector or employers' associations in any of the planned actions.

The National Action Plan 2013-2015 was adopted nearly a year after the EU Strategy (the official version of this document is dated 19 June 2012). It would therefore be legitimate to expect that the two documents would be aligned, particularly when it comes to establishing priorities. However, this is not the case.

In the EU Strategy (priority B), the European Commission sets the priorities concerning preventive measures against human trafficking, including action to gather knowledge on the demand and the possibilities of its reduction, including in the areas of corporate social responsibility, codes of conduct as well as initiatives aimed at eliminating human trafficking from the supply chains of businesses. The need to conduct research is not mentioned in the Polish National Action Plan even if the European Commission provides funding for research on reducing demand.

In accordance with the EU Strategy, the European Commission further assumes that the member states will undertake activities aimed at the private sector in order to decrease demand for trafficked labour and to encourage business to eliminate it from their supply chains. Again, the Polish National Action Plan does not refer to these areas.

It is legitimate to ask the reasons behind such far-reaching differences between EU and Poland's policy documents regarding combating human trafficking and forced labour. Effective combating of human trafficking is only possible as a result of co-ordinated activities of all national stakeholders and close international co-operation. Therefore these differences are even more surprising.

## 7. Legal and political guarantees for business development in Poland

The Polish legal system is classified as a continental legal system based solely on statutory law (as opposed to the Anglo-Saxon system based on case law). It is characterised by a hierarchical order of standards issued by competent bodies. Currently law making is not the exclusive domain of the national legislature. As a EU Member State, Poland is bound by the EU legislation. The interaction of different legal systems has resulted in a fundamental metamorphosis of the Polish legal system. Polish judges no longer make decisions based solely on laws, but they must increasingly seek other points of reference for judicial arguments.

The sources of universally binding law in Poland are the Constitution, laws, ratified international agreements, regulations and local laws. This catalogue is based on the principle of hierarchy. The Constitutional Tribunal ensures that each one is consistent with the higher-level ones.

In material terms, the legal system is composed of private and public law. Private law includes civil law, commercial law and labour law. Public law includes constitutional law, criminal law and administrative law.

The guarantees for business development in Poland are constitutional, legal and political. From this point of view, two provisions of the Constitution of the Republic of Poland<sup>21</sup> are significant. Article 20 establishes that “*a social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and co-operation between social partners, shall be the basis of the economic system of the Republic of Poland*”. Article 22 states that “*Limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons*”. These two important constitutional regulations are strongly reinforced in Article 24 of the Constitution, which establishes the constitutional principle of the protection of labour: “*Work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work*”.

At the level of statutory regulations, the most important piece of legislation is law of 2 July 2004 on the Freedom of Economic Activity. This law regulates the principles for undertaking, conducting and terminating economic activities within the territory of Poland, and the responsibilities of public administration authorities. In Poland, opinions on this law are divided. Some experts argue that it creates too many obstacles to initiating business. Others are of the opinion that the overly liberal provisions on the conduct of economic activity make it difficult for ethical business standards and sustainable development strategies to be accepted in Poland.

Private business law governs the relationship between participants in the economic market and defines the formal aspects of the functioning of this market, notably the creation, transformation and liquidation of its participants.

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<sup>21</sup> <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483>

The basic premise of the functioning of a legal economic system (public and private) in Poland is to ensure the proper functioning of the general mechanisms comprising the economic market. In contrast, the fundamental task of the private business law is to protect the four fundamental values for the proper functioning of the market, namely: property rights, economic freedom, contractual freedom, and protection of free and fair competition. This catalogue has been expanded in recent time to include another value or, de facto, a set of values related to building socially responsible business, which implies addressing the challenge of respecting human rights and the elimination of forced labour.

Experts interviewed for this report questioned the extent to which Polish economic, civil and commercial law complies with international standards such as the UN Guiding Principles on Business and Human Rights.<sup>22</sup> Answers varied, but they had a common denominator – the observation that knowledge of this subject is very limited, as it has never been the subject of systematic study. Due to the specific regulations in a country like Poland, it is a task that should be undertaken by a large team of experts working under the auspices of the state, with strong support from business, NGOs and other civil society stakeholders.

Experts consulted also pointed out shortcomings in the system regulating the private sector and state-owned companies. For instance, one of the experts explained that an issue as important as the functioning of capital groups is not properly regulated in Poland.<sup>23</sup> In contrast, almost all of the experts agreed that the existing shortcomings in the law are the result of relatively low interest from the state, the obvious lack of interest from the private sector, and the weak pressure from civil society. International initiatives that aim at building a culture of responsible and socially sensitive business are an important supporting argument.

In Poland, there are no effective mechanisms to check whether companies meet elementary conditions for the protection of human rights or the elimination of forced labour. Few Polish companies have codes of conduct for socially responsible production or service provision. Many entrepreneurs believe that such issues do not need to be regulated in voluntary codes that may or may not be followed. In their view, it is more important that a company's management consists of people who understand such issues and have integrity.

When it comes to international law, Poland is an active participant in the activities of the International Labour Organisation (ILO), as demonstrated by the fact that it has ratified 91 ILO conventions.<sup>24</sup> Poland is a party to all the conventions related to labour rights and human rights and all the conventions that build a system to protect the labour market.

Poland creates relatively good conditions for business development, and the private sector obtains significant state support. A key government institution for business promotion and support is the *Polish Agency for Enterprise Development*<sup>25</sup> (PARP) whose mission is to implement national and international business ventures financed from structural funds, the state budget and multi-annual programmes of the European

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<sup>22</sup> [http://pihrb.org/wp-content/uploads/2014/10/Wytyczne-ONZ-UNGPs-BHR-PL\\_web\\_PIHRB.pdf](http://pihrb.org/wp-content/uploads/2014/10/Wytyczne-ONZ-UNGPs-BHR-PL_web_PIHRB.pdf)

<sup>23</sup> This is the opinion of an expert and is not verified by the author.

<sup>24</sup> [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:102809](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102809)

<sup>25</sup> <http://www.parp.gov.pl/>

Commission. PARP is actively involved in the creation and efficient implementation of the state's policy in the field of business, innovation and preparation of professionals/ entrepreneurs.

In turn, the Ministry of Economy implements the programme *Supporting Entrepreneurship*,<sup>26</sup> which aims at creating favourable conditions for business development through, inter alia, strengthening competitive advantages and, ultimately, achieving long-term economic growth. Since entrepreneurship is considered a major factor in socio-economic development, the government should be tasked with taking measures to improve the business environment and enhance the economy's competitiveness; however, according to experts, this is not always the case.

Another important component of the institutional framework for business in Poland is the Public Procurement Office (PPO)<sup>27</sup> which supports the Chairman of the Office who is the main competent body in matters of public procurement, as specified by the Public Procurement Law of 29 January 2004. The PPO's mission is to ensure transparency in the public procurement process and providing entrepreneurs with non-discriminatory access to public procurement.

A joint venture of all these institutions is the Information Point for International Public Procurement.<sup>28</sup> It is tasked with introducing Polish business to the international public procurement market, including that implemented in the UN system, the European Commission and the World Bank Group.

While it is impossible to list all the initiatives and documents that serve businesses, it is worth mentioning one of the most important policy documents that aim at ensuring stable development of companies in Poland: the *Enterprise Development Programme 2020 - Implementation Programme for the Strategy for Innovation and Economic Efficiency 'The World is Changing'.*<sup>29</sup> The programme constitutes an annex to the Resolution of the Council of Ministers of 8 April 2014.

Reference should be made to the screening of businesses conducted by CentrumCSR.<sup>30</sup> In the period October 2011 - June 2012, the study reviewed the websites of 100 of the largest companies and 20 financial institutions (a total of 120 economic entities) on two occasions, seeking data to assess the involvement of companies in corporate social responsibility (CSR) issues. The general conclusion was not optimistic: the screening showed that Polish businesses are still at a very early stage of managing social responsibility and do not adequately communicate their actions. Most companies do not see the need for dialogue with stakeholders about non-financial aspects of their business.<sup>31</sup>

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<sup>26</sup> <http://www.mg.gov.pl/Wspieranie+przedsiębiorczosci>

<sup>27</sup> <http://www.uzp.gov.pl/cmsws/page/?F;239>

<sup>28</sup> <http://www.parp.gov.pl/ruszyl-projekt-parp-punkt-informacyjny-miedzynarodowe-zamowienia-publiczne-mzp>

<sup>29</sup> <http://www.mg.gov.pl/node/20481>

<sup>30</sup> The largest Polish companies and corporate social responsibility. Report from the 2012 study, M. Krzemień, G. Piskalski, CentrumCSR.PL Screening.

<sup>31</sup> Ibid. p. 3.

The issue of human rights is not of as much interest to companies as one would expect. Only 25% of the largest Polish enterprises address this issue in any way. On the other hand, companies are increasingly aware that most of the social responsibility risks that they may encounter can be classified into the broad catalogue of human rights (the most important issues of workers' rights, prohibition of discrimination and forced labour).

According to the study, 31 of the 120 companies that were studied (25%) referred on their websites and available materials to the responsibility of their partners in the supply chain. This result is equally weak as an indicator associated with the respect for human rights. 'The Social Report' was published on the websites of only 20% of the companies studied. However, there are issues which are difficult to subject to regulations and reporting, but that would rather fit in the area of organisational culture. These include the mode and quality of communication between economic operators.

According to the experts interviewed, almost no Polish company has full information about the location and conditions of production of all production units used to fulfil a specific contract or order. In addition, no expert is aware of a company interested in whether a partner/contractor is in possession of a report on an inspection of production units when signing a contract.

Communication channels in the other direction are equally ineffective or absent. Even if a company performing an order or providing raw materials has a code of conduct on socially responsible production, it is still uncommon to forward it to all stakeholders involved in the given economic venture, including to the contracting institution. According to experts, before legislation is created, a new culture of communication needs to be built. Although this is obviously the right direction, their effectiveness is doubtful.

## 8. State and non-state initiatives to combat trafficking in human beings for the purpose of labour exploitation in the private sector

When the role of the state in building standards for ethical business is analysed, it appears that the set of tools available to the state is not particularly broad. However, there are numerous measures which could be used. For example, the state can:

1. use legal mechanisms, such as administrative and criminal law, to discourage employers from violating employees' rights and engaging in forced labour;
2. create a social atmosphere favouring ethical business and respect for human rights,
3. provide with good examples, introducing the highest standards of ethical business in state-owned companies;
4. formulate expectations regarding human rights towards all economic entities, e.g. in documents with a political nature;

5. promote and popularise information about international instruments and create a system of encouragement and benefits (financial, access to new technologies) for enterprises which pay attention to business social responsibility.

All these instruments will be discussed later when answering the key question: are any activities aimed at reduction of demand for human trafficking undertaken in Poland?

If the answer to this question was based on documents officially available, such as the National Action Plan against Human Trafficking, the answer would have to be negative. If the scientific studies published in Poland on this subject were analysed, the answer would also have to be negative.<sup>32</sup> And, finally, if the content of the most important portal regarding human trafficking managed by the Ministry of the Interior was analysed, the answer to the question would again be negative.

Therefore, it can legitimately be claimed that in Poland the issue of combating human trafficking through discouraging demand is not a subject of an intense public debate. Interviewed experts even had difficulties to correctly define the core of the problem of eliminating the risk of human trafficking and forced labour through tackling demand.

Such an observation demonstrates the importance of launching a comprehensive educational campaign for various communities, including businesses, public administration, NGOs and the media in Poland. It is necessary to present the necessary facts and to demonstrate particular examples of why the lack of transparency in the economy is dangerous for human rights.

Experts interviewed also indicated that the global processes are still not interpreted appropriately in Poland. Internationalisation of large business is portrayed as a tool to build prosperity, while much less is spoken about the fact that as a result of globalisation of economic activities state instruments to supervise compliance with production standards, provision of work and distribution of goods are getting weaker.

Documents such as the UN Guidelines regarding Guiding principles on business and human rights, implementing the United Nations “Protect, respect and remedy” Framework<sup>33</sup> are increasingly important, but there is not much awareness in Poland about them. The previous government was not particularly interested in human rights and business and the implementation of the Guidelines within the national legal and economic order aroused controversies and disputes over authority.

In practice, no department wanted to implement them. That is why in March 2015 several NGOs prepared an Appeal to the Prime Minister Ewa Kopacz requesting that the work start for the National Action Plan on human rights and business which would be compliant with the UN Guidelines.<sup>34</sup> Signatories of the Appeal requested the immediate

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<sup>32</sup> The only scientific centre in Poland involved in the issue of human trafficking, which the author manages, does not pay enough attention to the subject of demand. It results from the lack of interest of the authorities which do not allocate any special funds to scientific research regarding human trafficking.

<sup>33</sup> [http://pihrb.org/wp-content/uploads/2014/10/Wytyczne-ONZ-UNGPs-BHR-PL\\_web\\_PIHRB.pdf](http://pihrb.org/wp-content/uploads/2014/10/Wytyczne-ONZ-UNGPs-BHR-PL_web_PIHRB.pdf)

<sup>34</sup> <http://www.opzz.org.pl/-/razem-na-rzecz-wytycznych-onz-dotyczacych-biznesu-i-praw-czlowieka>



establishment of the responsible department(s) or an inter-department team to be established at the level of the Prime Minister's Office. Authors of the Appeal highlighted the value of the Guidelines as a document which contributes to effective and efficient functioning of the state and non-state institutions, and not only business. Reportedly, the government decided that the Ministry of the Foreign Affairs would be involved in developing the National Action Plan. In order to test the level of involvement of the national authorities in the implementation of the Guidelines, the information was searched on the websites of two key ministries – the Ministry of Economy and the Ministry of State Treasury. On the website of the Ministry of Economy the most recent entries are from 2011. On the website of the Ministry of State Treasury, there was no information on the Guidelines.

Another important instrument is the OECD Guidelines for Multinational Enterprises.<sup>35</sup> In chapter 4 of this document entitled “Relations between employees and employers”, there is a recommendation for Member States to pass laws to encourage companies to “contribute to actual liquidation of the issue of child labour and elimination of all forms of forced or compulsory labour (§ 1)”. However, the significance of this document in Poland is significantly small.

These conclusions are only initial in nature, and knowledge of the guidelines and their actual influence on functioning of the market in Poland should constitute the subject of broader and more detailed research.

The debate regarding social responsibility of business in Poland is still at its initial stage. Indeed, there is a group of very active NGOs and several international initiatives present in Poland, but the media and politicians pay more attention to the economic dimension of production. Several “conflicts” overlap between society, business and the state, such as the battle for elimination of discriminatory agreements, conflicts regarding work time entitling to retirement, or conflicts about the role of trade unions in the economic and political life of the country. Inevitably, guarantees of respecting human rights are marginalised of the debate.

In fact, the issue of human rights as the foundation of the responsibility of economic entities within supply chain management is almost non-existent in Poland. There are very few companies which implement codes of conduct applicable for suppliers and contractors, which would determine a limit of minimum wage, introduce principles of equal treatment or limits to working time. In a country which has been building its market economy only for 25 years, such ideas rarely find fertile ground. Businesses perceive them as far-reaching interference with their recently obtained freedom of economic activities. If there are any regulations regarding human rights, human trafficking or forced labour, they are too general and not sufficiently precise. Moreover, there is a lack of access to detailed information by suppliers and recipients to build a flow model of goods and services based on principles of justice and security.

By consensus of the experts who were interviewed for this report, there are two key mechanisms which could be used to undertake activities aimed at impacting demand. First,

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<sup>35</sup> <http://www.oecd.org/corporate/mne/38111315.pdf>

disclosure rules, according to which there is an obligation to report activities undertaken by a company apart from its business activities, mostly related to the respect of human rights. Key questions concern whether a given company negotiates with employees, if it was involved in court proceedings, e.g. in labour courts, if men and women are equally paid, etc. The assumption is that if investors have to indicate that they verified whether their contractors in the supply chain respect human rights, they would only enter into agreements with those who do.

The second mechanism concerns public procurement, including selection criteria, sustainable public procurement<sup>36</sup> or green public procurement.<sup>37</sup> In practice, the objective is to make procurement procedures fully transparent or make sure that selection of an offer does not involve any violations of human rights (including violation of the prohibition of forced labour) and corrupt practices.

The European standards on rules for disclosure are determined by two essential legal instruments:

- a) EU Directive 2013/34/EU of 26 June 2013 on annual financial statements, consolidated financial statements and related statements of some types of entities.
- b) EU Directive 2014/95/EU of 22 October 2014 amending Directive 2013/34/EU regarding disclosure of non-financial information and information regarding diversity by some large entities and groups.<sup>38</sup>

The first Directive differentiates obligations of economic entities regarding financial reporting in respect of their size: the smaller the entity, the smaller the scope and specificity of information that should be disclosed in the annual statement. There are possibilities for simplifications and exemptions, and limitations regarding large entities and units of public interest. However, some decisions regarding simplifications and exemptions are left to the decision of member states. In the case of Poland, there will be companies, including state-owned companies, which will make efforts to disclose as little information as possible regarding human rights, corporate social responsibility or the elimination of exploitation and forced labour.

One cannot state unequivocally that the Directive is already being or is not being implemented. From a legal point of view and according to the Ministry of Finance (and some experts), some regulations that transpose Directive 2013/34 into the Polish legal system are included in the Accounting Act,<sup>39</sup> while some of the adjustment provisions are comprised in the draft regulation of the Minister of Finance which has a long and intricate title: *Draft regulation of the Minister of Finance amending the regulation on the scope of information provided in financial statements and consolidated financial statements, required in the prospectus for issuers registered within the Republic of Poland to whom the Polish rules of*

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<sup>36</sup> Application of sustainable public procurement in Poland. The report of the first stage of monitoring, CentrumCSR, 2015.

<sup>37</sup> Green public procurement, Warsaw 2009, Public Procurement Office.

<sup>38</sup> Dz. U. UEL 330/1, 15.11.2014

<sup>39</sup> Journal of Laws of 1994 no. 121 item 591.

*accounting apply.*<sup>40</sup> The draft resolution is currently a subject of a legislation process and it is hard to determine when it will come to an end. It still has six steps of legislation procedure to complete – among other things, it has to be subject to the analysis of two governmental committees, and has to be notified and published. Poland has already failed to fulfil its obligation of timely implementation of the Directive as the process for its transposition should have finished by 20 July 2015.

The second European legal instrument is the EU Directive 2014/ 95/ EU of 22 October 2014 amending Directive 2013/34/ EU in relation to the disclosure of non-financial information and information regarding diversity by some large entities and groups. The Directive has not yet been implemented, but according to Ministry of Finance, the work for the amendment of appropriate acts is in progress. According to experts, the subjective scope of the new regulations will be very limited, which means that their impact on the practices of the private sector will be minimal.

Some proposals of experts deserve close consideration. According to one such proposal, the obligation of disclosure of complete non-financial information could apply to all state-owned companies. This way the state could accomplish important objectives with a single operation. First and foremost, it can set a good example. A state that acts according to the principles of ethics may force the private sector to adopt an ethical approach. The solution would be valuable also for one more reason – state-owned companies would become pioneers of change, which in practice means that they would test new solutions having the support of the state. The experience could serve to create an optimum model of disclosure of non-financial information. And this would have a significance for the image of the state and state-owned companies. In fact, according to the opinions of the majority of experts both state authorities and state-owned companies are blocking any changes along these lines. This concerns increased transparency and access to non-financial information, the procedure for appointing governing bodies and also in the area of the respect of human rights.

Considering the fact that the disclosure of financial and non-financial information is the key to the transparency of the private sector, the Polish authorities should publish the regulation implementing Directive 2013/ 34/ EU and complete the works on an act adjusting the national laws to Directive 2014/ 95/ EU as soon as possible.

Another important instrument is public procurement and the introduction in the tender procedure of requirements other than the price, such as social considerations. It is a question of building the highest standards in business and culture of sustainable public procurements adjusted to the concept of human rights. There is still a lot to be done. More changes in the laws on public procurement are necessary – the changes introduced so far, although in the right direction, fail to create an effective mechanism for enforcing new standards. Besides, not long ago the principle of the ‘lowest price’ was applicable in Poland, which inevitably led to violations of employee rights and the fundamental rules of fair competition.

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<sup>40</sup> <https://legislacja.rcl.gov.pl/projekt/12278501>

The basic legal act that regulates issues related to public procurement in Poland is the Public Procurement Act<sup>41</sup> of 29 January 2004. Due to the need to adjust laws to international standards, the act has been amended several times over the last three years. Pursuant to current regulations the law requires that social considerations be taken into account in the selection of the best proposal.

Article 91 sec. 2 of the Act states that the assessment criteria are either price or price and other criteria that pertain to the subject matter of the procurement. The Act lists, among others, the following item among the other criteria: application of the best available technology in terms of environmental impact.

The regulation included in Article 91 sec. 8 of the Act is equally important. It states that the Prime Minister will determine the obligatory proposal assessment criteria other than the price for certain public procurement procedures by way of a regulation. When undertaking this task, the Prime Minister should keep in mind the need to implement the provisions of EU law and the specific nature or objective of the public procurement.

Furthermore, Article 25 sec. 1 of the Act states that the client may demand from the contractor a variety of documents and certificates to confirm that the offered products, services or construction works satisfy the requirements specified by the client. This includes documents that verify the compliance of contractor's activities with quality norms or refer to quality assurance systems based on appropriate European norms. Article 25 sec. 2 of the Act grants the Prime Minister an authorisation to determine the types of documents that the client may demand.

In the context of public procurement the use of the notion of sustainable public procurement<sup>42</sup> is becoming increasingly common. Sustainable public procurement is understood as a strategy of performance that involves not only social considerations, but also issues associated with human rights. The reasoning can be linked to Article 2 of the Treaty on European Union which lists the respect of human dignity and rights among fundamental values of the European Union. Similar regulations are included in the UN Guiding Principles on Business and Human Rights.<sup>43</sup>

For several years, the European Commission's document Social issues in procurement. A guide to consideration for social issues in public procurement (2011), has been available in Polish and is a key document concerning sustainable public procurement in Europe.

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<sup>41</sup> Journal of Laws of 2004 no. 19 item 177, as amended.

<sup>42</sup> Socially responsible public procurements are public procurements under which at least one of the following social issues is taken into consideration: job opportunities, dignity of work, compliance with social and labour laws, social integration (including the disabled), equal opportunities, availability, design for all, satisfaction of sustainable development criteria, including ethical trade issues and the voluntary respect of the rules of corporate social responsibility, with the application of the rules included in the Treaty on European Union and directives on public procurement, see: *Buying Social. A Guide to Taking Account of Social Considerations in Public Procurement*. European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, Directorate-General for the Internal Market and Services, 2010.

<sup>43</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

In order to comply with these directions of reforming the public procurement system the Public Procurement Office prepared in 2013 the National Action Plan concerning sustainable public procurement (2013-2016). The Plan is aimed at including considerations of environmental and social aspects in tender procedures.<sup>44</sup>

In terms of institutions, the National Labour Inspectorate (hereinafter: NLI) has a significant role in regulating social relations and eliminating negative market practices. Its tasks and organisational structure are stipulated in the Law of 13 April 2007 on the National Labour Inspectorate.<sup>45</sup> For years the institution was marginalised and its activity was hardly visible. Quite paradoxically, the institutional meaning and social role of the NLI changed when the problem of human trafficking and forced labour appeared in Poland. Influenced by substantive arguments and external pressure, the NLI changed its attitude towards combating human trafficking. The system for training labour inspectors with regard to human trafficking is not perfect, but there is a group of experts well familiarised with this topic. The NLI along with the Border Guard controls the legality of the employment of foreigners working in Poland. This activity is based on the agreement of both parties signed on 12 May 2015. Co-operation includes exchange of information on breaches of the employment and residence of foreigners in Poland, including cases of entrusting illegal work to foreigners, illegal work performed by foreigners and other information allowing the Border Guard bodies to recognise, prevent and detect border crimes, as well as human trafficking and forced labour.

The controlling tasks of the NLI, stipulated in Articles from 10 to 16 of the Act, are so broad that they cover nearly all employers.<sup>46</sup> This is the result of an evolution this institution is undergoing, but also of the manner of perceiving its systemic role in a slightly new context. Labour control services in many countries are regarded not only as agencies of the state, but as an important partner of civic society in eliminating various violations of the labour market<sup>47</sup>. The Polish legislator expresses this view by formulating, in Article 14. § 1, a long list of social partners of the NLI, including trade unions, employer organisations, employee councils, social labour inspection, public employment services as defined by regulations of promotion of employment and labour market institutions, state administration authorities, especially with authorities of supervision and control over working conditions, the Police, the Border Guard, Customs Services, tax offices and the Social Security Institution, as well as territorial local government authorities.

From the point of view of this study the most important question is whether the NLI can be and really is an entity which successfully eliminates from the market any signs of breaches of human rights. In this sense, it is crucial to ask whether procedural guarantees provided for the NLI and ethical integrity of inspectors make it an institution to be respected by all market participants and provide appropriate solutions and redress to injured parties.

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<sup>44</sup> <http://www.uzp.gov.pl/cmsws/page/GetFile1.aspx?attid=6888>

<sup>45</sup> Journal of Laws 2007 No. 89 item 589.

<sup>46</sup>As a principle, individual agricultural farms are excluded, but in the period of field work NLI inspectors visit such farms as well. Uniformed services are subject to NLI control only in the scope of employment of civil employees working based on contracts.

<sup>47</sup> See: Zbigniew Lasocik, *Labour market criminology, [in:] Criminological aspects of functioning of the labour market and employment in Poland*, Warsaw 2014, OPZZ.

In practice, the question implies whether the NLI may perform unannounced visits to all companies and whether corruption temptations are eliminated successfully. Since the scope of action of the NLI has already been mentioned, and the issue of acts of corruption of inspectors is not the focus of this report,<sup>48</sup> what remains to be examined is the right of NLI to carry out unannounced visits to business entities. Legally binding regulations in Poland raise some controversy, as there is a contradiction between various state regulations, but also between Polish law and the international ILO conventions ratified by Poland. In order to demonstrate the problem in a clear way, conflicting regulations will be presented in chronological order and starting with the international law.

In 1997 Poland ratified two ILO conventions concerning labour inspections, i.e. Convention No. 81 of 1947 on industrial and trade inspection<sup>49</sup> and Convention No. 129 of 1969 on agricultural inspection.<sup>50</sup> Both treaties stipulate that control actions of labour inspection shall be performed unannounced.

In 2004, the Parliament adopted the Law of 2 July 2004 on Freedom of Economic Activity,<sup>51</sup> which settles this issue in a completely different way. In Article 79 § 1 the legislator provides that the “Control authorities will notify the entrepreneur on an intention to conduct a control”. On the other hand, § 4 of the same article states that “Control is initiated no earlier than after 7 days and no later than before the lapse of 30 days upon serving the notification of the intention to conduct control”. In practice, this means that routine control by the NLI<sup>52</sup> of a business entity may be conducted 7 days after prior notification.

In 2007, the Polish Parliament adopted another law relevant to labour inspection which is of crucial importance, the Law on the National Labour Inspectorate, which establishes in Article 24 that “*Labour inspectors are authorised to monitor compliance with labour law regulations concerning the legality of employment in the scope referred to in Article. 10(1), items 3 and 4, without announcement and at any time of day and night*”. The legislator provides that the control may be conducted unannounced, but only in strictly specified situations, therefore this rule does not relate to all inspections.

Such diverse legal regulations raise interpretation doubts and are a source of a non-coherent practice of control bodies. Considering the role of labour inspection in protecting employees’ rights, it is necessary to clarify the legal situation and to make the practice more uniform.

Trade unions are key stakeholders in combating forced labour. In many studies, guidelines and recommendations it is mentioned that the right to membership in existing

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<sup>48</sup> Although it is not an act of corruption, at the time of writing this report, the Polish media reported that already for the third time this year the Head of the NLI granted awards to herself and her deputies in the amount of monthly wage, see:

<http://wyborcza.biz/biznes/1,100896,19221006,4-trzynastki-szefowej-pip-w-sumie-40-tys-zl-dodatkow-pensji.html#ixzz3sQljCbCA>

<sup>49</sup> Journal of Laws 97.72.450.

<sup>50</sup> Journal of Laws 97.72.452.

<sup>51</sup> Journal of Laws 2004 No. 173 item 1807.

<sup>52</sup> The situation is different in the case of special, ad hoc controls.

trade unions and the right to establish new trade unions are among the most effective instruments of influencing human trafficking in terms of demand. Employees familiarised with their rights and aware of the support from a union organisation are a much harder 'target' for the employer intending to violate their employee rights and human dignity.

The existence and activity of trade unions in Poland are stipulated by the Law of 23 May 1991 on Trade Unions.<sup>53</sup> Pursuant to the provisions of this legal act, membership in trade unions is possible for everyone performing any form of work, as well as retirees and pensioners, or even the unemployed. Any employee is entitled to join a union operating in his/ her enterprise, to establish a unit of an already existing organisation or establish (with others) a new union organisation. The single act of joining an existing union is the easiest solution, and comes down to expressing one's will and fulfilling the formalities. It is also relatively easy to establish a new organisational unit of the existing union. It suffices to gather at least 10 people who will adopt a suitable resolution, select their authorities and notify the union headquarters. Establishing a completely new union is more difficult, as it also requires registration of the organisation in a court.

In spite of such simplified procedures, experts claim that in Poland there is a relatively low level of "unionisation" of enterprises. Such a situation, however, does not result from legal restraints, but from the employers applying effective ways to "discourage" potential members of trade unions and possible initiators of union activity. Experts claim that in many private sector enterprises there is a ban on creating union organisations, and potential activists of the union movement are intimidated or dismissed. However, according to Polish law, employees do not have to inform their employer of establishing a union, and if they decide to do so, they do not have to disclose the list of members. Of course, a union operating in secret will not be as active as a union operating in the open and, sooner or later, it will have to reveal itself.

To conclude, a few remarks on the progress of CSR in Poland. The concept of CSR, although commonly accepted, has been raising controversies.

According to some experts, the CSR level in Poland is not particularly high and has been brought down to the level of marketing and Public Relations activities. The problem lays in the fact that CSR has been handed over to companies. If negotiations on CSR are held, they are most often conducted between companies and social organisations, whereas they should be conducted on a state-company level. An opportunity to restore the CSR concept is the obligation to report non-financial data. Another alternative is to establish an organisation or an institution authorised to review data concerning suppliers in a supply chain.

The following practice has been reported: company X contacts a well-developed non-governmental organisation Y, implementing various CSR projects. The co-operation with such an organisation has a good impact on the improvement of the company's image and strengthens the trust towards it. Such a way of thinking is based on the assumption that if company "X" was unreliable, organisation "Y" would not be willing to co-operate with it.

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<sup>53</sup> Journal of Laws 1991 No. 55 item 234.

## 9. The public debate and building civic awareness on combating trafficking in human beings for the purpose of labour exploitation in Poland

A comprehensive professional debate on human trafficking and labour exploitation is still lacking in the public domain and the Polish media. Furthermore, the issue of demand reduction measures to combat trafficking in human beings is not being addressed. The Human Trafficking Studies Centre of the University of Warsaw has been monitoring the media for many years and the observations made are rather pessimistic. There are few publications about human trafficking and these are usually descriptions of police operations, coverage of court proceedings or information on preventive measures targeted at young people by various institutions (mainly by the Police). There is a clear lack of analyses showing the context of this offence, and of information about the responsibilities of various social actors and, above all, of the state's role in this regard.

With regards to forced labour, there are occasional articles and reports that expose the negative business practices of companies, both transnational ones and those operating in the Polish market. The most common criticism is that these companies do not address forced labour in their supply chain management, nor do they work towards improving the unacceptable working conditions of their employees. Another criticism is the companies' disregard for the environment and their wasteful exploitation of raw materials. At the time of writing, the following article was published in Poland: *Nestle apologises for buying from those who benefited from the work of slaves*. Although it demonstrates degrading practices of exploitation of workers (fishermen in particular) in Thailand, it appeared in online media sources only. Furthermore, the existence of valuable and widely available press articles that take an analytical approach to the issue of responsible business and the state's role as a regulator of the market structures to facilitate protection of human rights is quite rare. Such publications appear on the websites of NGOs that work in these areas. They are growing in number and starting to become increasingly professional. NGOs are also beginning to play an important role in the Polish market.

When analysing press material, it is sometimes difficult not to get the impression that Polish mainstream media attach greater importance to threats to economic freedom by the state (difficulties with registration, high labour costs, complicated tax system, high VAT), than on the state's role as an effective market regulator that seeks to create conditions that foster dignified and socially responsible businesses. It is worth noting two issues that are relatively frequent in the Polish media. The first issue is related to economic disparities in Polish society, the message being conveyed is that 25 years after the system changed, things have not improved but rather deteriorated. On the other hand, when economists argue that wages in Poland are too low to stimulate consumption, representatives of businesses argue that there is a crisis and that their hands are tied. This, in effect, does not leave a positive impression of the Polish business community. When entrepreneurs discuss ethical business, social responsibility and human rights, it is perceived as a smokescreen instead of a credible declaration of good intentions. The second issue refers to the intensive involvement of trade



unions in the political process. Union leaders are standing with party leaders vying for power. Polish trade unions stubbornly repeat that they represent their members but will avoid clear declarations in the interest of all workers. Tripartite talks were abandoned and city streets – mainly in Warsaw – are a place of confrontation between unions and the government. This seriously tarnished the image of trade unions and decreased public confidence in these organisations.

Poland held a presidential election in May 2015 and parliamentary elections in October 2015. The presidential election saw 11 registered candidates, and the parliamentary election 119 election committees, including 10 of nationwide importance. Based on the materials available, it was not found that any of the presidential candidates addressed the issue of forced labour in their campaign. Furthermore, analysing the manifestos of all major political parties and party coalitions, forced labour was not addressed in any parliamentary campaigns.

In 2011 the Human Trafficking Studies Centre<sup>54</sup> wrote that the quality of social education on human trafficking in Poland was poor. Poland lacks a good school curriculum about phenomena such as human trafficking and forced labour. Occasionally, there are information campaigns in which various NGOs intensify actions aimed at young people planning to work abroad. However, they completely ignore other aspects of human trafficking, such as building the younger generation's sensitivity to the needs of others, including those who emigrate to Poland. Occasionally, awareness-raising campaigns are organised by the police. In such programmes, officers meet with school children. The effectiveness of these activities, however, is not convincing.

The importance of general education as one of the priorities of the authorities is highlighted by the fact that the official website on trafficking in human beings ([www.handelludzmi.eu](http://www.handelludzmi.eu)) has several posts about this issue.<sup>55</sup> In June 2015, a four-page leaflet called '*Don't let yourself be sold. Work safely abroad*' appeared on the website. Since February 2015, the website has included a brochure on human trafficking containing important and useful information. The leaflet *Human Trafficking in the EU*, prepared by the European Commission, was originally published in English, which significantly limited the effectiveness of the message. On 12 July 2013 a statement was posted in which the Ministry of the Interior and Administration reports that 'In order to raise the awareness of school children about human trafficking, an information campaign devoted to this issue has been conducted since 2009 within the framework of the National Action Plan against Trafficking in Human Beings'. There is no information about whether it is still on-going. Another entry consists of the Council of Europe's comic strip published under the campaign called *You're not for Sale*. The description includes the following statement: 'People employed legally or illegally in many economic sectors such as agriculture and the food industry often work for minimum rates or do not receive any remuneration'. The cover, however, has an illustration that gives the impression that human trafficking is mainly

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<sup>54</sup> Eliminating human trafficking in Poland. Analysis of the System, Zbigniew Lasocik (ed.), Warsaw 2011, Human Trafficking Studies Centre of the University of Warsaw, p. 175.

<sup>55</sup> <http://www.handelludzmi.eu/hl/multimedia-1/materialy-informacyjne>

forced prostitution. If such publications are to be effective, they should include an extensive campaign explaining the nature and complexity of the problem.

The official website on human trafficking in Poland lacks information about on-going school programmes being used at different levels of education. An attempt was made to acquire relevant information from the Ministry of National Education; however, nobody in the Ministry could give an answer to this question.

There are several websites on which those who are planning a trip abroad can get in touch with others who have had such an experience. Online forums see an intensive exchange of information, contacts, good advice and information on how to verify ads. Such sites are often run by NGOs or the media. The state has an almost non-existent role in these online resources.

Various NGOs in Poland publish textbooks on international standards for corporate social responsibility and ethical business aimed at different environments and professional groups.

In Poland, building public awareness on combating human trafficking and forced labour through tackling demand is seriously neglected and it is a task of high urgency. Citizens must understand what responsible business and sustainable development mean.

## 10. List of government, non-governmental and business initiatives to strengthen respect for human rights by businesses and reduce the demand for goods and services

In this part of the report, basic information is included on examples of some of the initiatives, projects and programmes that refer, sometimes indirectly, to the issue of demand reduction measures to combat trafficking in human beings for the purpose of labour exploitation. The initiatives presented here are very diverse and their relevance to the problem varies.

The Academy for the Development of Philanthropy in Poland, Warsaw, is an NGO in Warsaw that supports, among others, volunteering. It collaborates with the Ministry of Labour and Social Policy ([www.filantropia.org.pl](http://www.filantropia.org.pl)).

The Appeal to Prime Minister Ewa Kopacz demonstrated the power of civil society in Poland. In March 2015, dozens of NGOs made an appeal to Prime Minister Ewa Kopacz to start work on the National Action Plan in the field of human rights and business, which would implement the UN Guiding Principles on Business and Human Rights. The signatories to the appeal asked the Prime Minister, among other things, to immediately appoint a leading ministry or ministries responsible for implementing this task, or to appoint, at the Prime Minister's Office, a relevant interministerial team.<sup>56</sup> As a result of the Appeal, the Ministry of Foreign Affairs was appointed as the Ministry that is to undertake the work.

Aperam Stainless Services & Solutions Poland Sp. z o.o.<sup>57</sup>, Semianowice Śląskie, is a company that has ensured the highest management standards for many years. In 2005, it began implementing various norms and standards. The first was ISO9001, followed by a certificate of conformity OHSAS18001 and standard ISO 14001, which was obtained almost at the same time. The last one was the highest standard of organisational culture in the form of certificate SA 8000. In accordance with the latter norm, it should be documented that business partners are involved in the issue of corporate social responsibility (CSR), but the possibility of influencing their actual involvement in these issues is significantly limited. It is necessary to conduct a thorough scientific study of such companies and the actual results of the certificates being obtained.

ATERIMA<sup>58</sup>, Kraków, is an employment agency which has pursued a policy of corporate social responsibility since its inception. The company belongs to the 'Coalition for Responsible Business' set up by the Employers of Poland organisation. One of the company's initiatives was staff training called 'Identification and intervention at first contact with a victim of human trafficking', prepared by the Ministry of Internal Affairs and the Association PoMOC from Katowice.

The Business Ethics Centre is a joint initiative of Kozminski University and the Institute of Philosophy and Sociology of the Polish Academy of Sciences in Warsaw. ([cebi@kozminski.edu.pl](mailto:cebi@kozminski.edu.pl)).

EWL<sup>59</sup>, Warsaw, is another recruitment agency which was one of the first companies in the Polish market specialising in recruitment services and comprehensive services for hiring employees from eastern countries. Among the many initiatives of this Agency, the following project must be highlighted: *Safe Work in Poland*. It was implemented for employees from the former Soviet Union. The culmination of the project is the publication of two guides – one for foreigners seeking employment in Poland<sup>60</sup>, and the other for employers intending to hire foreign workers<sup>61</sup>. Both documents refer to the idea of the UN Guiding Principles.

The educational and consulting company CSRInfo has its headquarters in Warsaw. It organises, among others, the Benefactor of the Year Competition. ([www.csrinfo.org](http://www.csrinfo.org))

The Responsible Business Forum, Warsaw, is an organisation that promotes CSR in Poland. It examines issues of sustainable development, and cooperates with four key stakeholders, i.e. business, the scientific community, administration and NGOs. It prepares publications, analyses and reports. ([www.fob.org.pl](http://www.fob.org.pl))

Global Compact for Sustainable Development, Poland<sup>62</sup>, Warsaw, is the world's largest platform engaging business in the implementation of Sustainable Development

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<sup>56</sup> <http://www.opzz.org.pl/-/razem-na-rzecz-wytycznych-onz-dotyczacych-biznesu-i-praw-czlowieka>

<sup>57</sup> Global Compact Yearbook 2014, p. 301.

<sup>58</sup> <http://www.aterima.pl/>

<sup>59</sup> <http://www.ewl.com.pl/>

<sup>60</sup> <http://bezpiecznapraca.info.pl/files/poradnik-pl.pdf>

<sup>61</sup> <http://bezpiecznapraca.info.pl/files/poradnik-pracodawcy.pdf>

Goals. The purpose of this programme is to assist companies in developing best business practices and acquiring new growth opportunities. Global Compact publishes the Polish version of the Yearbook, which contains a number of reports on corporate social responsibility. It also includes, indirectly, reports on eliminating negative practices, including exploitation and forced labour, from the market.

The Global Reporting Initiative is an initiative whose mission is to create international standards of reporting on responsible and sustainable business. An example of this is the *Guidelines for Reporting on the Issue of Sustainable Development* of the GRI (*Global Reporting Initiative*).<sup>63</sup> The guidelines apply to companies of any size and any sector. A Polish translation of these guidelines has been available for some time.<sup>64</sup> In 2013, the GRI published the latest and most-comprehensive G4 Sustainability Reporting Guidelines.<sup>65</sup>

The Working Group of the Ombudsman is responsible for the implementation of the UN Guiding Principles. The action group is to be complementary to the National Plan implemented by the Ministry of Foreign Affairs. It is the only initiative on the list that has not yet been formally created; however, this is certain to happen as information about the appointment of the Group is to be announced on 10 December (Human Rights Day).

ORBIS Hotels against sex tourism<sup>66</sup>: In 2012, as part of their preventive and educational measures to protect children, the Orbis Hotel Group adopted (in the presence of the Chief of Police and the Nobody's Children Foundation) the Code of Conduct which aims to protect children from sexual exploitation. This is a ground-breaking document for Poland's sex tourism industry. The activities undertaken by ORBIS and the Accor Hotel Group included training hotel staff, informing tourists through catalogues, brochures, flyers, spots and the website about the problem of sexual exploitation of children, informing key people in the local area about the company's policy, and co-operation with the Police, taxi drivers, as well as owners of bars and restaurants.

The Institute for Political and Legal Studies<sup>67</sup>, **Toruń** was created to implement socially and economically useful purposes, namely, to take action for the development of knowledge and skills in areas relevant to modernisation and development of the state; the design and support of reforms and modernisation of the organisational structures of the state; creating and introducing modern, transparent and stable legal solutions necessary for the development of the country; as well as development and co-operation between artistic circles based on the intellectual achievements of the social sciences.

The Clean Clothes Polska Campaign (CCP), Warsaw, is an informal coalition of NGOs working to improve working conditions in the global garment industry. It has been operating since December 2009. The coalition currently includes organisations such as the Buy Responsibly Foundation, KARAT Coalition, the Polish Humanitarian Action, and the

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<sup>62</sup> <http://ungc.org.pl/>

<sup>63</sup> <https://www.globalreporting.org/standards/Pages/default.aspx>

<sup>64</sup> <https://www.globalreporting.org/resource/library/GRI-G3-Polish-Reporting-Guidelines.pdf>

<sup>65</sup> <http://odpowiedzialnybiznes.pl/hasla-encyklopedii/gri-inaczej-wytyczne-do-raportowania-kwestii-zrownowazonego-rozwoju-ang-global-reporting-initiative/>

<sup>66</sup> <http://www.orbis.pl/zrownowazony-rozwoj/ochrona-dzieci>

<sup>67</sup> <http://www.ibpp.net.pl/>

'Źródła' Centre for Environmental Activities. A report called *Sewn with Thick Thread* is an example of a OCP report. The analysis focuses on the working conditions in Bangladeshi factories that supply Polish clothing companies. This is, essentially, the first publication that so openly questions the situation of persons employed in the supply chains of these companies.

The CSR Watch Coalition Poland Częstochowa/Warsaw is an informal platform for civil society organisations working to protect and improve respect for human rights and principles of sustainable development within the context of conducting economic activity. The coalition works to improve respect for human rights in the context of conducting economic activity in the spirit of the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. The Coalition is also an attentive and critical observer of the activity of enterprises operating in Poland, Polish companies operating abroad, and the functioning of state institutions and agencies responsible for ensuring observance of human rights under this theme. The coalition consists of a dozen or so NGOs.<sup>68</sup>

The Ethics Advocates Coalition<sup>69</sup> was established on 10 December 2014 during a conference inaugurating the programme 'Human Rights and Business 2014-2020', and has been formally operating since 8 April 2015. The purpose of the Coalition is to develop a set of standards for Ethics Advocates and those organisational units in companies that are responsible for the implementation of ethics codes and other regulations in the spirit of the UN Guiding Principles on Business and Human Rights.

The National Chamber of Commerce *Fair Play Programme*, Warsaw, supports entrepreneurship, dialogue with the government, facilitates access to foreign markets, and promotes the principles of 'Fair Play' in business. (<http://www.fairplay.pl/>).

The National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights is a specific initiative that was extensively discussed and implemented under the Ministry of Foreign Affairs. Many NGOs are involved in consultations regarding this activity.

The National Action Plan for sustainable public procurement for 2013-2016 is a government plan that aims to promote the inclusion of environmental and social aspects in tender proceedings<sup>70</sup>. The entity implementing this plan is the Public Procurement Office.

The OECD National Contact Point<sup>71</sup> is an initiative that functions within the Polish Information and Foreign Investment Agency. The aim of the Contact Point is to promote and

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<sup>68</sup> The Polish Institute for Human Rights and Business (PIHRB) (coordination), Amnesty International Poland, Clean Clothes Polska, Frank Bold Foundation Poland (formerly Ecological Legal Service), the Nobody's Children Foundation, the Foundation of the 'Fair Trade Coalition', the Buy Responsibly Foundation, the Other Space Foundation, the Institute for Political and Legal Studies, the KARAT Coalition, Źródła' Centre for Environmental Activities, and the Polish Fair Trade Association. The Helsinki Foundation for Human Rights also cooperates with the coalition as a member with observer status.

<sup>69</sup> <http://ungc.org.pl/portfolio-items/koalicja-rzecznikow-etyki/>

<sup>70</sup> <http://www.uzp.gov.pl/cmsws/page/GetFile1.aspx?attid=6888>

<sup>71</sup> [http://www.paiz.gov.pl/kpk\\_oecd#](http://www.paiz.gov.pl/kpk_oecd#)

ensure compliance with OECD Guidelines, and to consider complaints against the actions of multinational companies in breach of the guidelines.

Monitoring the Social Responsibility of Major Polish Enterprises<sup>72</sup> is a project for the multistage independent social audit of business. The study analysed information on selected aspects of corporate social responsibility (12 indicators), which are available on the companies' websites.<sup>73</sup> The project selected 227 strategic companies in Poland, with the exception of cigarette, alcohol and weapons manufacturers.

The Good Business Portal is a website run by the Academy for the Development of Philanthropy in Poland ([www.dobrybiznes.info](http://www.dobrybiznes.info)).

The Business Ethics Portal is a domain that is only available at a fee at AfterMarket.pl ([www.etykabiznesu.pl](http://www.etykabiznesu.pl)).

Screening Centrum CSR. PL<sup>74</sup> is a non-commercial tool that allows public opinion to assess the level of progress and commitment of the largest Polish companies in terms of corporate social responsibility. The screening is carried out by CentrumCSR.PL in cooperation with Det Norske Veritas Business Assurance Poland sp. z o.o. based on an analysis of CSR-related website content.

Sygnalista.pl is a website that was created within the project 'Protection of Whistleblowers' conducted by the Stefan Batory Foundation.<sup>75</sup> It seems that the whistleblower system is one of civic society's best opportunities to create an alternative channel to CSR for putting pressure on governments and businesses.

Vision 2050<sup>76</sup> is *the Vision of Sustainable Development for Polish Business 2050*, which is the result of a dialogue and partnership between PwC, the Ministry of Economy and the Responsible Business Forum. The programme was created with the participation of 150 representatives of companies, organisations and institutions. *The Vision* defines the challenges and key areas for action, and indicates priority issues for the business sector.

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<sup>72</sup> <http://pihrb.org/koalicja/>

<sup>73</sup> <http://www.centrumcsr.pl/wp-content/uploads/2015/07/Methodologia-projektu.pdf>

<sup>74</sup> <http://www.centrumcsr.pl/projekt-centrum-nr-2/>

<sup>75</sup> <http://www.sygnalista.pl/dla-pracownika/stanowisko-fundacji-bator-ego-w-sprawie-sygnalistow/>

<sup>76</sup> <http://www.mg.gov.pl/node/24632>

## 11. Recommendations

1. The state should recognise that addressing/ impacting demand is a way to combat human trafficking and labour exploitation. The state should take on this task.
2. The government should enter into a dialogue with all stakeholders to develop an action strategy in this area. Appropriate recommendations for public authorities should be included in the National Plan against Trafficking in Human Beings for 2016-18.
3. The government should ensure that national action plans in the field of human trafficking and human rights are in line with international standards including the Council of Europe's Convention on Acting against Trafficking of Human Beings and the European Union's policy in this regard, such as the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016.
4. State authorities (the Parliament, President, Government), business and social stakeholders should review Polish business law to determine the extent to which it is consistent with international law, including, in particular, ILO conventions and existing guidelines on responsible and ethical business (UN, OECD).
5. The government, NGOs and educational institutions should carry out a series of awareness-raising activities to draw attention to the issue of the elimination of forced labour by impacting demand.
6. The state should consider the possibility of introducing provisions governing liability for violation of labour rights in the whole chain of suppliers and services.
7. The Parliament and the Government should, as soon as possible, complete the implementation of the two directives on reporting (Directive 2013/ 34/ EU and Directive 2014/ 95/ EU).
8. The state should create a system forcing companies to report financial and non-financial data.
9. The government, in consultation with businesses and NGOs, should consider appointing an institution/ organisation to monitor the exchange of information about the supply chain among companies, and to publish information on companies in breach of human rights.
10. The state should review the regulations on public procurement, so as to eliminate doubt as to the rank of social criteria in tender selection.
11. The state should introduce the highest standards for public procurement in state-owned companies, setting a good example to other enterprises.
12. The state should introduce the highest standards for employment in state-owned companies so as to become a model employer.

13. The state should regain control of the labour market, which needs a strong regulator. The government should employ an active policy promoting labour law and employment contracts (eliminating discriminatory contracts). It should promote freedom of association and ensure proper functioning of labour inspectorates.
14. The government should create an incentive system so that companies that decide to implement codes of conduct (especially those consistent with the UN and OECD Guidelines) would want to publish them, and effectively promote them. The government should periodically present to Parliament and to public opinion the results of monitoring compliance with such codes.
15. The Parliament and the government should ensure that the conditions for operation of foreign investors will be the same as for domestic investors, and will comply with applicable labour law.
16. The Ministry of Foreign Affairs should make every effort to ensure that the implementation of the UN Guiding Principles, which was launched by this ministry, is completed as soon as possible with the participation of all stakeholders.
17. The Ministry of Economy should make every effort to ensure that all documents relating to ethical business are readily available on this ministry's websites and on the websites of other ministries and government agencies having any contact with the private sector.





[www.coe.int](http://www.coe.int)