

ACT
of 7 April 2006

on Information and Consultation of Employees ¹⁾

Article 1

1. This Act shall establish the framework for informing and consulting employees as well as rules governing election of members of works councils.
2. This Act shall apply to employers carrying out business activity and employing at least 50 employees.
3. This Act, in so far as it refers to the rules governing the election and protection of members of the works council, shall not apply to:
 - 1) state-owned enterprises where an employee self-government has been established;
 - 2) mixed enterprises employing at least 50 employees;
 - 3) state-owned film institutions.
4. In the undertakings referred to in Section 3 above the right to information and consultation shall be vested in the board of employees.

Article 2

The following terms, as used in this Act, shall have the following meanings:

- 1) trade union organisation – shall mean a company or inter-company trade union organisation which is representative within the meaning of Article 241^{25a} § 1 of the Act of 26 June 1974 – Labour Code (*Journal of Laws* of 1998 No. 21, Item 94, as amended ²⁾); provisions of Article 241^{25a} § 3 to 5 shall apply accordingly;

¹⁾ This Act implements Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ EC L 80 of 23.03.2002; OJ EU Polish Special Edition, Chapter 05, Vol. 4, p. 219).

²⁾ Amendments to the uniform text of the Act referred to were published in the *Journal of Laws* of 1998 No. 106, Item 668 and No. 113, Item 717; of 1999 No. 99, Item 1152; of 2000 No. 19, Item 239; No. 43, Item 489; No. 107, Item 1127 and No. 120, Item 1268; of 2001 No. 11, Item 84; No. 28, Item 301; No. 52, Item 538; No. 99, Item 1075; No. 111, Item 1194; No. 123, Item 1354; No. 128, Item 1405 and No. 154, Item 1805; of 2002 r. No. 74, Item 676; No. 135, Item 1146; No. 196, Item 1660; No. 199, Item 1673 and No. 200, Item 1679; of 2003 No. 166, Item 1608 and No. 213, Item 2081; of 2004 No. 96, Item 959; No. 99, Item 1001; No. 120, Item 1252 and No. 240, Item 2407; and of 2005 No. 10, Item 71; No. 68, Item 610; No. 86, Item 732; and No. 167, Item 1398.

- 2) information – shall mean transmission by the employer to the works council members of data in matters related the employer in order to enable the latter to acquaint themselves with the subject matter;
- 3) consultation – shall mean the exchange of views and establishment of a social dialogue between the employer and the works council.

Article 3

1. The works council shall comprise the following number of members depending on the employer's staff levels and subject to Section 3 below and Article 5 Section 2 Item 1:
 - 1) from 50 to 250 employees – 3 members;
 - 2) from 251 to 500 employees – 5 members;
 - 3) more than 500 employees – 7 members.
2. Each trade union organisation shall have the right to elect at least one member of the works council.
3. Where the number of trade union organisations is larger than that of the members of the works council as specified in Section 1 above, each trade union organisation shall have the right to elect one member of the works council.
4. Trade union organisations may lay down their own principles of representation in the works council, other than those specified in Sections 2 and 3.

Article 4

1. Where at a particular employer:
 - 1) one trade union organisation operates, the management board of the organisation shall elect members of the works council and notify the employer thereof;
 - 2) more than one trade union organisation operate, the organisations shall jointly elect members of the works council and notify the employer thereof.
2. The rules for the appointment and operation of the works council referred to in Section 1 Item 2 shall be set out by trade union organisations by mutual agreement.
3. In the event of a failure to reach the agreement referred to in Section 2 above within 30 days of the commencement of negotiations, the trade union organisations shall notify the employer thereof and the members of the works council shall be elected by employees from among the candidates submitted by the trade union organisations following the rules specified in Articles 9 and 10.
4. Members of a works council at an employer at which no trade union organisation operates shall be elected, depending on the employer's staff levels, as follows:
 - 1) for an employer having up to 100 employees – members of the works council shall be elected by employees from among the candidates submitted in writing by a group of at least 10 employees;
 - 2) for an employer having more than 100 employees – members of the works council shall be elected by employees from among the candidates submitted in writing by a group of at least 20 employees.

5. The works council referred to in Section 4 above shall be dissolved and the mandate of its members shall expire following the lapse of 6 months of the date on which the employer at which no trade union organisation has operated thus far, is notified in writing of the establishment of a trade union organisation and of the number of members of the organisation who are its employees.
6. The provisions of Section 5 above shall not apply if the term of office of the works council expires within less than 12 months.

Article 5

1. The works council shall agree with the employer upon:
 - 1) the rules and procedure for the communication of information and undertaking of consultations;
 - 2) procedure for the settlement of disputes;
 - 3) rules for the distribution of costs incurred in connection with the election and operation of the works council appointed in accordance with the procedure provided for in Article 4 Section 4, including of costs incurred in connection with the commissioning of necessary expert opinions;
 - 4) rules for the distribution of costs incurred in connection with the commissioning of necessary expert opinions where the works council was appointed in accordance with the procedure provided for in Article 4 Sections 1 and 3.
2. The works council may agree with the employer, in particular, upon the following:
 - 1) number of members of the works council other than the one specified in Article 3 Section 1, which, however, may not be less than 3;
 - 2) rules for the distribution of costs incurred in connection with advisory services provided to the work council by persons having specialist knowledge;
 - 3) rules for the granting of leave of absence to members of the works council depending on the employer's staff levels.
3. The arrangements referred to in Sections 1 and 2 should provide for such a framework for information and consultation of employees that is no less favourable than the one laid down in the Act, and that takes into account the interests of the employer and employees.
4. In the event of a failure to make the arrangements referred to in Sections 1 and 2, the relevant provisions of the Act shall apply.

Article 6

Any costs incurred in connection with the election and operation of the works council appointed in accordance with the procedure specified in:

- 1) Article 4 Section 4 – shall be borne by the employer;
- 2) Article 4 Sections 1 and 3 – shall be borne by the trade union organisations.

Article 7

1. The employer's staff levels shall be determined based on the average number of persons employed under an employment contract in the period of the last 6 months prior to the date of notification of the election of the works council members.
2. While determining the staff levels referred to in Section 1 above juvenile workers shall not be taken into account.
3. In order to calculate the average number of employees in the period of the last 6 months, the numbers of employees in the subsequent months shall be summed up and divided into 6.
4. In order to calculate the average number of employees employed by an employer which conducts its activity for less than 6 months, the numbers of employees in the subsequent months shall be summed up and divided into the relevant number of months.
5. Having reached the staff levels referred to in Article 1 Section 2, the employer shall immediately notify its employees thereof in accordance with a procedure in place at the employer.

Article 8

1. Election of members of the works council appointed in accordance with the procedure specified in Article 4 Section 4 shall be held by the employer upon a written request of a group representing at least 10% of employees. The employer shall notify the employees of the date of the election and the deadline for the submission of candidates for the works council members in accordance with a procedure in place at the employer.
2. The notification referred to in Section 1 shall be made no later than 30 days prior to the election date. The deadline for the submission of candidates for members of the works council shall be 21 days.
3. The provisions of Sections 1 and 2 shall apply accordingly to the election of members of the works council appointed in accordance with the procedure specified in Article 4 Section 3.

Article 9

1. Active voting rights shall be vested in all employees, except for juvenile workers.
2. Passive voting rights shall be vested in all employees who have been employed by the employer for an uninterrupted period of at least one year, unless the employer has conducted its activity for a shorter period of time.
3. Passive voting rights shall not be vested in an employee who is the sole person in charge of an establishment or in their deputy, an employee who is a member of a collective body which manages the establishment, a chief accountant, a legal counsel or a juvenile worker.
4. The employment period referred to in Section 2 above shall include the period of employment at a previous employer if the change of employer was pursuant to Article 23¹ of the Act of 26 June 1974 – Labour Code, and in other cases if,

pursuant to separate regulations, the new employer became party to the existing employment contract by operation of law.

Article 10

1. The election of members of the works council shall be conducted by an electoral committee.
2. The composition as well as rules and procedure for the operation of the electoral committee in respect of the election referred to in:
 - 1) Article 4 Section 3 – shall be defined in the rules and regulations to be established by the employer and consulted with the trade union organisations;
 - 2) Article 4 Section 4 – shall be defined in the rules and regulations to be established by the employer and consulted with employees appointed in accordance with a procedure in place at the employer.

In the event of a failure to agree upon the rules and regulations within 30 days of the date on which these have been submitted, the rules and regulations shall be established by the employee with account being taken of the arrangements made in the course of negotiation.

3. The election shall be held, where possible, on a business day, during a general meeting of employees or in any other fashion provided for in the rules and regulations referred to in Section 2, no later than within 30 days of the date of adoption thereof.
4. The election of members of the works council shall be direct and held by secret ballot.
5. The election shall be valid if at least 50% of persons employed by the employer have cast their vote.
6. Where less than 50% of employees have cast their vote during the election, re-election shall be held following the lapse of 30 days of the election and be deemed valid irrespective of the number of employees casting their vote.
7. The candidates who receive the largest number of votes shall become members of the works council.
8. Where candidates for members of the works council receive an equal number of votes and the number of vacancies is smaller than the number of such candidates, the members of the works council shall be re-elected by employees from among these candidates.

Article 11

1. The term of office of members of the works council shall be 4 years.
2. Within 30 days of the date of election of the works council, the employer shall call the first meeting of the works council.
3. The works council shall appoint the chairperson from among its members and adopt its rules and regulations.
4. The works council shall operate until the first meeting of a newly elected works council.

5. Employer shall hold election of members of the next works council no later than 14 days prior to the expiry of the term of office of the existing works council.

Article 12

1. Membership in the works council appointed in accordance with the procedure specified in Article 4 Section 4 shall expire upon termination or expiry of the employment contract, resignation of the membership or as a result of submission of a petition for the cessation of membership, signed by no less than 50% of persons employed at the employer for at least 6 months.
2. In cases referred to in Section 1 above, supplementary election shall be held in accordance with Articles 9 and 10.
3. Membership in the works council appointed in accordance with the procedure specified in Article 4 Sections 1 and 3 shall expire upon termination or expiry of the employment contract, resignation of membership or dismissal by the trade union organisation.
4. In the event referred to in Section 3, the trade union organisation shall elect new members of the works council.

Article 13

1. Employer shall provide the works council with information on:
 - 1) recent and probable development of the employer's activities and economic situation;
 - 2) the situation, structure and probable development of employment, and on any measures envisaged with a view to maintaining current staff levels;
 - 3) measures likely to lead to substantial changes in work organisation or in contractual relations.
2. Employer shall provide the information if any changes are anticipated or action is planned or upon a written request by the works council.
3. Employer shall provide the information at such time, in such fashion and with such content as are appropriate to enable the members of the works council to acquaint themselves with the subject matter, analyse the information and, in matters referred to in Section 1 Items 2 and 3, prepare for consultation.
4. In matters referred to in Section 1 above, the works council may pass its opinion; adoption of the opinion shall require approval of the majority of members.
5. Each member of the works council may pass their dissenting opinion which should be presented to the employer.

Article 14

1. Employer shall undertake consultation with the works council in matters referred to in Article 13 Section 1 Items 2 and 3.
2. Consultation shall take place:

- 1) at such time, in such fashion and with such content as are appropriate to enable the employer to take action in the subject matter of consultation;
 - 2) at the relevant level of management and representation, depending on the subject under discussion;
 - 3) on the basis of information supplied by the employer, opinion formulated by the works council and, where applicable, a dissenting opinion of a member thereof;
 - 4) in such a way as to enable the works council to meet the employer and obtain a response, and the reasons for that response, to any opinion it might formulate;
 - 5) with a view to reaching an agreement between the works council and the employer.
3. The works council and the employer shall hold consultation in good faith, taking into account the interests of both parties.

Article 15

While carrying out its tasks, the works council may be assisted by persons having specialist knowledge.

Article 16

1. The works council and the persons referred to in Article 15 shall be obliged not to disclose any information, obtained in connection with the carrying out of their tasks, that constitutes business secret and has expressly been provided to them by the employer in confidence. The confidentiality obligation in respect of the information obtained shall continue to apply even after the expiry of their term of office, but not longer than for a period of 3 years.
2. In specific cases, the employer shall not be obliged to communicate information to the works council when the nature of that information is that, according to objective criteria, it would seriously harm the functioning of the undertaking or establishment, or would be seriously prejudicial to it.
3. If the works council considers the confidentiality of information or a refusal to disclose it to be in breach of the provisions of Section 1 or 2, it may apply to a District Court – Commercial Court to exempt the employer from the confidentiality obligation or to order it to disclose the information or undertake consultation.
4. In matters referred to in Section 3 the relevant provisions of the Act of 17 November 1964 – Code of Civil Proceedings (*Journal of Laws* No. 43, Item 296, as amended³⁾) on the examination of cases falling within the scope of laws on state-

³⁾ Amendments to the Act referred to were published in the *Journal of Laws* of 1965 No. 15, Item 113; of 1974 No. 27, Item 157 and No. 39, Item 231; of 1975 No. 45, Item 234; of 1982 No. 11, Item 82 and No. 30, Item 210; of 1983 No. 5, Item 33; of 1984 No. 45, Items 241 and 242; of 1985 No. 20, Item 86; of 1987 No. 21, Item 123; of 1988 No. 41, Item 324; of 1989 No. 4, Item 21 and No. 33, Item 175; of 1990 No. 14, Item 88; No. 34, Item 198; No. 53, Item 306; No. 55, Item 318 and No. 79, Item 464; of 1991 No. 7, Item 24; No. 22, Item 92 and No. 115, Item 496; of 1993 No. 12, Item 53; of 1994 No. 105, Item 509; of 1995 No. 83, Item 417; of 1996 No. 24, Item 110; No. 43, Item 189; No. 73, Item 350 and No. 149, Item 703; of 1997 No. 43, Item 270; No. 54, Item 348; No. 75, Item 471; No. 102, Item 643; No. 117, Item 752; No. 121, Items 769 and 770; No. 133, Item 882; No. 139, Item 934; No. 140, Item 940 and No. 141, Item 944; of 1998 No. 106, Item 668 and No. 117, Item 757; of 1999 No. 52, Item

owned enterprises and self-government of employees of a state-owned enterprise, excluding Article 691¹ § 2 and Article 691⁷, shall apply. In such cases the works council and the employer shall have the capacity to be parties in court proceedings.

5. The court may, upon request of the employer or acting *ex officio*, by its order, restrict to such an extent as is necessary the right to review the evidence material attached by the employer to the case file in the course of the court proceedings if any disclosure of such evidence material could result in a revealing of a business secret or any other secrets protected under separate provisions. A court order restricting the right to review the evidence material may not be appealed against.
6. The provisions of Sections 1 to 5 shall be without prejudice to the provisions concerning protection of secrets, contained in separate regulations.

Article 17

1. Employer may not terminate the employment contract with an employee who is a member of the works council throughout the latter's term of office, unless the works council consents thereto.
2. Employer may not unilaterally change any terms and conditions of work or pay to a disadvantage of an employee who is a member of the works council throughout the latter's term of office, unless the works council consents thereto, except for cases when it is allowed under the relevant provisions of other Acts.
3. Employee who is a member of the works council shall have the right to take a leave of absence, while retaining their right to receive remuneration, for such time as is necessary to participate in the carrying out of the tasks of the works council which cannot be carried out outside working hours, unless they take a leave of absence for any other reason.

Article 18

Within 30 days of the date of the notification referred to in Article 4 Section 1 or of the date of election of members of the works council by the employees, the employer shall submit information on the works council, drawn up in accordance with the model attached as Appendix hereto, to the minister competent for matters related to labour.

Article 19

1. Any person who, contrary to this Act:

532; of 2000 No. 22, Items 269 and 271; No. 48, Items 552 and 554; No. 55, Item 665; No. 73, Item 852; No. 94, Item 1037; No. 114, Items 1191 and 1193; and No. 122, Items 1314, 1319 and 1322; of 2001 No. 4, Item 27; No. 49, Item 508; No. 63, Item 635; No. 98, Items 1069, 1070 and 1071; No. 123, Item 1353; No. 125, Items 1368; and No. 138, Item 1546; of 2002 No. 25, Item 253; No. 26, Item 265; No. 74, Item 676; No. 84, Item 764; No. 126, Items 1069 and 1070; No. 129, Item 1102; No. 153, Item 1271; No. 219, Item 1849; and No. 240, Item 2058; of 2003 No. 41, Item 360; No. 42, Item 363; No. 60, Item 535; No. 109, Item 1035; No. 119, Item 1121; No. 130, Item 1188; No. 139, Item 1323; No. 199, Item 1939; and No. 228, Item 2255; of 2004 No. 9, Item 75; No. 11, Item 101; No. 68, Item 623; No. 91, Item 871; No. 93, Item 891; No. 121, Item 1264; No. 162, Item 1691; No. 169, Item 1783; No. 172, Item 1804; No. 204, Item 2091; No. 210, Item 2135; No. 236, Item 2356; and No. 237, Item 2384; of 2005 No. 13, Item 98; No. 22, Item 185; No. 86, Item 732; No. 122, Item 1024; No. 143, Item 1199; No. 150, Item 1239; No. 167, Item 1398; No. 169, Items 1413 and 1417; No. 172, Item 1438; No. 178, Item 1478; No. 183, Item 1538; and No. 267, Item 2258; and of 2006 No. 12, Item 66.

- 1) prevents establishment of a works council;
 - 2) does not provide the information referred to in Article 7 Section 5;
 - 3) does not hold or hinders election of members of the works council;
 - 4) does not inform or consult the works council on matters specified in the Act, or hinders consultation; or
 - 5) discriminates against any member of the works council in connection with the latter's carrying out of tasks related to information and consultation
- shall be liable to a penalty of restricted liberty or a fine.
2. If, in the period referred to in Article 16 Section 1, any member of the works council or any person referred to in Article 15 discloses any data which has expressly been provided to them by the employer in confidence, they shall be liable to a penalty of restricted liberty or a fine.
 3. The offence referred to in Section 2 above shall be prosecuted at the request of the employer as the aggrieved party.
 4. Proceedings in cases referred to in Sections 1 and 2 above shall be conducted pursuant to the Act of 24 August 2001 – Code of Proceedings in Cases Prosecuted as Minor Offences (*Journal of Laws* No. 106, Item 1148, as amended ⁴⁾). In cases referred to in Section 1 above, a labour inspector shall act as the public prosecutor.

Article 20

In Article 25 of the Act of 25 September 1981 on a Self-Government of Employees of a State-Owned Enterprise (*Journal of Laws* No. 24, Item 123, as amended ⁵⁾) the following Section 1a shall be inserted after Section 1:

“1a. A works council shall have the right to obtain information and undertake consultation in accordance with the Act of 7 April 2006 on Information and Consultation of Employees (*Journal of Laws* No. ..., Item ...).”

Article 21

In the Act of 10 July 1985 on mixed enterprises (*Journal of Laws* No. 32, Item 142; of 1986 No. 12, Item 72; of 1987 No. 33, Item 181; and of 1994 No. 121, Item 591) the following Article 23a shall be inserted after Article 23:

“Article 23a. A works council shall have the right to obtain information and undertake consultation in accordance with the Act of 7 April 2006 on Information and Consultation of Employees (*Journal of Laws* No. ..., Item ...).”

⁴⁾ Amendments to the Act referred to were published in the *Journal of Laws* of 2003 No. 109, Item 1031 and No. 213, Item 2081; of 2004 No. 128, Item 1351; and of 2005 No. 132, Item 1103 and No. 143, Item 1203.

⁵⁾ Amendments to the Act referred to were published in the *Journal of Laws* of 1986 No. 17, Item 88; of 1987 No. 33, Item 181; of 1989 No. 10, Item 57; of 1990 No. 17, Item 99; of 1991 No. 2, Item 6; of 1996 No. 24, Item 110; and No. 118, Item 561; and of 1997 No. 43, Item 272.

Article 22

In Article 35 of the Act of 23 October 1987 on the State-Owned Enterprise “Porty Lotnicze” (*Journal of Laws* No. 33, Item 185) the following Section 3 shall be inserted after Section 2:

“3. A works council shall have the right to obtain information and undertake consultation in accordance with the Act of 7 April 2006 on Information and Consultation of Employees (*Journal of Laws* No. ..., Item ...).”

Article 23

In Article 5 Section 5 Item 6 of the Act of 13 March 2003 on Special Terms and Conditions of Termination of Employment Contracts with Employees for Reasons Not Attributable to the Employees (*Journal of Laws* No. 90, Item 844; No. 213 Item 2081; No. 223 Item 2217; and of 2004 No. 96, Item 959) full stop shall be replaced with a semicolon and the following Item 7 shall be inserted:

“7) is a member of a works council or an employee representative specified in the agreement referred to in Article 24 of the Act of 7 April 2006 on Information and Consultation of Employees (*Journal of Laws* No. ..., Item ...), entitled to obtain information from and be consulted by the employer.”

Article 24

1. This Act shall not apply to the employers which are parties to an agreement concerning information and consultation of employees, entered into prior to the date of entry into force hereof, providing for a framework for information and consultation which is no less favourable than the one established in the Act and which takes into account the interests of both the employer and the employees, subject to Section 2.
2. To the employers and employee representatives entitled under the agreement referred to in Section 1 above to obtain information and undertake consultation, the provisions of Articles 15 to 17 shall apply accordingly.
3. Each party to the agreement referred to in Section 1 above may submit to the other party, in writing, its statement of reservations about the agreement’s fulfilment of the requirements set out in Section 1.
4. If, within 30 days of the submission of the statement of reservation referred to in Section 3 above, the parties to the agreement fail to settle the issues raised therein, the agreement shall be terminated by operation of law. In such an event the relevant provisions of the Act shall apply.
5. Employer shall, within 30 days of the entry into force of this Act, notify the minister competent for matters related to labour of the agreement entered into.

Article 25

1. The information referred to in Article 4 Sections 1 and 3 shall be communicated by a trade union organisation to the employer within 2 months of the entry into force of this Act.

2. In cases referred to in Article 4 Sections 3 and 4 the employer shall, within 4 months of the entry into force of this Act, inform the employees, in accordance with a procedure in place at the employer, of their right to elect a works council and of the scope of the council's powers.
3. Within 6 months of the entry into force of this Act, the employer referred to in Section 2 shall be obliged to hold election of members of the works council.

Article 26

1. By 23 March 2008, this Act shall apply to employers having at least 100 employees.
2. In the period from 24 March 2008 to:
 - 1) 23 May 2008, a trade union organisation shall make the notification, referred to in Article 4 Sections 1 and 3, to the employer;
 - 2) 23 July 2008, in cases referred to in Article 4 Sections 3 and 4, the employer shall be obliged to inform the employees, in accordance with a procedure in place at the employer, of their right to elect a works council and of the scope of the council's powers;
 - 3) 23 September 2008, the employer referred to in Item 2 above shall be obliged to hold election of members of the works council.

Article 27

No later than by 27 February 2007, a Trilateral Social and Economic Commission shall review the application of this Act with a view to proposing any necessary amendments to the government, based, *inter alia*, on the information referred to Article 18 and on the data obtained from the Central Database of Information on Business Activity and the Central Statistical Office.

Article 28

This Act shall enter into force 14 days following publication hereof.

MARSHALL OF THE SEYM

/ - / Marek Jurek

Model Information on the Works Council

1. Employer's name
2. Employer's address (registered office or place of residence)
3. Date of appointment of the works council
4. Procedure followed in the appointment of the works council
5. Number of members of the works council
6. The framework for information and consultation of employees:
 - 1) has been agreed upon by the works council and the employer, or
 - 2) is as specified in statutory regulations
7. Scope of the arrangements made by the works council and the employer pursuant to Article 5, Sections 1 and 2:

Explanatory notes:

Re.: 4 – specify the legal basis, i.e. Article 4 Section 1 Item 1 or 2, Section 3 or Section 4.

Re.: 5 – specify the legal basis, i.e. Article 3 Section 1 Item 1, 2 or 3, or Section 3.