



INFORMATION AND CONSULTATION

XENIA CHRONOPOULOU

EC DIRECTIVES



Directive 98/59 on mass redundancies

Directives 94/45 and 2009/38 on the establishment of European Works Councils

Directive 2001/86 on worker involvement in the European company SE

Directive 2001/23 on transfer of undertakings

Directive 2004/25 on take over bids

Directive 2002/14 on information and consultation

WHAT DOES IT MEAN?

THERE IS NO COMMON DEFINITION FOR INFORMATION AND CONSULTATION

IN EACH EC DIRECTIVE, HENCE IN EACH TRANSPOSITION LAW, THERE IS A DIFFERENT DEFINITION OF INFORMATION AND CONSULTATION.

WHAT DOES INFORMATION MEAN IN DIRECTIVE 2002/14?



“information” means transmission by the employer to the employees’ representatives of data in order to enable them to acquaint themselves with the subject matter and to examine it.

WHAT DOES CONSULTATION MEAN IN DIRECTIVE 2002/14?



“consultation” means the exchange of views and establishment of dialogue between the employees’ representatives and the employer.

WHAT DOES INFORMATION MEAN IN DIRECTIVE 2009/38 ON EWC?



“information” means transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given **at such time, in such fashion and with such content as are appropriate** to enable employees’ representatives **to undertake an in-depth assessment of the possible impact** and, where appropriate, **prepare for consultations** with the competent organ of the Community-scale undertaking or Community-scale group of undertakings.

WHAT DOES INFORMATION MEAN IN DIRECTIVE 2009/38 ON EWC?



“consultation” means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees’ representatives **to express an opinion on the basis of the information** provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings.

Information and consultation shall cover:



- (a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;
- (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
- (c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations (e.g. mass redundancies, take-overs)

HOW DOES INFORMATION TAKE PLACE UNDER DIRECTIVE 2002/14?



Information shall be given **at such time, in such fashion and with such content** as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, **prepare for consultation.**

HOW DOES CONSULTATION TAKE PLACE UNDER DIRECTIVE 2002/14?



- (a) while ensuring that **the timing, method and content** thereof are **appropriate**;
- (b) at the **relevant level of management and representation**, depending on the subject under discussion;
- (c) **on the basis of information supplied by the employer** and of the opinion which the employees' representatives are entitled to formulate;

HOW DOES CONSULTATION TAKE PLACE UNDER DIRECTIVE 2002/14?



(d) in such a way as to enable employees' representatives to meet the employer and **obtain a response, and the reasons for that response**, to any opinion they might formulate;

(e) with a view **to reaching an agreement on decisions** within the scope of the employer's power.

IS INFORMATION PROVIDED BY THE EMPLOYER CONFIDENTIAL?



In principle yes, information is confidential in so far the employer has **expressly state it is confidential**.

The employer is not obliged to communicate information or undertake consultation when the nature of that information or consultation is such that, according to objective criteria, it would seriously harm the functioning of the undertaking or establishment or would be prejudicial to it.

IS INFORMATION PROVIDED BY THE EMPLOYER CONFIDENTIAL?



In the event that the employer requires confidentiality or does not provide information, interested parties can apply for it to the First Instance Court of the company's registered office, which considers the matter during interim relief measures.

PROTECTION OF EMPLOYEES' RIGHTS - SANCTIONS



Directive 2002/14 previews in the point 28 of the introduction that “Administrative or judicial procedures, as well as sanctions that **are effective, dissuasive and proportionate** in relation to the seriousness of the offence, should be applicable in cases of infringement of the obligations based on this Directive”.

In many countries though sanctions are only financial fines which in some cases are derisory (in Greece up to **10.000 €**) contradicting the provisions of the Directive.

