

# INFORMATION SESSION ON INFORMATION & CONSULTATION OF EMPLOYEES



ORGANISED BY  
THE MALTA EMPLOYERS' ASSOCIATION  
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# DIRECTIVE 2002/14/EC

On the 17<sup>th</sup> December 2001 the European Commission reached unanimous agreement on a directive setting minimum requirements for companies informing and consulting with their employees. On 11<sup>th</sup> March 2002 it was adopted by Council of Ministers and European Parliament.

It took three years of animated discussion to reach such agreement. The EU framework law, obliges all businesses with over fifty employees to provide for genuine information and consultation of their workers before all major decisions at the company are taken, especially those affecting jobs.

Governments must set penalties at a level which makes them effective in deterring companies from breaching the directive.

The aim of this framework directive is to provide for minimum standards for companies situated in the EU and to fill the gaps and counter the shortcomings in the provisions in force at national and Community levels. This is the first EU law generalizing the obligation to inform and consult employees. Up to the enactment of directive 2002/14/EC, directives have identified specific situations where companies are obliged to exchange views with workers: collective dismissals, transfer of ownership of companies or where companies have a European Works Council.

The directive applies to all companies with fifty employees or more, representing under 3% of all EU companies (97% of EU companies fall outside the directive) and about 50% of EU employees.

**Principle of Subsidiarity**

## L.N.10 of 2006

The Regulations do **not** apply to businesses with less than 50 employees.

For the first time employees will have the legal right to independent representation for the purposes of information and consultation, with or without the presence of a recognized union.

The Regulations apply to public and private undertakings situated in Malta that carry out an economic activity whether or not operating for gain.

# INFO & CONSULTATION

## Three year transitional period

- a. for undertakings employing 150 and over entered into force on the date of publication in the Government Gazette, 13<sup>th</sup> January 2006
- b. for undertakings employing between 100 and 149 employees, on the 23<sup>rd</sup> March 2007 and
- c. for undertakings employing 50 employees and over, on the 23<sup>rd</sup> March, 2008.

How shall  
info & consul  
Take place?

3 scenarios

All  
categories  
are unionised

Not all  
categories  
are unionised

None of  
the  
employees  
are unionised

- In the case of undertakings where there is one or more recognized trade union covering all categories of employees, **with the representatives of the recognized trade union or unions**
- In the case of undertakings where the recognized trade union or unions do not represent all categories of employees, **with the representatives of the recognized trade union or unions, together with the elected or appointed representatives of the workers in the unrepresented categories**
- In the case where there is no recognized trade union, **with the representatives of the employees elected or appointed by means of a secret ballot from amongst all employees**

## WHO CAN STAND FOR ELECTION?

Any employee who is not in his/her probationary period on the date of the holding of the ballot shall be entitled to stand as a candidate in such a ballot.

- ❑ Only one employee representative per unrepresented category
- ❑ If only one employee stands as a candidate in such a ballot such employee shall be considered to be automatically elected and shall be appointed as an information and consultation representative from the date of the end of the period set by the employer for the submission of nominations
- ❑ In the event that no employee in a category submits a nomination for candidature, the employer shall have the duty to inform the employees in that category, **at three month intervals** from the initial call, of their right to have a representative to be informed and consulted. Nominations can be made within two weeks from date of communication and a ballot shall be held within one month from the closing date for nominations

- ❑ The employee representative shall hold office for a period of three years from date of election or appointment.
- ❑ The employer shall take the necessary measures to hold another ballot in the event of the resignation of an elected or appointed representative or on the expiry of a representative's term of office.



The employer has a number of obligations when a ballot for the election of representatives of employees in categories not represented by a recognized trade union is held.

1. the employer has to ensure that the ballot is fair and shall supply the Director with the procedure to be followed at least one month before the projected date of the ballot
2. all employees employed by the undertaking on the date of the ballot who are entitled to vote in the ballot are allowed to do so
3. the ballot must be conducted so as to secure that :
  - those voting do so in secret and
  - the votes given at the ballot are accurately counted

Following the election or appointment of the information and consultation representatives, the employer shall:

- inform the employees in writing of the identity of the information and consultation representatives and

#### **Art 5 (3) b**

- **Where the threshold has been reached on entry into force, hold a first information and consultation meeting within two months from their date of election or appointment**

#### **Art 5 (4) b**

- **When the threshold is reached after date of entry into force, within nine months from date of reaching such threshold.**
- hold a minimum of at least one meeting within six months after the date of each preceding meeting.

# WHEN SHOULD INFO BE GIVEN?

The information must be given

1. at such time,
2. in such fashion and
3. with such content

as are appropriate to enable, in particular, the information and consultation representatives to conduct an adequate study and, where necessary, to prepare for consultation.

**Consultation must take place prior to decisions being taken.**

## WHAT INFORMATION SHOULD BE GIVEN?

The employer must provide the information and consultation representatives with information on:

(a) the recent and probable development of the undertaking's activities and economic situation

(b) the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular, where there is a threat to employment within the undertaking and

(c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations

- A person to whom the employer entrusts any information or document (recipient) on terms requiring it to be held in confidence shall not disclose that information or document except in accordance with those terms.
- A recipient whom the employer has entrusted with any information or document on terms requiring it to be held in confidence may refer the dispute to the Industrial Tribunal for a declaration as to whether it was reasonable for the employer to require the recipient to hold the information or document in confidence.
- The employer is not required to disclose any information or document to a recipient when the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to the undertaking.
- Industrial Tribunal has competence over disputes concerning confidentiality or otherwise of information.
- An employee representative shall be in attendance at meetings and the representative shall be entitled to take reasonable time off with pay during his working hours in order to perform his functions as such a representative.
- An information and consultation representative or a candidate in an election for representation shall not suffer any detriment including dismissal.

# NON COMPLIANCE

Any person who fails to comply with any obligation imposed under these regulations shall be guilty of an offence and shall, on conviction, be liable –

- (a) to a fine (*multa*) of not less than ten liri and not more than fifty liri for every employee of the undertaking in relation to a failure by the employer to
  - (i) to set up an information and consultation procedure in accordance with regulation 11
  - (ii) to omit to do anything which he is under an obligation to do under these regulations and
- (b) in relation to any other offence, a fine (*multa*) of not less than five hundred liri and not more than five thousand liri.

THANK YOU

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