

Interpellation # 20360

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To: Minister of Work and Pensions

Concerning functioning of Work Councils – repeat

Dear Mr. Minister, with reference to the Secretary's of State in the Ministry of Labour and Social Policy response on 24th September 2013 to interpellation concerning work councils functioning I state, it is not exhaustive in terms of the merits and I would like to inquire about its complementation based on the knowledge outlined in final questions (previous interpellation #20360).

Substantiating the necessity of repetition of the answer to my interpellation on 19th August 2013, I hereby state that the Ministry of Labour and Social Policy does not question the fact of recent drastic drop in the number of work councils. According to the resort between 2006-2009, 2000 work councils were reported to be established, whereas after 4 years of the 1st tenure, only 544 were reported to be established. The responder's argumentation rebutting reproach concerning department's scant responsibility for provision 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 (hereinafter: directive) and its implementing act concerning informing and consulting employees (hereinafter: act) is based on the assumption that the decline is not a result of legislator's mistake or insufficient commitment on the part of the department and the National Labour Inspectorate, but stems from overall factors, including above all low interest in the issue on the part of employees, which is reflected in the lack of proposals for establishing council signed by 10% of the establishment's employees (Art. 8, section 8, Act I). The responder states, that the lack of the above mentioned proposal exempts the employer from the responsibility of establishing the council. The very expression must be deliberately deceptive, since the procedure of council establishment does not begin with submitting the proposition for council establishment, but with the employer's fulfilling the responsibility mentioned in Art.11, section 5 of the Act, meaning informing the employers about such possibility. Therefore it is a legitimate question, whether the lack of interest on the employees' part does not stem from lack of knowledge, where it is the employer who is at fault. As I gain my knowledge from the publication of the Civil Affairs Institute in Lodz monitoring work councils, the National Labour Inspectorate in its report compiled after first 12 months, when the Act was in force for the purpose of realization Art.27 among cases of Act's violation did not pronounce not even one fact of employer's violation of duty to inform employees about the possibility of council's choice (that is Art.25, section 2, which partly fulfils provision of Art. 11, section 5 of the Act). It is incompatible

with healthy sense of reality, that from the group of about 35 000 employers employing at least 50 employees not even one would violate this regulation. All the more that, as the Civil Affairs Institute informs, during the schooling the employers were told how to simulate in front of the National Labour Inspectorate inspectors fulfilling the requirements of this Article. Lack of informing the employees about the possibility of choosing the council is a clear statement of employer's unwillingness to establishing the council of the next tenure, and seeing as how people who sign the proposal to establish the council are not protected from the negative consequences of employer's actions, the low "interest" on the employees' part cannot be viewed as strange. Holding employees liable for lack of success in implementing the directive in Poland is under these circumstances at least inapt.

Thereupon I wish to kindly request that you state, how many cases of violation of Art.11, section 5 of the Act of informing and consulting employees by employers in the period of 2011 - 2012 was reported by the National Labour Inspectorate. If it shows, that as after the first year when the Act was in force, none or just few, then in that case the Ministry's of Labour and Social Policy statement concerning employees' lack of interest in councils turns false, which entails acknowledging the response to my previous interpellation to be inaccurate and requiring another response, this time based on actual state of affairs, enclosed in among others in the following questions, answers to which I would like to ask you to state in the response to the interpellation:

Did the National Labour Inspectorate, having made the report for the use of realisation of Art. 27 of the Act, conduct a control dedicated precisely to following the Act? Is it true that during routine control programmes, which inspectors follow during their work, there are no aspects concerning functioning of Act of informing and consulting employees? In other words, was the issue of following the Act reflected in the National Labour Inspectorate control plans, so that its outcome could be the base for a fair view of the directive's implementation?

How many cases of violating the Act, mentioned in the interpellation response, were stated after employees report, and how many during the National Labour Inspectorate routine controls?

How many of the above mentioned violations of the Act were brought to proceedings in offence case as per Art. 19, section I and 4 of the Act?

In how many cases brought to proceedings mentioned in the previous point number 4 were the accusations of violations of the Act considered unfounded? What part ended as conditional discharge, and which as imprisonment or imposing a fine? What was the average imprisonment period and what was the average fine?

Did the Ministry of Labour and Social Policy informed its European Commission partner about realisation of the above mentioned directive, including the decline in numbers of work councils? If so, I wish to kindly request to be sent the document.

If the department does not have at its disposal the above discussed information, it means the Act realisation is not being monitored, therefore the response I was given is much less competent.

Best regards

Mariusz Kamiński MP

Warsaw, 28th October 2013