

Written answer from the Secretary of State in the Ministry of Labour and Social Policy to the interpellation no. 20360 regarding the functioning of Works Councils.

Dear Mr Marshal,

In connection with the written interpellation by Mr Mariusz Kaminski MP sent on September 19<sup>th</sup>, 2013 (SPS-023-20360/13) regarding the functioning of Works Councils, I herewith inform Mr Marshal of the following.

The application in practice of the provisions of the Act of April 7<sup>th</sup>, 2006 on Information and Consultation of Employees (Polish Journal of Laws No. 79, item 550, as amended) remains under constant review of the Ministry of Labour and Social Policy. In accordance with Article 18 of the Act on Information and Consultation of Employees, an employer has 30 days from the date of election of members of Works Council by employees to deliver the information on the Works Council to the appropriate Minister of Labour and Social Policy, using the Model in the Annex to the Act. The information provided by employers are used to prepare a data set regarding Works Councils, including e.g. information on the date of creation, and information regarding the I or II term of the members of the Council. Nonetheless, it should be noted that the obligation, provided for in Article 18 of the Act on Information and Consultation of Employees, is not coupled with any effective sanctions.

At April 15<sup>th</sup>, 2013 there were 3,372 notifications on the election of members of Works Councils sent to the appropriate Minister of Labour and Social Policy, including 544 elections for a second term. Notifications on the election for a first term were as follows:

- 1) 2012 — 88,
- 2) 2011 — 75,
- 3) 2010 — 151,
- 4) 2009 — 121,
- 5) 2008 — 697,
- 6) 2007 — 180,
- 7) 2006 — 1509.

The Act on Information and Consultation of Employees introduced an unfamiliar until now, common, unified system of informing and consulting employees. Article 13 of the Act on Information and Consultation of Employees is a straightforward implementation of Directive 2002/14/EC of March 11<sup>th</sup>, 2002, which establishes general framework for informing and consulting employees in the European Community. The information that should be provided to the Works Council in accordance with Article 13 of the Act is similar to the provisions of Article 4(2) of the Directive. Article 14 of the Act on Information and

Consultation of Employees introduces the obligation of consulting the Council on the matters described in Article 13(1), 13(2), and 13(3). According to Article 2(3) of the Act on Information and Consultation of Employees, “consultation” means the exchange of views and establishment of dialogue between the employees’ representatives and the employer.

The definition of “Consultation” in the Act is similar to the definition provided in Article 2(g) of Directive 2002/14/EC, on establishing general framework for informing and consulting employees in the European Community.

When considering any flaws of the solutions proposed in the Act, especially in Articles 13(1) and 14(1), one also needs to consider the nature of these regulations. The employer’s obligation of holding consultations is about due diligence, and not about any particular result. It should be noted that this obligation is fulfilled even if the employer and the Works Council, after carrying out all the activities described in Article 14 of the aforementioned Act, haven’t reached any consensus and stick to their separate stands. Furthermore, we need to remember that in order for the information-consultation mechanisms to work properly, it is necessary for the social partners to cooperate with each other. As rightly noted by the European Commission in its report entitled “Fitness check” on EU law in the area of Information and Consultation (Brussels, August 26<sup>th</sup>, 2013, SWD(2013) 293 final), the right to information and consultation is a learning process<sup>1</sup>.

Directly addressing the questions and concerns raised, according to the Ministry of Labour and Social Policy, there are no grounds for stating that Directive 2002/14/EC, which establishes general framework for informing and consulting employees in the European Community, remained in fact unimplemented. It should not be inferred from the information on the total number of Works Councils that the Directive was not implemented, without considering other aspects, such as employees’ engagement, support from Trade Unions, or corporate culture. It should be emphasized that creating a Works Council is a right, and not an obligation of employees. They can exercise this right at any time. Hence, the lack of appropriate request from the employees means that the employer is exempted from organizing Works Council elections. The nature of the right to information and consultation was also noted by the European Commission in its report entitled “Fitness check” on EU law in the area of Information and Consultation (Brussels, August 26<sup>th</sup>, 2013, SWD(2013) 293 final). In the report, the European Commission states that three directives on information and consultation of employees (Directive 2002/14/EC establishing general framework for informing and consulting employees in the European Community; Directive 98/59/EC of June 20<sup>th</sup>, 1998 on the approximation of the laws of the Member States relating to collective redundancies; and Directive 2001/23/EC of March 12<sup>th</sup>, 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses) are tools to effectively realize the goals described therein. Simultaneously, the European Commission pointed out that in a large number of companies covered under

the Directives there are no information-consultation bodies whatsoever, as the right to information and consultation requires certain involvement from the employees in order to be used in practice<sup>2)</sup>.

As for the changes to the Act of April 7<sup>th</sup>, 2006 on Information and Consultation of Employees, any new legislative solutions need to be preceded by negotiations and consultations as a part of dialogue between social partners. In the context of the changes to the Act, it is necessary to take into account the Resolution of February 26<sup>th</sup>, 2007 of the Trilateral Committee for Social and Economic Affairs on the review of the Act of April 7<sup>th</sup>, 2006 on Information and Consultation of Employees. According to § para 5 of the resolution, Trade Unions and Employers' Organizations represented within the Trilateral Committee for Social and Economic Affairs shall begin negotiations on consensus regarding the use of the Act, and the outcomes shall be presented to the Trilateral Committee for Social and Economic Affairs after consultations with the representatives of the government. The parties shall negotiate the directions of changes suggested by each party. Achieving a consensus by representatives of social partners would provide the basis for wide acceptance of the new solutions and high level of stability.

I would also like to draw your attention to the position of the Chief Labour Inspector, presented to the Minister of Labour and Social Policy as an input to the written answer to the interpellation by the MP: The National Labour Inspectorate responds to any signals regarding potential breaches of the Act on Information and Consultation of Employees. In such cases, Labour Inspectors perform investigation activities, and if any irregularities are detected, they confront such an employer. Additionally, if any violations of the Act on Information and Consultation of Employees are detected, the Labour Inspector has the right to prosecute such violations in accordance with Article 19(1) of the Act (by imposing a fine or by referring the case to a competent court).

Inspections carried out in relation to compliance with the Act on Information and Consultation of Employees:

- 1) 2010 — 72,
- 2) 2011 — 38,
- 3) 2012 — 31,
- 4) First half of 2013 — 9.

Employers who had violated the provisions of the Act on Information and Consultation of Employees:

- 1) 2010 — 69,
- 2) 2011 — 38,
- 3) 2012 — 29,

4) First half of 2013 — 9.

Due to the irregularities concerning the compliance with the Act during the period under investigation (01/01/2010 to 30/06/2013), the Labour Inspectors have reported the total of 195 cases of violating the provisions.

The violations mainly concerned the cases of failing to provide the information described in Article 13(1) of the Act to the Works Council; failing to stage consultations with the Works Council on the matters described in Article 13(1), 13(2) and 13(3) of the Act; failing to provide the information described in Article 7(5) of the Act to the employees; or failing to organize the elections.

The highest number of complaints regarded primarily the cases of failing to stage consultations with the Works Council on the matters described in Article 13(1), 13(2) and 13(3) of the Act, as well as cases of failing to provide the information described in Article 13(1) of the Act to the Works Council. The remaining complaints regarded the cases of preventing the formation of the Works Council, or failing to organize the elections.

Yours Sincerely,

Jacek Męcina

The Secretary of State

Warsaw, September 25<sup>th</sup>, 2013.

1) "Fitness check" on EU law in the area of Information and Consultation (Brussels, August 26<sup>th</sup>, 2013, SWD(2013) 293 final), pp. 24.

2) "Fitness check" on EU law in the area of Information and Consultation (Brussels, August 26<sup>th</sup>, 2013, SWD(2013) 293 final), pp. 40.