

Secretary's of State in the Ministry of Labour and Social Policy response – on the behalf of Minister – to Mariusz Kamiński's repeated interpellation to interpellation 20360 concerning work councils functioning.

Dear Mr. Marshal, in response to your letter from 6 November 2013, signature: SPS-023-20360p/13, with which Mariusz Kamiński's MP repeated interpellation was sent, I present the following explanation.

In connection with doubts and questions concerning functioning on the basis of the Act of 7th April 2006 on informing and consulting employees (Journal of Laws No. 79, item 550, as amended) work councils I kindly inform that I maintain my opinion that there are no basis for adopting the position on 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 (Journal of Laws EU.L.2002.08.29) has not been effectively implemented. Works on act's project implementing directive provisions began in last quarter of 2003. Analytical works were conducted, assumptions were formulated, and preliminary draft of the Act on informing and consulting employees thereafter. In 2004 consultations with social partners on this project began. They were conducted as the Social – Economic Trilateral Commission committee (Employment Regulation and Collective Labour Agreement Committee and Development of the Social Dialogue Committee). Thereafter, the project including range of annotations made by members of those committees was forwarded for assessment on 25th October 2004 in accordance with the statutory notice period to representative trade union organisations and employers' organisations. On forwarding the project, Minister of Economy and Labour acknowledged the government's position presented to the social partners during the Social – Economic Trilateral Commission sitting, according to which if employees' or employers' side forward until 30th November 2004 project conjointly agreed on implementing directive 2002/14/WE, the government will direct this very project to parliamentary procedures, not green paper. In the face of the fact that social partners did not forward the mutual draft after interdepartmental consultations and after the Council of Ministers had adopted the draft, on 19th January 2005 the green paper was forwarded to the Polish National Parliament . Project's first reading took place on 14th February 2005. Works on the project were ceased due to expiry of the National Parliament term of office.

After second adoption the draft law was forwarded to the National Parliament on 19th October 2005. As a result of agreement between social partners concluded during parliamentary proceedings, during the sitting on 7th April 2006 Polish legislator passed the bill.

At the same time, I would like to emphasize the fact, that according to department's opinion the process of work councils establishment is of multifaceted nature, influenced by legislative, as well as non-legislative factors. Undoubtedly the disproportion in number of propositions of work council establishment in 2006 and 2007 and following years can be partly explained by changes in regulations due to the ruling of the Constitutional Court of 1st July 2008 (Journal of Laws No. 120, item 778) and Act of 22 May 2009 of changes of the Act of informing and consulting employees (Journal of Laws No. 97, item 805). Due to the changes in the act of informing and consulting employees trade unions functioning in the enterprise lost the possibility to designate council members and to put up candidates to election. Thus, part of work councils lost "union support". Moreover, it should be stated, that even though the duty to forward to the minister in charge of information concerning work councils emerges also at the election of work councils for second and following tenure, the information passed to the department suggest, part of the employers treat it as one-time duty. Therefore, employees of work department within working contacts with employers, who filed proposition on councils election for the first tenure, determine the scope of the phenomenon.

With regard to question No. 5 I kindly inform that accordingly to Art. 12 of the directive 2002/14/WE no later than till 23 March 2007 it was the Commission that was obliged to review the implement the directive, after consulting the Member States and representatives of employers and employees on the community level. Fulfilling the abovementioned obligation, the Commission created a document "Opinion of the Committee of the Regions on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the review the implementation of the Directive 2002/14/WE in EU (COM 2008 146 final version)¹⁾Enclosed please find ²⁾ a copy of government's view on "Opinion of the Committee of the Regions on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the review the implementation of the Directive 2002/14/WE in EU".

At the same time, I forward Chief Labour Inspector's view on questions 1-4.

As a result of conducted control on violating regulations of the Act on informing and consulting employees in the analysed period (that is from 01.01.2010 till 30.06.2013) labour inspectors disclosed 46 violations against employee's rights. It applied most frequently to:

- Not fulfilling employees with information on matter stated in Art.13 of the Act (14),
- Not consulting employees on matter stated in Art. 14 of the Act (10),
- Termination of employment relationship with council member without council's consent (6),

- Not fulfilling employees with information referred to in Art. 7, section 5 of the Act (5).

In every case of violation, labour inspectors undertook actions required by law.

The labour inspectors:

- Imposed 10 penalties as fines in total amount of 15,300 PLN,
- Brought 21 applications for punishment before court.

Moreover, in 9 cases inspectors applied pedagogical measures.

Courts decided on 21 cases:

- 7 proceedings ended with the acquittal of the accused,
- 12 proceedings ended with putting fine on the accused (in total amount of 22,900 PLN; average fine equalled 1,900 PLN),
- in 1 proceeding the accused was found guilty, but the punishment was waived.
- 1 proceeding ended with discontinuation due to limitation.

Concurrently, I would like to inform, that amongst conducted controls, where labour inspectors applied juridical measures concerning violations of regulations of the Act on informing and consulting employees, 72% were conducted due to reported labour complaint on the matter.

In 2011-2012, there were 3 cases of violation of Art. 11, section 5 of the Act on informing and consulting employees. In 2012, National Labour Inspectorate received 1 complaint concerning violation of Art. 11, section 5 of the Act, which was found legitimate. However in the first term of 2013, one complaint concerning the matter was filed and found ill-founded – labour inspector did not find plaintiff's accusations compatible with actual state of affairs.

Taking into consideration received signals, in 2014 the National Labour Inspectorate within the scope of conducted controls will pay close attention to the issue concerning abiding by regulations of the Act of 7th April 2006 on informing and consulting employees.

Best regards

Prime Secretary of State

Jacek Męcina

Warsaw, 16 December 2013

- 1) Document available under: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0146:FIN:PL:PDF>
- 2) Appendix – in Secretariat of the Parliament Sitzings