

Lodz, 2014-09-29

**A complaint to the European Commission on faulty implementation by Poland of Directive
2002/14/EC of the European Parliament and of the Council**

Dear Sirs or Madams,

The Civil Affairs Institute (INSPRO) is non-governmental organisation not related to any political party or interest groups. INSPRO's motto is: *to shape, develop and promote civic attitude*. We conduct social campaigns i.a. "Trucks on Tracks" (we promote people and environment friendly transport) and "Citizens Decide" (we promote participatory democracy).

Since 2007 we have led Work Council Support Centre. Within the Centre we work for the benefit of Work Councils created as a result of implementing Directive 2002/14/EC the European Parliament and Council on 11th March 2002 establishing general framework for informing and consulting employees in the European Community. In the period between 2007 – 2013 nearly 3 thousand members of Work Councils took advantage of our support (trainings, legal consulting). Within the initiative we conduct monitoring of implementation of the Directive by Polish law.

In the letter that was sent in 2009 we drew the Commission's attention to the provisions of Polish Act on informing and consulting employees defectively implementing the Directive. Unfortunately, our letter did not evoke any reaction on your part. From available information we concluded that European Commission accepted Polish Government standpoint in good faith.

Before preparing this letter, we requested Ministry of Labour and Social Policy and National Labour Inspectorate to entertain the problems we introduce. The Ministry parried, and National Labour Inspectorate ignored our letter. In the face of these facts, we convinced one of members of Polish Parliament to file an official interpellation on this matter. The answer we got twice confirms our evaluation of this situation (see attachments 4, 5).

Therefore, 8 years after the Polish Government has passed the bill implementing the Directive we hereby inform about the following facts, which prove the Directive does not function on the Polish territory in accordance with the intentions of its authors.

1. In point 2 of preamble to Directive invoking point 17 of the Community Charter of the Fundamental Social Rights of Workers it is stated that informing, consulting and participation of workers **“must be developed”**. In Poland, there are about 35 thousand of enterprises employing over 50 employees obliged to implement informing and consulting employees. 7 thousand enterprises signed with Labour Unions adequate agreements on informing and consulting employees before entry into force of the act without setting up Work Councils. In the group of the rest 28 thousand enterprises, until 2010 the act was implemented in 3048 enterprises by setting up Work Councils, nevertheless by the end of 2013 their number dropped to 544 in 2013. In response to parliamentary interpellation (see attachments 4, 5) the Ministry stated, that its major cause is the fact that employers neglect the duty of informing the Ministry about establishing Work Council. This information is not true with our knowledge. Namely, since 2007 we have been in touch with majority of Work Councils in Poland and currently we confirm steep decline in their numbers. Nota bene, if less than 20% of employers understood the law regulating their duty to inform the administration about establishing the council of the next tenure, what does it tell about clarity of the established law? The author of the act is to be blamed for unclear regulations and lack of their effective execution, therefore the Ministry cannot invoke this fact as extenuating circumstance of its negligence. In our opinion, the basic reason for this steep decline of work councils number is the pressure exerted by employers on employees not to sign petition for establishing council, the petition that needs to be signed by 10% of work crew to be the prerequisite for establishing the council. Signatories of those petitions are not protected from repressions from employers' part. Shortly after the act was implemented, employers were taken aback by this innovation. Although today they possess whole arsenal of methods to discourage employees from signing the petition for council establishment.
2. Point 28 of the preamble and the Art.8 of the 2 Act of Directive imposes implementing of effective court proceedings. These proceedings are not implemented by Polish law. Firstly,

terms of legally valid claim proceedings stretch up to 2 years and more. Moreover, in face of ambiguity in Polish Act courts assume, that employer-council relation in matters unregulated by the Act are regulated by the civil code. As a consequence, the complaint filed in work council court against employer about not informing or lack of consulting is discontinued in the moment of expiration due to end of council's tenure (new council is not, according to Polish courts, an inheritor of the previous council, even if it is constituted of the same members). It means that delaying tactics are of great benefits for the employer, because even if they breach the law, courts are not able to execute the law to be observed. The National Labour Inspectorate is also ineffective in executing the Act on informing and consulting employees. Out of 7 complaints filed in courts against employers for breaching the Act, employers won all of them. In other words, in Poland there have been no reported cases of breaching the Act on informing and consulting employees, even though other employee's rights are infringed repeatedly. It stems from the fact that Polish Act is phrased in unclear way as to what is the subject of information and consultations. The National Labour Inspectorate is inefficient not only in courts. Notwithstanding this rapid decline in numbers of work councils labour inspectors did not report any case of repressing employees against signing petition for council establishing or any case of not informing employees about being entitled to filing such petition, of which they were obliged by the Act.

3. Notwithstanding the foregoing, in respect to capital groups Polish Act does not guarantee effectiveness of regulations regarding informing and consulting employees encompassed in art.1 of the 2 Act of Directive. Decisions on subsidiary companies' future are made by holding companies, which are not employers to subsidiary companies' employees as defined in Polish Act as obliged to inform and consult. Many entrepreneurs take advantage of this loophole. Moreover, Polish labour law states that one entrepreneur cannot have many employers (for example: a company with many localisations within the borders of the country or so big the internal division for many employers is necessary). It is common for the inner employer to refuse information and not to consult restructuring hiding behind headquarters, when work council does not function; even if there is a work council on the level of headquarters, confidentiality regulations forbid sharing those information with other work council without employer's permission.

4. Lack of determination in Polish Act the way of financing expert support for work council stands against the prerequisite of effectiveness. General regulation stating that it is the employer who finances the functioning of work council is not supported by any guidelines in case the sides do not reach agreement in the field of the extent of financing. As a consequence, with unfavourable employer, the council has no means for experts financing, which means, that understanding of submitted information, as well as expressing an independent opinion on restructuring plans is impeded, if possible at all.

Therefore we lodge a formal complaint to the European Commission regarding the implementation by Polish Government of Directive 2002/14/EC the European Parliament and Council on 11th March 2002 establishing general framework for informing and consulting employees in the European Community. We apply for verification of authenticity of Government's statements.

The Civil Affairs Institute will be happy to provide the Commission with alternative knowledge of factual functioning of regulations about informing and consulting employees in Poland.

Rafał Górski

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