



EUROPEAN COMMISSION  
Employment, Social Affairs and Inclusion DG

Working Conditions

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EMPL.B.2/BMS/nmr (2016)

Civil Affairs Institute - INSPRO  
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**Subject: Your complaint of 4 December 2014 against Poland, registered under the reference CHAP(2015)00068**

Dear Mr Górski,

Thank you for your above-mentioned complaint of 4 December 2014, which was transmitted to me for action.

I would like to apologise for the delay in providing you with the final assessment in this matter. This is partially due to the large number of complaints and enquiries we receive under EU labour law.

In your complaint, you consider that Directive 2002/14/EC establishing a general framework for informing and consulting employees is not implemented in Poland in accordance with the intentions of its authors.

In particular, you indicate, first, that in the years following the adoption of the Act of 7 April 2006 on informing and consulting employees, the number of works councils in Poland declined significantly, which in your view is mainly due to pressures exerted by employers on workers not to sign a request for the establishment of a works council. Second, you consider in substance that the wording of the above-mentioned Act is unclear as to the topics to be covered by information and consultation and that the Polish authorities are ineffective in enforcing the Act. Third, you state that the Act allows for a situation where the management of companies may not inform and consult workers' representatives in case of a restructuring that has been decided by the parent company. Fourth, you criticise the lack of indication in the Act of how the recourse to experts is to be financed.

You also ask the European Commission to verify the 'authenticity' of the replies, attached to your complaint, of the Polish Secretary of State in the Ministry of Labour and Social Policy to the interpellations submitted in 2013 by Mr Kamiński, a Member of Parliament, on issues related to the application of the Act of 7 April 2006.

As a preliminary remark, I would draw your attention to the scope of the possible intervention of the European Commission. In its role of guardian of the EU Treaties, the Commission is notably in charge of monitoring the correct transposition of EU legislation by the national authorities of the Member States into their internal legal order. It may launch infringement proceedings against the Member States in order to bring national law in line with Union law. However, the practical application of the national rules implementing EU law falls exclusively under the competence of the national administrative and judicial authorities.

I should also point out that the principle of sincere cooperation between the Union and the Member States is enshrined in EU law. According to Article 4(3) of the Treaty on European Union, they shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. More generally, it is not for the Commission to call into question the factual information that the authorities of a Member State may provide in writing.

We have been informed that the Polish authorities have transposed Directive 2002/14/EC into national law by adopting the Act of 7 April 2006 on informing and consulting employees, published in the Journal of Laws on 10 May 2006, and that this piece of legislation was later amended by an Act of 11 April 2008, published on 30 May 2008. Both acts have been officially notified to the Commission. Following a judgment by which the Constitutional Court declared certain provisions of the Act of 2006 to be unconstitutional, it was further amended by an Act of 22 May 2009.

In the light of the above, please find hereunder the outcome of our assessment.

#### **1) As regards the alleged decline in the number of works councils in Poland**

I wish to underline that pursuant to Article 4(1) of Directive 2002/14/EC, the purpose of this Directive is to establish a general framework setting out minimum requirements for the right to information and consultation of employees. Article 4(2) states that the practical arrangements for information and consultation shall be defined and implemented in accordance with national law and industrial relations practices in individual Member States in such a way as to ensure their effectiveness.

Thus, the Directive takes into account the diversity of national systems and traditions. Notably, it does not oblige Member States to provide for the compulsory setting up of bodies representing workers in undertakings or establishments that reach the thresholds of employees laid down in the Directive. A rule such as the one contained in the Polish legislation, according to which an employer must set up a works council only upon receipt of a motion in writing signed by at least 10% of the workforce, cannot be considered as being incompatible with Directive 2002/14/EC.

The issue of the number of works councils in Poland bears no direct relationship to the provisions of the Directive and their implementation by the Polish authorities. On the basis of the information you have provided, we do not have any reason to consider that the rules applicable in Poland in this field are unclear and that this Member State would be violating EU law. As regards the obligation, under Polish law, of employers to transmit information on the establishment of a works council to the minister responsible for labour affairs, it is not prescribed by the Directive and therefore does not raise any issue of compatibility with it. Should a number of companies fail to communicate this information, as suggested by the Secretary of State in the Ministry of Labour and Social

Policy in his reply to Mr Kamiński's second interpellation, this may obviously have an impact on the statistics relating to the number of works councils.

**2) As regards the subjects on which information and consultation must take place and the alleged ineffectiveness of the Polish authorities in enforcing the Act of 2006**

On the question of the topics to be covered by information and consultation under Polish law, we do not share your view that the wording of the relevant provisions is unclear. Articles 13 and 14 of the Act of 7 April 2006 define the subject matter of information and consultation and the conditions under which they must take place, in terms that are similar to those used in the Directive itself. Unless we receive more specific information backing up your general statement, we do not have sufficient grounds to consider that Poland would infringe EU law on that matter.

You also allege that the enforcement of the Act by the National Labour Inspectorate is ineffective, notably due to the unclear wording of the provisions on the subject of information and consultation, and you appear to consider that this is demonstrated by the relatively small number of violations of the Act being brought to light and of related court cases.

In that regard, I should underline that Directive 2002/14/EC provides in Article 8(1) that Member States shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from the Directive to be enforced. Article 8(2) requires Member States to provide for adequate, effective, proportionate and dissuasive sanctions in the event of infringement of the Directive by the employer or the employees' representatives. I would draw your attention to the information contained in the annex to the Commission staff working document<sup>1</sup> accompanying the 2008 Communication on the review of the application of the Directive. Concerning Poland, the Commission states, in relation to Article 8(1) of the Directive, that *'In case of non-compliance with the provisions of Act 2006, the works councils may bring the case before the competent general courts. Furthermore, the labour inspector assumes the role of the public prosecutor in cases of commitment of the minor offences provided for in Article 19 of the Act.'* On Article 8(2), it is explained that *'Article 19 of Act 2006 provides for a fine or restriction of liberty in case of violation of the Act, in particular where the employer fails to inform or consult the works council on matters specified in the Act or hinders consultations or discriminates against a works council member in connection with his/her activities in the field of information or consultation.'*

Thus, on the basis of the information at our disposal, we do not have any reasons to consider that Poland would have infringed the Directive and, notably, the above-mentioned provisions. In particular, the limited number of sanctions being imposed for non-compliance with national legislation and of cases of litigation does not allow to conclude that the Directive's Article 8 on the protection of rights has been breached.

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<sup>1</sup> Commission staff working document accompanying the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the review of the application of Directive 2002/14/EC in the EU {COM (2008) 146 final} (SEC(2008) 0334 final).

**3) As regards the alleged failure of the Act of 2006 to impose the information and consultation of workers' representatives in case of restructuring decided by the parent company**

Several pieces of EU legislation containing provisions on information and consultation of workers, for instance Directive 98/59/EC on collective redundancies and Directive 2001/23/EC on transfers of undertakings, state in substance that a breach of information and consultation requirements cannot be excused by the fact that the necessary information has not been provided by an undertaking controlling the employer. By contrast, Directive 2002/14/EC does not contain an explicit provision to that effect. However, in Article 2(c), the Directive defines the term '*employer*' as '*the natural or legal person party to employment contracts or employment relationships with employees, in accordance with national law and practice*'. It also provides, in Article 4(4)(c), that consultation shall take place '*on the basis of information supplied by the employer (...)*'. Consequently, it is clear from the wording of the Directive that the obligations of the employer rest on the natural or, in most cases, legal person employing the workers, regardless of whether any measures on which workers' representatives must be informed and consulted are being taken by an undertaking controlling the direct employer, i.e. the parent company.

Although the Act of 2006 does not specifically define the term '*employer*', it does not appear to prohibit an interpretation according to which workers' representatives must be duly informed and consulted on a number of issues by the management of the legal entity employing them. In order to ensure the *effet utile* of the Directive on that matter, the Polish legislation should be interpreted along those lines.

**4) As regards the lack of indication in the Act of 2006 of how experts are to be financed**

Experts may provide a valuable help to employees' representatives in carrying out their tasks. Directive 2002/14/EC envisages the possibility of resorting to experts by mentioning, in Article 6 on confidential information, '*(...) the employees' representatives, and any experts who assist them (...)*'. However, the Directive does not contain any provision specifying how the possible recourse to experts should be financed.

Consequently, we could not find any grounds to consider that the provisions of the Act of 2006 which allow works councils to consult experts, but do not state how the support of experts should be financed, would be incompatible with the Directive and, more generally, Union law.

In conclusion, the information you have provided in your complaint does not enable us to identify any element that may suggest a breach of EU legislation on the part of the Polish authorities. Therefore, the Commission is not in a position to follow up on the matters you are referring to in your complaint.

In view of the above considerations, we intend to close your complaint. Should you have any information which you consider could lead to a different decision, please send it to us at your earliest convenience and at the latest within four weeks of this letter.

Yours sincerely,



Muriel GUIN  
Head of Unit