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COMMISSION OF THE EUROPEAN COMMUNITIES

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**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}

## 1. INTRODUCTION

Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community<sup>1</sup> (henceforward: "the Directive") was adopted five years ago on 11 March 2002.

The Directive's objective was mainly to consolidate the principle of information and consultation in the EU, whilst, on one hand, supplementing the existing Community directives<sup>2</sup> and, on the other hand, filling the gaps in national laws and practices.

To this end, the Directive provided for the establishment, by way of minimum requirements, of a general and flexible framework comprising the principles, definitions and arrangements for employees' information and consultation in undertakings at national level. A large measure of flexibility was given to Member States, in particular as regards the implementation of the Directive's concepts (such as "employees' representatives", "employer", "employees", etc.), and of the arrangements for information and consultation, in order to be able to adapt them to their own national situation and practices. The importance of the role of management and labour in this regard was emphasised.

The present document deals with the transposition of Directive 2002/14/EC in the enlarged EU. The Commission services based themselves on the replies to a questionnaire addressed to the Member States and to the European social partners<sup>3</sup>, on a study prepared by independent experts<sup>4</sup>, as well as on various other sources, including research, complaints etc. which were brought to the knowledge of the Commission.

It should be stressed that the present Commission services' report does not prejudice the position, which the Commission might eventually take with regard to the compatibility of any national provisions with the Directive.

## 2. NATIONAL MEASURES TRANSPOSING THE DIRECTIVE

2.1 Only a few Member States adopted measures in order to transpose the directive within the required deadline, i.e. by 23 March 2005 (FR<sup>5</sup>, HU, NL, PT, SK, FI, UK<sup>6</sup>). Two Member States (DE, AT) notified to the Commission that their existing legislation conforms already to the Directive's requirements and that no further measures are needed. BG and RO transposed the Directive, as required, before the date of their accession to the EU (1 January 2007).

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<sup>1</sup> OJ L 80 of 23.3.2002, p. 29.

<sup>2</sup> Council Directive 94/45/CE of 22 September 1994, on the establishment of a European Work Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purpose of informing and consulting employees, OJ L 254 of 30.9.94, p. 64; Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies. OJ L 225 of 12.8.98, p.16; and Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82 of 22.03.2001, p.16.

<sup>3</sup> Questionnaire on the transposition and review of Directive 2002/14/EC establishing a general framework for informing and consulting employees in the EU.

<sup>4</sup> Study on the implementation of Directive 2002/14/EC in the enlarged EU, Synthesis Report (to be published soon in DG EMPL's website)

<sup>5</sup> French legislation conformed already largely with the Directive. FR adopted law n° 2005-32 of 18.01.2005 with the aim to transpose Article 6(2) of the Directive.

<sup>6</sup> ICE Regulations 2004 were adopted on 21 December 2004, but entered into force on 6 April 2005.

The majority of the Member States failed thus to transpose the directive on time. Following infringement proceedings launched by the Commission, the European Court of Justice issued judgements against IT<sup>7</sup>, BE<sup>8</sup>, LU<sup>9</sup>, ES<sup>10</sup> and EL<sup>11</sup> for non-transposition within the required deadline. IT, ES and EL adopted meanwhile implementing legislation. BE and LU have transposed the Directive only partially.

2.2 Most of the Member States transposed the Directive by way of legislation. DK transposed it, in accordance with its tradition, by way of both legislation and collective agreements<sup>12</sup>; the transposing law applies in case that an undertaking is not covered by a collective agreement equivalent to the Directive's requirements. BE transposed the Directive by way of several legal and regulatory acts as well as by a number of collective agreements.

In some Member States transposition implied the adoption of a comprehensive law (e.g. DK, EE, EL, IT, CY, PL); in others only some, more or less minor, changes to the existing legislation were made (e.g. CZ, LV, LT, HU, NL, SI, SK, FI, SE).

In almost all Member States the transposition was preceded by a consultation of the social partners, albeit in different forms and procedures in accordance with the particular tradition of each country.

Some countries, which did not dispose of a general, permanent and statutory system of information and consultation nor a general, permanent and statutory system of employee representation, made use of the transitional provisions provided for in Article 10 of the Directive (BG, IE, IT, CY, MT, PL, UK).

A table on the state of implementation of the Directive setting out the national transposition measures is appended (annex 1).

Annex 2 gives an overview of the replies of the consulted stakeholders to the general questions of the questionnaire<sup>13</sup> regarding the application, the impact on the industrial relations systems of the Member States and the eventual need to review the Directive.

### 3. ANALYSIS OF THE TRANSPOSITION MEASURES

#### 3.1 Object and principles (Article 1)

**Article 1 of the Directive provides the following:**

**"1. The purpose of this Directive is to establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the Community.**

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<sup>7</sup> Judgement of 1.3.2007 in case C-327/06.

<sup>8</sup> Judgement of 29.3.2007 in case C-320/06.

<sup>9</sup> Judgement of 14.6.2007 in case C-321/06.

<sup>10</sup> Judgement of 5.7.2007 in case C-317/06.

<sup>11</sup> Judgement of 13.9.2007 in case C-381/06.

<sup>12</sup> The 1986 Cooperation agreement was amended in 2003 to meet the Directive's requirements.

<sup>13</sup> See footnote 3 above.

**2. 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.**

**3. When defining or implementing practical arrangements for information and consultation, the employer and the employees' representatives shall work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the employees."**

Article 1 lays down the purpose and principles of the Directive. It requires in particular that the practical arrangements for information and consultation of employees have to be effective and that the employer and the employees' representatives have to work in a spirit of cooperation.

One Member State reproduced the terms of article 1 of the Directive (EL). Several Member States laid down explicitly in their transposing measures that the employer and the employees' representatives have to cooperate or work in a spirit of cooperation taking into account the interests of both (e.g. BE, CZ, ES, IE, IT, MT, UK). Some other Member States used different wording, such as cooperation in good faith or on a basis of mutual trust (e.g. DE, EE, LT, AT, PL). However, generally, even where there is no express mention, the spirit of cooperation can be deduced from the content or the spirit of the transposing acts, which sometimes go beyond the directive's requirements and provide for advanced forms of employees' involvement, such as negotiation, co-determination or participation (e.g. FR, NL, FI, SE).

### **3.2. Definitions (Article 2)**

#### **(a) Undertaking**

**Article 2 letter (a) of the Directive defines the concept of undertaking as “a public or private undertaking carrying out an economic activity, whether or not operating for gain, which is located within the territory of the Member States”.**

Several Member States reiterate the aforementioned definition in their transposing legislation (DK, EL, IE, IT, CY, MT, RO, UK). Some Member States use a rather different definition (BE, BG, CZ, LV, NL, PL, SI, FI), whilst other Member States do not provide for any explicit definition in their transposing legislation (DE, EE, ES, FR, LT, LU, HU, AT, PT, SK, SE). However, some of the latter Member States use the term "employer" instead of "undertaking" in order to define the personal scope of application of the Directive (EE, HU, PL, SK, SE)<sup>14</sup>.

**Belgium:** The *Loi portant Organisation de l'Economie du 20 Septembre 1948* (hereafter Law 1948) defines this concept as follows: “unité technique d'exploitation, définie à partir des critères économiques et sociaux; en cas de doutes, ces derniers prévalent” (article 14 (1) of Law 1948). Article 14 (2) of Law 1948 adds that an undertaking is also obliged to set up a works council, if it occupies as a legal entity at least 50 workers.

**Bulgaria:** "undertaking" shall be any workplace -undertaking, office, organization, cooperative, establishment, project and the like, where work against payment is done (Supplementary provisions to the Labour Code)

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<sup>14</sup> In UK, although the Regulations 2004 define the term "undertaking", they use the term "employer" instead of "undertaking" in relation to its employees (Reg. 3 (3)).

**Czech Republic:** "Undertaking", as used in Part Twelve of the Labour Code, means "employer" (Article 276(1) LC).

**Latvia:** any organisational unit in which an employer employs his/her employees (Article 5 Labour Code)

**The Netherlands:** any organised body publicly operating as an independent unit where work is performed under a contract of employment or under public law appointment (art. 1 (c) of the Works Councils Act (hereafter WOR)).

**Poland:** There is no explicit definition in the transposing legislation. However, according to Art 1(3) of Employees' Information and Consultation Act of 7/04/2006 (hereafter Act 2006), the provisions concerning the election of the Work Councils and the protection of its members do not apply to certain undertakings (in particular state enterprises where self management is operated, joint enterprises employing more than 50 workers and state film industries). Furthermore, by virtue of Article 1(2) of Act 550/2006 applies to employers conducting business activities.

**Slovenia:** Article 1 of the 1993 Workers Participation in Management Act (hereafter WPMA) was amended in 2007 in order to enlarge its personal scope of application (commercial companies, irrespective of the type of ownership, and cooperatives) by adding the single entrepreneurs. However, it still excludes the institutes<sup>15</sup> to the extent that it provides that the collective exercise of the right to participate in management should be regulated by a separate law (not adopted yet)<sup>16</sup>.

**Finland:** In accordance with art 3 of Act of 30/3/2007 on co-operation within undertakings (hereafter Act 2007), an undertaking refers to a corporation, foundation or natural person engaged in economic operation regardless of whether the operation is intended profitable or non-profitable.

## **(b) Establishment**

**Article 2 letter (b) of the Directive defines the concept of establishment as “a unit of business defined in accordance with national law and practice, and located within the territory of a Member State, where an economic activity is carried out on an ongoing basis with human and material resources”.**

One Member State reiterates the aforementioned definition in their transposing legislation (EL). Member States which chose the option of Article 3 (1, a) of the Directive did not have to transpose this definition. Other Member States define the concept in different ways or terms:

**Germany:** According to case law, an establishment (Betrieb) is an organised unit within which the employer and the employees pursue in a permanent way by the use of technical or immaterial means, productive goals not limited to the satisfaction of their own needs.

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<sup>15</sup> According to the Slovenian legislation, institutes are a form of organisation, established to carry out activities in the field of education, science, culture, sport, public health, social protection, children care, protection of disabled and other activities, whose purpose is not to operate for gain.

<sup>16</sup> However, employees' representatives seem to be entitled to participate in the management of an institute by way of the institute's council.

**Spain:** the unit of business with specific organisation registered as such before the labour authority (Art. 1 (5) of Statute of Worker's Rights (hereafter WS)).

**Austria:** Every workplace building an organisational unit in which a natural or moral person or an association of persons continuously achieves certain work results with technical or immaterial means regardless whether profit is intended or not (Article 34 ArbVG; see also. Article 35 ArbVG).

### **(c) Employer**

**Article 2 letter (c) defines this concept as “the natural or legal person party to employment contracts or employment relationships with employees, in accordance with national law and practice”.**

Some Member States reiterate the aforementioned definition (EL, RO), whilst some others do not provide for any explicit, precise definition in their transposing legislation (BE, DK, DE, EE, FR, HU, LU, AT, PL, SI, FI, SE, UK). Several Member States define the term more precisely:

**Bulgaria:** any natural person, body corporate or division thereof, as well as any other organizationally and economically autonomous entity (undertaking, office, organization, cooperative, farm, establishment, household, association and the like), that independently hires employees under employment relationships (Supplementary provisions to the Labour Code)

**Czech Republic:** an individual or legal entity that employs individuals in an employment relationship (Article 7 LC).

**Spain:** any person, natural or legal, or community of property for whom services are rendered by employees, as well as persons transferred to user undertakings by legally constituted temporary employment agencies (Art. 1 (2) WS).

**Ireland:** "employer" in relation to an employee, means the person by whom the employee is employed under a contract of employment (section 1 of Act 9/2006).

**Italy:** any natural or legal person who is engaged in an organised economic activity in the form of an undertaking, including on a non-profit basis, in accordance with labour laws and collective labour agreements (Article 2 (b) of Legislative Decree n° 25/2007).

**Cyprus:** any person employing an employee, including the government of the Republic of Cyprus (Article 2 of Law 78(I) of 2005).

**Latvia:** a natural or legal person or a partnership with legal capacity that, on the basis of an employment contract, employs at least one employee (Article 4 of Labour Code).

**Lithuania:** (only in the LC, not in the WCL) an employer may be an enterprise, agency, organisation or any other organisational structure irrespective of the form of ownership, legal form, type and nature of activities, which has labour capacity according to Article 14 of this Code. An employer may also be any natural person. Legal capacity of the employer is regulated by the Civil Code (Article 16 of Labour Code).

**Luxembourg:** a natural or legal person who directs and controls the activity of salaried employees who are subordinated to him/her (Article 311 of the Labour Code).

**Malta:** Article 2(2) of LN 10/2006 refers to the relevant provision of the Employment and Industrial Relations Act (Section 2 of EIRA), according to which the term "employer" includes a partnership, company, association or other body of persons, whether vested with legal personality or not.

**The Netherlands:** a natural person or corporate body who maintains or operates the undertaking (Art. 1 (1, d) WOR).

**Portugal:** a natural or legal person party to employment contracts under whose authority and direction employees render their work (Article 10 of the Labour Code).

**Slovakia:** an employer is a legal or natural person employing at least one natural person in labour-law relation and, if so stipulated by a special regulation, also in similar labour relations. An organizational unit of an employer is also an employer, if stipulated by special regulations or statutes under special regulation (Article 7 LC).

#### **(d) Employee**

**Article 2 letter (d) defines the “employee” as “any person who, in the Member State concerned, is protected as an employee under national employment law and in accordance with national practice”.**

One Member State reiterates the aforementioned definition (EL), whilst some others do not provide for any explicit, precise definition in their transposing legislation (BG, CZ, DK, EE, FR, LU, HU, PL, SI, FI). Several Member States define the term more precisely:

**Belgium:** Employees are defined as persons occupied on the basis of a contract of employment or of apprenticeship. The King can, in the cases he determines, assimilate to employees certain categories of persons who, without having a contract of employment or of apprenticeship, provide work under the authority of another person (art. 14 (1) of Law 1948).

**Germany:** Article 5 BetrVG includes apprentices, teleworkers, home workers and excludes certain categories in particular executive employees (*leitende Angestellte*). The term "employee" is mainly defined by case-law as regards employees in the private sector.

**Spain:** any person who voluntarily renders salaried services within the sphere of the organisation and management of another natural or legal person, known as employer or entrepreneur (Art. 1 (1) WS).

**Ireland:** “employee” means a person who has entered into or works under a contract of employment (section 1 of Act 9/2006).

**Italy:** any person who undertakes, in exchange for remuneration, to provide intellectual or manual work to an undertaking, in the employment of and under the supervision of the entrepreneur (Article 2 (c) of Legislative Decree n° 25/2007).

**Cyprus:** any person who works for another person either on the basis of a labour contract or contract of apprenticeship or under such circumstances that it may be concluded that an employer-employee relationship exists (Article 2 of Law 78(I) of 2005).

**Latvia:** a natural person who, on the basis of an employment contract for agreed remuneration, performs specific work under the guidance of an employer (Article 3 of Labour Code).



**Lithuania:** (only in the LC, not in the WCL) An employer is a natural person possessing legal capacity in labour relations according to Article 13 of this Code, employed under employment contract for remuneration (Article 15 of Labour Code).

**Malta:** Article 2(2) of LN 10/2006 refers to the relevant provision of the Employment and Industrial Relations Act (Section 2 of EIRA), according to which the term "employee" means any person who has entered into or works under a contract of service, or any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker, but excluding work or service performed in a professional capacity or as a contractor for another person when such work or service is not regulated by a specific contract of service.

**The Netherlands:** Article 1 (2) WOR provides for a definition of "persons employed by the undertaking" as follows: "those persons employed by the company pursuant to a contract of employment with the business owner who maintains the works council. Persons who are employed in more than one company by the same business owner shall be regarded as being exclusively employed by the undertaking that manages their activities." It therefore makes no difference whether an individual works on a part-time basis or has a fixed-term contract. Paragraph 3 of the same Article indicates when and where (in the user undertaking or in the temporary employment agency) a temporary employment agency worker shall be included in determining the number of persons employed by an undertaking. Work council and the employer may extend or restrict by agreement the scope of the concept of "persons employed" (Article 6 (4) WOR).

**Austria:** persons employed in the establishment including apprentices and home workers regardless their age. Article 36 (2) ArbVG provides for certain exceptions.

**Portugal:** a natural person who undertakes in exchange of a salary to render work to one or more persons under their authority and direction (Article 10 of the Labour Code).

**Romania:** a natural person, party of an individual labour agreement or an employment relationship, who works for and under the authority of an employer and benefits of the rights stipulated by the Romanian law, as well as of the labour agreements and contracts (Article 3(c) of Law 467/2006)

**Slovakia:** a natural person, who performs dependant work for an employer according to his/her instructions in an employment and similar relationships and receives wage for his/her work (Article 11 LC).

**Sweden:** the term "employee" includes also any person who performs work for another and is not employed by that person, but who occupies a position of essentially the same nature as that of an employee (Section 1 of Co-determination Act 1976 (hereafter MBL)).

**United Kingdom:** an individual who has entered into or works under a contract of employment and, where the employment has ceased, an individual who worked under a contract of employment (Reg. 2 of ICE Regulations).

#### **(e) Employees' representatives**

**Article 2 letter (e) gives no specific definition of the term "employees' representatives", but refers explicitly to the relevant specific definitions provided for by "national laws and/or practices".**

Some Member States reiterate the aforementioned provision in their transposing legislation (EL, CY), whilst some others do not provide for any explicit, precise definition (BE, FR, LU, PL, SI). Several Member States define the term more precisely:

**Bulgaria:** trade union organizations; employees' representatives under Article 7(2) LC; employees' representatives under Article 7 a LC.

**Czech Republic:** trade union organisation or, where there is none in the undertaking, a works council (Article 276 (1) LC) or representatives concerned with occupational safety and health protection at work. Trade union organisations represent all workers including non-unionised ones (Article 286 LC)<sup>17</sup>.

**Denmark:** The representatives to be informed and consulted on behalf of the employees are the employees' ordinary representatives (i.e. shop stewards or members of the work council). If ordinary employees' representatives have not been elected at the undertaking or if it is agreed between the management and the ordinary representatives, representatives to be informed and consulted on behalf of the employees shall be elected by all employees at the undertaking. Where so required, the ordinary employees' representatives may be supplemented by representatives of groups who are not represented by the ordinary representatives.

**Germany:** works councils in the private sector and staff councils in the public sector.

**Estonia:** A representative is an employee of an employer who has been elected by a general meeting of the employer's employees to represent them in carrying out the duties deriving from this Act in relations with the employer (Article 2 ERA).

**Spain:** works councils or staff representatives depending on the number of employees (Articles 62 and 63 WS).

**Ireland:** "Employees' representative" means an employee elected or appointed for the purposes of this Act (sections 1 and 6 of Act 9/2006).

**Italy:** Workers' representatives are defined in accordance with the provisions in force, the inter-confederal agreements of 20 December 1993 and 27 July 1994, and subsequent amendments, or the national collective agreements applying in cases where these interconfederal agreements do not apply (Article 2 (d) of Legislative Decree n° 25/2007).

**Latvia:** Either trade union representatives or authorised employees' representatives who have been elected in an undertaking, which employs five or more employees (Article 10 (1) of Labour Code).

**Lithuania:** In labour relations the rights and interests of employees may be represented and protected by the trade unions. Where an undertaking, agency or organisation has no functioning trade union and if the staff meeting has not transferred the function of employees' representation and protection to the trade union of the appropriate sector of economic activity, the employees shall be represented by the works council elected by secret ballot at the general meeting of the staff (Article 19 of Labour Code).

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<sup>17</sup> A case is pending before the Constitutional Court concerning the constitutionality of the provision which stipulates that trade union organisations represent all employees, including those who are not members of any organisation within the undertaking.

**Luxembourg:** By virtue of Book IV CT, the staff representation is ensured in particular through the staff delegations and the joint works council.

**Hungary:** According to Article 42 (2) of the Labour Code, participation rights shall be exercised by the works councils or by the worker's representative elected by the employees.

**Malta:** Either the representatives of the recognized union(s) where the latter cover all categories of employees or, in case that not all categories of employees are represented, the representatives of the recognized union(s) together with the elected or appointed representatives of the workers in the unrepresented categories (Article 5(1) LN 10/2006).

**The Netherlands:** works councils in undertakings occupying more than 50 employees and employee representation in undertakings occupying between 10 and 49 employees.

**Austria:** Article 40 ArbVG provides for the staff institutions, in particular the works council.

**Portugal:** works councils, sub-councils, trade unions (Article 451 LC).

**Romania:** representatives of union organizations or, if there is no union, elected and appointed persons to represent the employees in accordance to the law (Article 3 (d) of Law 467/2006)

**Slovakia:** Employees' representatives shall be the competent trade union body, works council or works trustee (Article 11(a) LC).

**Finland:** In accordance with art 8 of Act 2007, the representatives of the personnel groups are: a shop steward elected in accordance with the relevant collective agreement; an elected representative as referred to in chapter 13, section 3 of the Employment Contracts Act; the occupational safety delegate; a co-operation representative.

**Sweden:** Section 6 MBL defines the term "employees' organisation" as an association of employees that pursuant to its by-laws is charged with safeguarding the interests of the employees in relation to the employer.

**United Kingdom:** By virtue of Regulation 2 of ICE Regulations, "information and consultation representative" means a) in the case of a negotiated agreement which provides as mentioned in regulation 16(1, f, i), a person appointed or elected in accordance with that agreement or b) a person elected in accordance with regulation 19(1).

#### **(f) Information**

**Article 2 letter (f) defines "information" as the "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".**

Several Member States reiterate explicitly the aforementioned definition in their transposing acts (EL, ES, IT, CY, LV, MT, NL, RO). Some Member States use a slightly different definition (CZ, EE, IE, HU, PL, SK, UK). Other Member States do not provide for any

explicit definition in their transposing legislation<sup>18</sup> (BE, BG, DK, DE, FR, LT, LU, AT, PT, SI, FI, SE).

**Czech Republic:** "Information" means transmission of necessary data from which the state of the communicated fact can be explicitly ascertained and, if relevant, an opinion on such fact can be formed (Article 278 LC).

**Estonia:** By virtue of Article 19 paragraph 1 ERA, the provision of information shall mean the forwarding to the employees' representative or, if there is no representative, to the employees of information at the appropriate level to allow the employees to obtain at the proper time a clear and sufficiently thorough overview of the employer's structure, economic situation and employment position, together with possible developments, and of other circumstances affecting the employees' interests and likewise to understand the effect on the employees of the situation and other circumstances.

**Ireland:** transmission by the employer to one or more employees or their representatives (or both) of data in order to enable them to acquaint themselves with the subject matter and to examine it and cognate words shall be read accordingly (section 1 of Act 9/2006).

**Hungary:** According to Article 15/B.1.a LC, the employer's obligation to inform the trade union or the works council (worker's representative) means provision to these representative bodies of the information specified in the Labour Code concerning industrial relations or the employment relationship, in such a way as to enable them to acquaint themselves with, examine, formulate and defend an opinion on the subject matter.

**Poland:** By virtue of Article 2(2) of Act 2006, "information" means the provision of data on matters relating to the employer to the work council to enable it to acquaint itself with the subject matter. Article 13(3) adds that the data should enable the work council to address and analyse the matter.

**Slovakia:** Information shall be the provision of data by the employer to the employees' representatives, in order to acquaint them with the content of the information (Article 238 LC).

**United Kingdom:** By virtue of Regulation 2, "information" means data transmitted by the employer to the information and consultation representatives or, in the case of a negotiated agreement which provides as mentioned in regulation 16(1, f, ii), directly to the employees, in order to enable those representatives or those employees to examine and to acquaint themselves with the subject matter of the data.

### **(g) Consultation**

**Article 2 letter (g) defines "consultation" as the "exchange of views and establishment of dialogue between the employees' representatives and the employer".**

Several Member States reiterate explicitly the aforementioned definition in their transposing legislation (EL, ES, IT, CY, LT, HU, MT, NL, PL, RO, SK<sup>19</sup>). Some Member States use a slightly different definition (CZ, EE, IE, LV, LT, SE, UK), whilst other Member States do not

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<sup>18</sup> In certain cases, such as for example in BE, BG, DK, DE, SI, the elements of the definition can, however, be deduced from other provisions of the relevant legislation.

<sup>19</sup> However, Article 237 LC uses the term "negotiations" instead of "consultation".

provide for any explicit definition in their transposing legislation<sup>20</sup> (BE, BG, DK, DE, FR, LU, AT, PT, SI, FI).

**Czech Republic:** "Consultation" means the negotiation between the undertaking (the employer) and the employees, the exchange of views and explanations with the objective of reaching an agreement (Article 278 LC).

**Estonia:** By virtue of Article 19 paragraph 2 ERA, consultation shall mean the exchange of views between the employer and the employees' representative or, if there is no representative, the employees and the conduct of a dialogue at the appropriate level to allow the representative or the employees to express opinions and obtain from the employer replies to the opinions expressed for the purpose of reaching an agreement on the matters laid down in Section 20 (1, points 2 and 3) of this Act.

**Ireland:** the exchange of views and establishment of dialogue between either or both (a) one or more employees, (b) the employees' representative or representatives, and the employer (section 1 of Act 9/2006).

**Latvia:** "Consultation means the exchange of views and dialogue between employees' representatives and the employer with a view to reaching an agreement" (Article 11 (3) LC as amended in 2005).

**Lithuania:** (only in LC) "Consultation means exchange of opinions and establishing and developing a dialogue between the employees' representatives and the employer (employers' organisation)" (Article 47(1) of Labour Code).

**Sweden:** the concept of "negotiation" is used instead of consultation (Section 10 MBL). Section 15 MBL provides for certain elements of this concept (e.g. meetings; reasoned proposal in the search of a solution etc.).

**United Kingdom:** By virtue of Regulation 2 of ICE Regulations, "consultation" means the exchange of views and establishment of a dialogue between a) information and consultation representatives and the employer; or b) in the case of a negotiated agreement which provides as mentioned in regulation 16(1, f, ii), the employees and the employer. In the case of PEAs, the terms "seek the views" of employees or their representatives are used.

### **3.3 Scope, threshold and derogations (Article 3)**

#### **3.3.1 According to Article 3(1) of the Directive, this Directive shall apply, according to the choice made by Member States, to:**

**(a) undertakings employing at least 50 employees in any one Member State, or**

**(b) establishments employing at least 20 employees in any one Member State.**

Several Member States chose the first option of this provision and applied the information and consultation framework to undertakings employing at least 50 employees (IE, IT, MT, PL, UK). Other Member States chose different thresholds or mechanisms:

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<sup>20</sup> In certain cases, such as for example in BE, BG, DK, DE, SI, the elements of the definition can, however, be deduced from other provisions of the relevant legislation.

**Belgium:** At present, a general, permanent and statutory system for information and consultation is only guaranteed insofar as the threshold of 100 employees is reached in an undertaking. Despite the threshold of 50 employees provided by the Law 1948, this law has always been implemented through royal decrees in a way that elections of works councils had to be organized in undertakings employing at least 100 employees. Sectoral collective agreements may also provide for the institution of a *Délégation syndicale* in an undertaking. The relevant thresholds are fixed in these agreements and vary from 5 to 50 employees.

**Bulgaria:** In undertakings employing at least 50 employees and in parts of undertakings which are organisationally and territorially independent and employ at least 20 employees, the General Assembly elects employees' representatives for the purposes of informing and consulting employees, pursuant to Article 130c and Article 130d (Article 7a (1) LC)

**Czech Republic:** in any undertaking regardless of the number of workers (Article 278(1) LC). However, their number plays a role as regards the issues covered by information and/or consultation (if an undertaking employs less than 10 workers, cf. Articles 279(2) and 280(2) LC).

**Denmark:** in undertakings in which at least 35 workers are employed (Article 2(1) of Act n° 303/2005; cf. also Cooperation agreement between DA and LO).

**Germany:** In the private sector, works councils are established in establishments with at least 5 employees having the right to vote, of which 3 are eligible (Art 1 (1) BetrVG). The participation rights of the works councils do not depend, in principle, on the number of employees. However, certain rights do depend on this number, such as those enshrined in articles 99, 111 BetrVG. The establishment of the Economic Committee (Wirtschaftsausschuss) depends also on whether there are more than 100 employees in the establishment. In the public sector, staff councils are established in departments with at least 5 persons having the right to vote, of which 3 are eligible (Art 12 (1) BPersVG).

**Estonia:** Employers who employ at least 30 employees are required to implement the provision of information and consultation (Article 17 ERA).

**Greece:** in undertakings employing at least 50 employees and in establishments employing at least 20 employees (Article 3 of PD 240/2006).

**Spain:** in undertakings which have employees' representatives, i.e. in all undertakings with more than 10 employees, as well as in those occupying between 6 and 10 employees, where the majority of employees decided to elect a staff representative (Articles 62 and 63 WS).

**France:** By virtue of article L431-1 CT, works councils are set up in undertakings that employ at least 50 employees. They may be also set up in undertakings with less than fifty employees by way of collective agreements. The French legislation goes beyond the directive's requirements in that it provides for the establishment of staff delegations in undertakings or establishments occupying at least 11 employees.

**Cyprus:** in undertakings employing at least 30 workers (Article 3(1) of Law 78(I) of 2005).

**Latvia:** According to Article 10(2) LC, authorised employees' representatives may be elected in an undertaking in which at least 5 employees are employed.

**Lithuania:** According to Article 3 WCL, a works council shall be established in an undertaking that does not have a functioning trade union provided that a general meeting of employees has not delegated the rights of representation and protection to the trade union at the level of the relevant economic sector. An undertaking may have only one works council irrespective of the number of branches, establishments or units it may have. A works council may be established in an undertaking with at least 20 employees. In an undertaking with less than 20 workers, the functions of the works council shall be performed by a workers' representative elected at a general meeting.

**Luxembourg:** Article L 411-1 LC provides that every employer (in the private or public sector) has to designate staff delegates in establishments occupying regularly at least 15 workers under a contract of employment. There is also provision for divisional and central delegations (Articles L 411-3 and L 411-4 LC). Furthermore, Article L 411-1 LC provides that joint works councils have to be set up in all industrial, craft and commercial undertakings in the private sector occupying habitually at least 150 salaried workers.

**Hungary:** According to Article 43 LC, every employer or every independent operational facility (division) of an employer occupying more than fifty employees has to elect a works council. A worker's representative shall be elected if an employer or an independent operational facility (division) of an employer occupies at least fifteen but no more than fifty-one employees. A works council or a worker's representative shall only be elected at an employer's independent operational facility (division), if the head of this facility is entitled, in part or in full, to exercise employers' rights in connection with the works council's prerogatives set out in Article 65 LC. According to Article 22(2) LC, if there is no works council, the employer shall provide the trade union(s) with the information set out in this provision.

**The Netherlands:** Undertakings that employ at least 50 employees must set up a works council (OR) (Article 2 (1) WOR). In addition, undertakings with 10-49 employees may opt for employee representation (*personeelsvertegenwoordiging*, PVT), which has fewer rights than the works council. In the event that a PVT is not established, the business owner shall be obliged to hold a staff meeting at least twice per year.

**Austria:** in each establishment in which at least 5 workers with voting rights are continuously employed (Article 40 ArbVG).

**Portugal:** In accordance with Articles 464 and 465 LC, there is no requirement for a minimum number of employees in the undertaking or establishment for a works council or sub-council to be established.

**Romania:** in undertakings employing at least 20 employees (Article 4 (1) of Law 467/2006).

**Slovenia:** A works council is formed if an undertaking employs more than 20 workers having the right to vote or if a single entrepreneur employs more than 50 workers. If an undertaking employs less than 20 workers (or a single entrepreneur employs less than 50 workers) who have the right to vote, workers are entitled to participate in management through a workers' representative (Article 8 WPMA).

**Slovakia:** A works council is a body, which represents all employees of an employer. It may be set up if an employer employs at least 50 employees. A works trustee may operate if an employer employs less than 50 but more than five employees. The rights and duties of a works trustee are equivalent to those of a works council.

**Finland:** The Act 2007 applies to undertakings normally employing at least 20 persons under employment relationship, subject to certain exceptions. A number of provisions apply only to undertakings normally employing at least 30 persons. The Law on cooperation in the State civil service and agencies (651/1988) and the Law on cooperation between employers and staff in local government (449/2007) do not provide for any threshold.

**Sweden:** There is no threshold. MBL applies to all relationships between employers and employees.

### **3.3.2 According to Article 3(1), last sentence of the Directive, Member States shall determine the method for calculating the thresholds of employees employed.**

Some Member States did not need to establish such provision due to the fact that there is no threshold for information and consultation in their legislation (PT, SE). Some other Member States did not specify in any particular provision the method for calculating the thresholds (CZ, DK<sup>21</sup>, HU, MT, SK<sup>22</sup>).

**Belgium:** The thresholds are fixed by way of a Royal Decree governing the organisation of works councils' elections.

**Bulgaria:** The number of employees under paragraph 1 shall be determined on the basis of the average number of employees per month in the previous twelve months. It comprises all the employees who are or were employed, irrespective of the term of employment or duration of their working time (Article 7a (3) LC).

**Germany:** This issue is regulated by case-law or by legal provisions stipulating, in general, that the average number of workers over a determined period of time is taken into account. Fixed-term and part-time workers are included.

**Estonia:** According to Article 18 ERA, the employer shall determine the number of employees a) upon approval of annual reports; b) when the obligation of informing and consulting specified in Article 20(1) ERA arises. When determining the number of employees, the employer shall take into account the six months' average number of employees as of the date on which the obligation of informing and consulting arises.

**Greece:** The threshold is calculated at the beginning of the calendar month during which an issue related to the application of PD 240/2006 arises, independently of any posterior changes of the employees employed during the calendar month (Article 3 of PD 240/2006).

**Spain:** In order to determine the number of representatives, the following criteria shall be taken into account: a) employees who provide services in intermittent permanent employment and employees on a fixed-term contract for a period longer than one year shall be considered as permanent employees; b) employees on fixed-term contracts of up to one year shall be taken into account according to the number of days worked during the period of one year preceding the election announcement. Every two hundred days worked or part thereof shall be counted as one more employee (Article 72 (2) WS).

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<sup>21</sup> In the case of DK, according to the preparatory works which led to the adoption of the transposing legislation all workers are taken into account.

<sup>22</sup> It is not clear whether Article 243(4) LC concerns only European Works Councils or covers also works councils at national level.



**France:** The calculation of the thresholds is defined by legislation<sup>23</sup> as well as by case-law. In particular, article L 620-10 CT provides that permanent as well as home workers are taken into account integrally in the calculation. Fixed term workers as well as temporary agency workers are taken into account pro-rata depending on their presence during the preceding 12 months. Part time workers are taken into account by dividing the total sum of their hours of work fixed in their contract by the hours of work determined in the law or collective agreement.

**Ireland:** In determining whether employees are employed in an undertaking that meets a relevant workforce threshold, the number of employees in the undertaking shall be reckoned by calculating the average number of employees employed in the undertaking during the 2 years before a certain date (section 5 of Act 9/2006).

**Italy:** The numerical threshold of workers is defined in compliance with the relevant legal provisions and is based on the average weighted monthly number of employed persons working in the undertaking in the previous two years. Workers employed on fixed-term contracts shall be included in the calculation if the duration of their contracts is longer than nine months. For public- or private-sector employers engaged in activities of a seasonal nature, the nine-month period of duration of fixed-term contracts shall be calculated on the basis of the corresponding days actually worked, even if these days are not consecutive (Article 3(2) LD).

**Cyprus:** The threshold is calculated on the basis of the average number of employees, with a contract of employment of a fixed or indefinite term or on part-time, who have been employed by the undertaking in the previous two years. Contracts of fixed-term employment which expired or part-time contracts are transposed to a full annual employment (Article 4 of Law 78(I) of 2005).

**Latvia:** According to Article 10(5) LC, fixed term workers are also taken into account.

**Lithuania:** According to Article 5 WCL, the number of employees is established every time the works council is elected. The employer has to establish the number and the list of the employees within 7 days of the receipt of the proposal by the staff.

The number of employees in an undertaking is established on the basis of the number of employees on the day of the receipt of the aforementioned proposal, irrespective of their period of service at the undertaking. This number includes the employees of all the branches, establishments and other units of the company. The number of employees does not include:

- (1) employees on maternity leave (until the child is three);
- (2) employees doing military service;
- (3) employees working on a fixed-term contract;
- (4) employees representing employers referred to in Article 4(4) WCL.

**Luxembourg:** The calculation of the thresholds is defined in particular in article L 411-1-4 CT which provides that all workers working under a contract of employment in the

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<sup>23</sup> A particular aspect of the French regulation gave rise to an ECJ judgement (judgement of 18.1.2007 in case C-385/05). Workers who were less than 26 years old were excluded from the calculation of the threshold. The ECJ decided that this exclusion was violating the directive.

establishment are taken into account in the calculation, with the exception of those under a contract of apprentices. Fixed term workers as well as temporary agency workers are taken into account pro-rata depending on their presence during the preceding 12 months. Part time workers whose working hours are equal or superior to 16 hours per week are taken into account integrally. The other part time workers are taken into account by dividing the total sum of their hours of work fixed in their contract by the hours of work determined in the law or collective agreement. As regards the joint works councils, article L 421-1-1 CT provides that they are set up in undertakings occupying habitually at least 150 workers during the last 3 years. Article L 421-1-4 CT is similar to the aforementioned provisions of article L 411-1-4 CT.

**The Netherlands:** See under the section on the definition of the term "employees" above.

**Austria:** Home workers as well as the employer's (Betriebsinhaber) relatives who are excluded from the right to be elected are not taken into account (Article 40 (1) ArbVG).

**Poland:** Pursuant to Article 7 of Act 2006, the number of employees is calculated on the basis of the average number of persons employed by a certain employer during the 6 months prior to the date of notification of the works council election. Workers between 16 and 18 years old are not taken into account in this calculation.

**Romania:** The number of the employees taken into account in the undertaking is the one existing at the date the information procedures begins (Article 4 (2) of Law 467/2006).

**Slovenia:** There is no specific provision concerning the calculation of the threshold. However, works councils may be formed in companies employing more than 20 workers having the right to vote; the right to vote is given to all employees who have worked in the company for at least six uninterrupted months except the management (Article 12 WPMA).

**Finland:** Part-time employees are taken into account and, in the main, fixed-time workers too. The only persons who may be excluded are those working as contractors on one-off or temporary tasks and fixed-term employees doing relatively brief, seasonal work.

**United Kingdom:** By virtue of Regulation 4 (1) of ICE Regulations, the number of employees for the purposes of regulation 3(1) shall be determined by ascertaining the average number of employees employed in the previous twelve months. The other provisions of Regulation 4 set out the requirements for calculating the number of employees. A part-time employee working under a contract for 75 hours or less a month may be counted as representing half a full-time employee.

**3.3.3 According to Article 3(2) of the Directive, in conformity with the principles and objectives of this Directive, Member States may lay down particular provisions applicable to undertakings or establishments which pursue directly and essentially political, professional organisational, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and the expression of opinions, on condition that, at the date of entry into force of this Directive, provisions of that nature already exist in national legislation.**

The following Member States have made use of this option:

**Germany:** In accordance to article 118(1) BetrVG, the provisions of this law do not apply to undertakings and establishments, which directly and essentially pursue a) political,

professional organisational, religious, scientific, educational, artistic or charitable aims or b) aims related to information or the expression of opinions upon which art. 5(1) GG applies, to the extent that they are incompatible with the specificity of the undertaking. Certain provisions do not apply (art 106-110), whilst certain other (art 111-113) apply only to the extent that they regulate the mitigation of economic disadvantages of workers following changes of the undertaking.

The provisions of BetrVG do not apply to religious communities and their educational or charitable institutions (article 118(2) BetrVG). However, there are autonomous regulations regarding employees' representation in such institutions, such as those adopted by the Catholic and Evangelist Churches.

**Italy:** In accordance to article 3 (3) LD, this decree is without prejudice to any specific information and consultation procedures already in existence in national law at the date of its entry into force and which apply to employers that directly and mainly pursue aims of a political, labour organisation-related, religious, charitable, educational, scientific or artistic nature, as well as aims related to information or the expression of opinions.

**The Netherlands:** Some educational institutions are exempt from the WOR and an individual participation scheme for each type of education has been laid down in separate legislation. Any amendments to these laws have, in any case, to be examined with regard to their compatibility with the WOR, according to the principle that the situation of the employees in the concerned educational institution in respect to employee participation may be no worse than would have been the case pursuant to the WOR.

**Austria:** In accordance to article 132 ArbVG, certain provisions (art. 110-112) do not apply to undertakings and establishments which directly pursue political, professional organisational, religious, scientific, educational or charitable aims. Articles 108 and 109 (1-2) apply only to the extent that the particular aims are not affected. However, certain provisions of Art 109 apply in any case to the extent that changes of the undertaking are concerned.

With regard to undertakings which directly pursue aims related to information or the expression of opinions, Articles 108 and 112 do not apply to the extent that situations are at stake which influence the political direction of the undertakings. However, certain provisions of Art 109 apply in any case to the extent that changes of the undertaking are concerned.

With regard to undertakings which directly pursue religious aims of a legally recognised church or religious community, Title II ("Betriebsverfassung") of ArbVG does not apply to the extent that it is incompatible with the specificity of the undertaking. In any case, certain provisions (in particular Art 108-112) do not apply to establishments which serve the management of internal matters of a legally recognised church or religious community, with the exception of certain provisions of Art 109 to the extent that changes of the undertaking are concerned.

**Finland:** In accordance to article 4 of the Cooperation Act, this Act does not apply to offices and public services of municipalities, federation of municipalities, Evangelical Lutheran Church, Orthodox Church or Province of Aland or its municipalities or federations of municipalities. If the undertaking is a non-profit organisation, artistic association, scientific society, religious community or other denominational organisation or if its purpose is mainly in industrial policy, labour policy, general political or humanitarian, the provisions of this Act

shall not apply to decisions or their preparation regarding the purpose of the organisation or denominational or other similar objectives.

**Slovak Republic:** By virtue of Article 3 (3) of the Labour Code, labour-law relations of employees of churches and religious communities which perform clerical activities, are governed by this Act, unless stipulated otherwise by this Act, a special regulation, an international treaty, a treaty concluded between the Slovak Republic and churches and religious communities, or internal regulations of churches and religious communities.

Article 52 point a) of the Labour Code, stipulates that provisions on collective labour-law relations do not apply to labour-law relations of employees of churches and religious communities who perform clerical activity. Such provisions include those regarding information and consultation procedures.

**Slovenia:** By virtue of Article 1 WPMA, this act does not apply to institutes<sup>24</sup> to the extent that it provides that the collective exercise of the right to participate in management should be regulated by a separate law (not adopted yet)<sup>25</sup>. Until the entry into force of the aforementioned separate law, the employees' right to participate in management shall be regulated by collective agreements (Article 110 WPMA).

**Sweden:** In accordance to section 2 MBL, employer's activities which are of a religious, scientific, artistic or other non-profit making nature, or have co-operative, trade union, political or other opinion-forming aims shall be exempt from the scope of this Act with respect to the aims and focus of such activities.

### **3.3.4 According to Article 3(3) of the Directive, Member States may derogate from this Directive through particular provisions applicable to the crews of vessels plying the high seas."**

The following Member States have made use of this option: DK, DE, EL, CY, MT, RO, UK. Of these Member States, DK, DE and UK have introduced particular provisions applicable to the crews, while the other countries have not. France is a particular case.

**Denmark:** Specific rules in particular Act<sup>26</sup>.

**Germany:** Specific rules in transposing law (art 114-116 BetrVG).

**Greece:** The transposing act does not apply to personnel employed in vessels plying the high seas (Article 1(4) of PD 240/2006).

**France:** In general, the general rules on information and consultation of employees apply. However, they do not apply, under conditions, to sailors residing outside France whose contracts are governed by the law chosen by the parties, under law n° 2005-412 of 3.5.2005 (on establishment of the French International Register).

**Cyprus:** The transposing act does not apply to personnel employed in vessels plying the high seas (Article 3(2) of Law 78(I)/2005).

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<sup>24</sup> See footnote 15 above.

<sup>25</sup> However, employees' representatives seem entitled to participate in management of an institute by way of the institute's council.

<sup>26</sup> Bekendtgørelse nr 952 af 12.10.2005 om information og høring af søfarende.

**Malta:** The transposing act does not apply to personnel employed in vessels falling under the provisions of the Merchant Shipping Act (Article 1(4) of LN 10/2006).

**Romania:** The transposing act does not apply to crews of vessels belonging to the commercial navy, when they are on mission (Article 4(3) of Law 467/2006).

**United Kingdom:** Specific provision in transposing law (Regulation 43 of ICE Regulations), by virtue of which the Regulations apply to the merchant navy, but no long haul crew member can be negotiating representative or an information and consultation representative or stand as candidate for either of these positions unless the employer provides otherwise.

### **3.4 Practical arrangements for information and consultation (Article 4)**

**3.4.1 According to Article 4(1) of the Directive, "in accordance with the principles set out in Article 1 and without prejudice to any provisions and/or practices in force more favourable to employees, the Member States shall determine the practical arrangements for exercising the right to information and consultation at the appropriate level in accordance with this Article."**

Some Member States merely reiterated or largely reproduced this provision in their implementing legislation (EL, MT). Some others did not transpose it explicitly (such as CY, LV, HU). In general, the practical arrangements for exercising the right to information and consultation can be found in several provisions of the national transposing legislation, albeit sometimes not in so much detail. The transposing legislation of a number of Member States presents certain particularities:

**Belgium:** The practical arrangements have been laid down in several laws, decrees, regulatory acts and collective agreements in a manner that is neither global nor uniform. However, the directive is not yet entirely transposed (see in this regard the Court of Justice judgement of 29/3/2007 in case C-320/06). The main provisions, some of which are very detailed, are contained in the Law 1948, the Royal Decree of 27 November 1973 (hereafter AR 1973) and the *Conventions Collectives de Travail* nr. 9 and nr. 5 (hereafter CCT 9 and CCT 5).

**Bulgaria:** In accordance with Article 130d (1) LC, the employer and the employees' representatives pursuant to Article 7a shall determine, in an agreement between them: 1) The type of information and the deadlines within which it will be transmitted; 2) The deadlines within which the employees' representatives shall prepare their opinion on the transmitted information; 3) The deadlines and issues for holding consultation with the employer; 4) The employer's representatives who are authorised to transmit information and to hold consultations. If no agreement is reached, then Article 130d (2) LC applies. Article 7c LC provides for the rights and obligations of employees' representatives. Article 130 LC stipulates that the employer is responsible for providing to the trade union organisations and employees' representatives in the undertaking the information required by law, pursuant to Article 7 and Article 7a LC, and for holding consultations with them. The information is provided and the consultations are held with the participation of the trade union organisations alone, or with the participation of the representatives mentioned in Article 7, paragraph 2, in the event where there is no trade union organisation in the undertaking or no elected representatives under Article 7, paragraph 2, or if some of them refuse to participate in the information and consultation procedure. In addition, Article 130 LC gives directly to employees the right to timely, reliable and comprehensible information concerning the

employer's economic and financial status that might affect their working rights and obligations.

**Czech Republic:** By virtue of Article 276(1) LC, employees employed by an undertaking (the term "undertaking" being used in Part Twelve instead of "employer") have the right to information and consultation. The undertaking shall inform employees and consult with them directly, unless at the undertaking there is a trade union organization, a works council or unless there are one or more representatives concerned with occupational safety and health protection at work (referred to collectively as "employees' representatives"; in Czech "zástupci zaměstnanců"). Article 278(1) provides that in order to ensure the right to information and consultation, employees who are employed by an undertaking where there is no trade union organization may elect a works council or a representative (or representatives) concerned with occupational safety and health protection. Articles 279 and 280 LC enumerate the issues which are subject to information and consultation of employees. Article 287 LC enumerates the issues which are subject to information and consultation of trade unions. Article 286 stipulates that, in certain situations, the parties may determine some other information and consultation procedure. Trade unions represent not only their members but also non-unionised workers.

**Denmark:** In line with Danish practice, art 3(1) of Act n° 303/2005 states that the Act does not apply where the employer has an obligation to inform and consult employees under a collective agreement containing provisions which at least correspond to the provisions of Directive 2002/14/EC (Annex 1 of the Act).

**Germany:** There is a long tradition of employees' involvement in Germany and their rights go sometimes beyond the ones provided for in the Directive. Different laws cover the private and the public sector (in the latter case, at federal and state (Land) level<sup>27</sup>). In certain cases, information is provided to and consultation is held directly with employees.

**Estonia:** Whilst there is no threshold for the election of employees' representatives, the implementation of information and consultation affects only employers who employ at least 30 employees. If there are no employees' representatives, information and consultation should be provided directly to the employees at the appropriate level.

**France:** The practical arrangements have been laid down in great detail, in particular in the Labour Code (CT). Works councils are established in undertakings and in "economic and social units" occupying more than 50 employees, in accordance with art L 431-1 CT. In undertakings which have distinct establishments, it is provided to set up establishment councils and a central works council (art L 435-1 CT).

**Ireland:** Act N° 9 of 2006 provides for several possibilities of determining the practical arrangements of information and consultation of employees in undertakings: by way of Pre-Existing Agreements (PEAs) (section 9), Negotiated Agreements (NAs) (section 8) or the Standard Rules (section 10 combined with Schedule 1). In the cases of PEAs and NAs, information and consultation can be provided directly to employees. Where a system of direct involvement applies, it may be changed to a system of employees' representation, provided that a) at least 10 per cent of employees for whom the direct involvement system operates request such a change and b) this is approved by a majority of employees to whom the direct

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<sup>27</sup> This report focuses mainly on the legislation at federal level. The legislation at state level corresponds usually to the federal one.

involvement system applies. Such approval is demonstrated where a majority of those employees who cast a preference are in favour of the change (section 11).

**Italy:** According to Article 4(1) LD, in compliance with the principles laid down in Article 1 LD, and without prejudice to any practices that are more favourable to workers, collective agreements shall lay down the fora, timescales, subjects, procedures and content of the information and consultation rights granted to workers.

**Lithuania:** The issue of information and consultation of employees' representatives is regulated mainly by two laws, i.e. the LC and the WCL. These laws specify that the conditions and procedure for the provision of information and consultation shall be established by laws, collective bargaining agreements and agreements between the employer and the employees' representatives. It is not absolutely clear whether, under the current Labour Law in particular, employees' representatives may exercise their information and consultation rights already now or whether the exercise of these rights depends on the prior adoption of the aforementioned laws and/or agreements (the aforementioned provisions having in the latter case only programmatic character). As indicated before, employees may be represented either by trade unions or, under conditions, by the works council of the undertaking. Trade unions represent all workers (not only their members).

**Luxembourg:** The practical arrangements of information and consultation are regulated in principle in the Labour Code which distinguishes between the staff delegations and the joint works council. These instances have different rights defined in detail in the relevant provisions of the Labour Code.

**The Netherlands:** In the case of undertakings with more than 50 employees, the business owner is obliged to establish a works council. Undertakings with 10-49 employees may opt for an employee representation [*personeelsvertegenwoordiging*, PVT], which has fewer rights than the works council. In the event that an employee representation (PVT) is not established in this company, the business owner shall be obliged to hold a staff meeting at least twice per year.

However, the Social and Economic committee (Sociaal-Economische Raad) may, in particular circumstances, exempt the business owner from his/her obligation to establish a works council. New Article 5 (1) WOR provides that the Council may only grant such exemption if, with respect to the information provided to and the consultation of the employees on the issues referred to in paragraph 6 (corresponding to Article 4 (2) of the Directive), the enterprise has made arrangements to ensure compliance with the provisions of paragraphs 7 and 8 (corresponding to Article 4 (3-4) of the Directive).

**Poland:** Act 2006 provides for issues on which the works council has to reach consensus with the employer (such as the principles and procedure for providing information and carrying out consultations as well as the principles for covering costs of election/operation of the works council (Article 5 (1)), and for issues on which there may be agreement (such as the size of the works council (at least three employees), principles for covering costs of experts, or principles for time off regarding council members (Article 5 (2)). Article 5(4) specifies that provisions of the Act apply only in case of failure to reach consensus on the aforementioned issues. The agreement should ensure at least equal information and consultation conditions to those laid down in the Act.

**Portugal:** According to the Portuguese legislation, information and consultation rights are recognised to both works councils, which represent all workers, and to trade unions which

represent only unionised workers. However, there are differences as regards the scope, content, aims and procedures regarding these rights.

**Slovenia:** Article 2 WPMA stipulates that workers shall participate in management through, among others: the right to present an initiative and receive an answer to this initiative; the right to be informed; the right to give opinions, make proposals and receive answers to these proposals; the possibility or the obligation of joint consultations with the employer. Workers shall exercise the right to participate in management as individuals or collectively through a works council (or workers' representatives), a workers' assembly or workers' representatives in company bodies. Article 5 WPMA provides that the works council and the employer may agree on other modalities of worker participation in management, and adds that the exercise of rights as well as other questions may be defined in greater detail in a written agreement (on the condition that it does not regulate issues which are regulated by generally applicable collective agreements).

**Slovakia:** In accordance with Article 229 LC, with the view of securing just and satisfactory working conditions, employees shall participate in decision-making of the employer concerning their economic and social interests, either directly or by means of a competent trade union body, a works council or a works trustee. Employees shall have the right to be provided information on the economic and financial situation of the employer and on the presumed development of its activities in an understandable manner and at an appropriate time. Employees shall also have the right to voice their comments on such information and to projected decisions, to which they may submit their suggestions. They shall participate (by means of a competent trade union body, a works council or a works trustee) in the creation of just and satisfactory working conditions through a) joint decision-making, b) negotiation, c) right to information.

**Finland:** The Co-operation Act 2007 applies to undertakings in the private sector. Furthermore special laws apply to the public sector: the Law on cooperation in the State civil service and agencies (651/1988) and the Law on cooperation between employers and staff in local government (449/2007). In certain circumstances information and consultation involves directly all workers of an undertaking.

**Sweden:** The Swedish law on Co-determination (MBL) already provided for a detailed system on information and consultation. This made a distinction depending on whether the employer was or not bound by a collective agreement. In order to implement the directive such a system has been extended in order to oblige also the employer who is not bound by a collective agreement to provide information to employees' organisations with members employed by this employer (new Section 19a MBL).

**United Kingdom:** The ICE Regulations create room for a wide diversity of practices, combining both representative and direct forms of participation. The practical arrangements of information and consultation of employees in undertakings can be determined by way of Pre-Existing Agreements (PEAs) (regulation 2 -definition- and regulations 8 ff), Negotiated Agreements (NAs) (regulation 2 -definition- and regulations 7 ff) or the Standard Provisions (regulations 18 ff).

**3.4.2 According to Article 4(2) of the Directive, "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, including those covered by the Community provisions referred to in Article 9(1)."**

Some Member States reiterated or largely reproduced the aforementioned definition in their transposing legislation without specifying it further (BG, EL, IE, IT, CY, MT, PL, RO, UK)<sup>28</sup>. Other Member States used different wording, sometimes very detailed and precise, but in other cases quite general and sometimes even vague:

**Belgium:** Article 4(2) of the Directive corresponds to a considerable number of, sometimes very detailed, provisions laid down in several laws, decrees, regulatory acts and collective agreements. In particular, Article 4 (2, a) of the Directive corresponds to several provisions of the Law 1948 and of the Royal Decree of 27 November 1973; Article 4 (2, b) of the Directive corresponds to provisions of CCT 9, whilst Article 4 (2, c) of the Directive corresponds to provisions of the Law 1948, the AR 1973, the CCT 9, the CCT 39, the law of 26/6/2002 on closures of undertakings and the law of 17/3/1987 on new work regimes.

**Czech Republic:** By virtue of Article 279 LC, the undertaking (i.e. the employer) shall inform employees in particular on: (a) the undertaking's economic and financial situation and probable development; (b) the undertaking's activities, their probable development and their impact on the environment, and ecological measures related thereto; (c) the undertaking's legal status and changes in such status, internal organizational structure and the person authorized to act in the name and on behalf of the undertaking in labour (industrial) relations, and changes in the undertaking's business activities; (d) fundamental issues of working conditions and their changes; (e) matters within the scope laid down in Article 280.

Article 280 LC provides that the undertaking shall consult employees in particular on: (a) probable economic development of the undertaking; (b) envisaged structural changes within the undertaking, rationalization or organizational measures, any measures having impact on employment, in particular measures in connection with collective redundancies under Article 62; (c) the latest number and structure of employees, envisaged employment development in the undertaking, fundamental issues of working conditions and their changes; (d) transfer(s) under Articles 338 to 342.

Certain of the aforementioned obligations do not apply to undertakings employing less than 10 employees.

Article 287 LC enumerates the issues which are subject to information and consultation of trade unions.

**Denmark:** An undertaking is obliged to provide to its employees full information on circumstances of substantial importance to them via their representatives. This information

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<sup>28</sup> In relation to the Standard Rules in IE, UK.

obligation covers at least: 1) information on the recent and probable development of the undertaking's activities, the undertaking's economic situation and future prospects, including the order book and market situation and production issues; 2) information on the undertaking's employment circumstances, including whether employment at the undertaking is under threat and plans for major changes or events of importance to employment, and 3) information on the undertaking's decisions likely to lead to substantial changes in work organisation or contractual relations (Article 4(1) of Act n° 303/2005).

**Germany:** Several provisions correspond to Art 4 (2) of the Directive. Some of them are quite general, while others go in much detail.

In the private sector, the works council has comprehensive participation rights (cooperation and codetermination rights) on staff, social and economic matters. As regards economic matters, in bigger establishments (more than 100 employees) the employer has to inform the works council in good time and comprehensively in accordance with article 106 BetrVG. Other provisions cover all (or smaller) establishments: Article 80(2) BetrVG provides, in a general way, for the employer's obligation to give to the works council timely and comprehensive information so that it can perform its duties. Articles 43(2) and 53(2,2) BetrVG address the information rights of the general meeting of the establishment as well as the general meeting of the works councils. Article 110(2) BetrVG provides for the employer's obligation to give information directly to employees once every 3 months per year (in establishments with more than 20 employees). Article 111 BetrVG provides for the employer's obligation to give to the works council timely and comprehensive information and to hold consultation on changes in the establishment.

As regards social matters, Article 92 BetrVG provides for the employer's obligation to give timely and comprehensive information to the works council on staff planning issues and to hold consultations thereon. The works council can submit to the employer proposals thereon. Article 92a BetrVG provides also that the works council can submit to the employer proposals concerning the promotion and securization of employment. These proposals are subsequently the subject of consultations. In case the employer considers them inadequate, (s)he should give reasons this (in writing, if the establishment has more than 100 employees).

As regards matters falling under art. 4 (2, c) of the Directive, Article 90 BetrVG provides for the employer's obligation to give to the works council timely information and the necessary documentation on the planning of certain projects, infrastructure, procedures, working posts. The employer has also to hold consultations thereon in good time so that proposals and concerns can be taken into account for the planning. In addition, the aforementioned Article 111 BetrVG can be pertinent in this regard.

In addition, Article 87 BetrVG provides for co-determination rights in certain determined areas. There is an extensive case-law in this regard.

In the public sector, Art 68 BPersVG provides that staff councils have to be informed timely and comprehensively in order to be able to fulfil their duties. The same provision stipulates also a general initiative right. Furthermore, Art 66 BPersVG provides that the Dienststelle and the staff council should meet at least once a month to discuss on all matters which substantially affect the workers. As a general principle, the employer and the works council should cooperate in good faith and are obliged to strive to reach agreement on disputed questions in order to fulfil their duties.

**Estonia:** The employer shall provide information and consult at least on the following matters affecting the employees: 1) the employer's organisational structure, the composition of the workforce, any changes therein and planned decisions having a substantial effect on the employer's organisational structure and the composition of the workforce, 2) planned decisions that are likely to involve substantial changes in the organisation of work, 3) planned decisions that are likely to involve substantial changes in the employees' employment relationships, including the termination of employment. The employer shall also provide information on the annual report drawn up pursuant to the Accounting Act at the latest within 14 days following approval of the report (Article 20 ERA). Article 19 (1) ERA provides also for a number of elements in this regard.

**Spain:** Article 64 WS entitles the works council to be kept informed, at least every 4 months per year, in particular, on general trends in the economic sector to which the undertaking belongs, the economic situation of the undertaking, the recent and probable evolution of its activities, the production and total sales situation, the production schedule, the employer's forecasts for new contracts indicating the number, the modalities and types of the contracts, including part-time contracts, the realisation of supplementary hours by part-time employees and the subcontracting scenarios. Furthermore, the works council is entitled to be informed periodically on the balance sheet, the profit and loss account, the annual report and, in the case of a stock or share company, on other documents that are disclosed to the shareholders, and under the same conditions as the latter.

The works council is also entitled to be informed and consulted on: the situation, structure and (every 4 months) the probable development of employment within the undertaking or establishment; any anticipatory measures, in particular where there is a threat to employment; all decisions which could lead to changes in work organisation or in contractual relations in the undertaking.

Article 64(5) WS establishes also the competence of the employees' representatives to issue reports prior to the implementation by the employer of decisions adopted by him/her regarding: a) restructuring and total or partial, permanent or temporary closure; b) reductions in the working day; c) total or partial transfer of installations; d) mergers or change of the legal status of the undertaking that could affect employment; e) the undertaking's professional training programme; f) introduction or revision of systems of organisation and control of work.

**France:** Several provisions of the Labour Code regulate in detail these matters. Art L 432-1 CT provides that, in the economic area, the works council is obligatorily informed and consulted on questions concerned with organisation, management and the general operation of the undertaking, and, in particular, on measures likely to affect the volume or structure of the staff, working time, working conditions and professional training. The works council is obligatorily involved in good time on projects implying reduction of jobs. Article L 432-4 CT stipulates the communication of a determined economic and financial documentation within a month from the works council's election. Furthermore, a written report has to be transmitted once a year on the undertaking's activities, profits or losses, sub-contracting, investments, etc. Information has to be given every 3 months regarding economic developments. Specific provisions regulate the provision of economic information in commercial companies and in companies occupying more than 300 employees. Every 3 or 6 months, depending on the undertaking's size, the head of the undertaking has to inform the works council on the employment situation, the evolution, the number of employees per type of employment contract, the reasons for having recourse to atypical contracts, etc (Art L 432-4-1 CT). Art. L

432-1-1 CT provides that the works council is informed and consulted annually on the evolution of the employment and the qualifications, on the provisions and on actions aiming in particular at the prevention of employment threats and at the provision of training. Before such consultation meetings, the works council members have to receive a written report with all useful information. Furthermore, the works council is informed and consulted on general problems concerning working conditions resulting from works organisation, technology, working time organisation, training etc., in accordance with Art. L 432-3 CT. It is also informed and consulted before all important projects regarding the introduction of new technologies affecting employment (Art. L 432-2 CT). Articles L 432-1 and L 321-2 CT deal with transfer of undertakings and collective dismissals respectively.

**Latvia:** Employees' representatives, when performing their duties, have the right 1) to request and receive from the employer information regarding the current economic and social situation of the undertaking, as well as information regarding possible changes; 2) to receive information in good time and consult with the employer before the employer takes decisions that may affect the interests of employees, in particular decisions that may substantially affect remuneration for work, working conditions and employment in the undertaking; 3) to take part in the determination and improvement of remuneration provisions, the working environment, working conditions and the organisation of working time, as well as in protecting the safety and health of employees (Article 11(1, point 2) LL).

**Lithuania:** The employees, in view of the level of social partnership, shall have the right to be provided information and being consulted. Provision of information shall embrace information relating to the current and future activities of the enterprise and its economic and financial condition; information about the current state, structure of labour relations and potential changes in employment; information about the measures which the employer intends to apply whereof is intended in case of possible redundancies; other information connected with labour relations and activities of the enterprise (Article 47(1) of Labour Code). According to art 23 LC, the employer must hold consultations when making decisions that may affect the employees' legal position. Furthermore, by virtue of Article 21 of WCL, in the cases and under the terms and procedures defined in laws, collective agreements and agreements between the works council and the employer, the employer shall be obliged to provide, in writing and free of charge, to the works council information relating to labour relations and the activities of the company. In other cases, the information necessary for the performance of the functions of the works council shall be supplied by the employer.

**Luxembourg:** With regard to staff delegations, Article L 414-1 CT stipulates that, in the framework of their mission, they have to issue opinions and formulate proposals on all questions concerning the improvement of working and employment conditions and the social situation of the staff. Article L 414-4 CT obliges the head of the undertaking to communicate to the staff delegation information which can enlighten its members on the operation and the life of the undertaking. This communication takes place monthly, where there is a works council, and on the occasion of the meetings with the direction of the establishment, where there is no such council. If the undertaking has the form of a "société par actions", the direction has to inform the staff delegation in writing, once a month at least, on the economic and financial evolution of the undertaking. Article L 414-5 CT specifies the content and timing of the report to be presented in this context.

With regard to joint works councils, Articles L 423-2, 423-3 and 423-4 CT, regulate in detail the content of the information and consultation. The head of the undertaking has to inform and consult the works councils, twice per year at least, on the economic and financial

evolution of the undertaking. Article L 423-4 CT specifies the content (and timing) of the report to be presented in this context. The head of the undertaking has also to inform and consult the works councils, once per year at least, on the actual and foreseeable needs of the undertaking regarding staff as well as on the training measures which may result thereof. Furthermore, the head of the undertaking has to inform and consult the works council before he/she takes any important decision concerning in particular introduction, improvement or transformation of installations, equipment, work methods and production processes, etc. The works council has to be also informed on the impact of the aforementioned measures on the employment conditions and environment. In addition, the head of the undertaking has to inform and consult the works council on all decisions of economic or financial character which can have a decisive impact on the undertaking's structure or level of employment. Such information and consultation have to be carried out in principle before the envisaged decision. The relevant provisions of Article L 423-3 CT specify further the content of the decisions and the information/consultation at issue.

**Hungary:** According to Article 65 (3, a and f) LC, employers have to consult the works council prior to passing a decision in respect of, among others, planned actions affecting a large group of employees, in particular those related to proposals for the employer's reorganisation, transformation, conversion, privatization and modernisation of an organisational unit into an independent organization and the introduction of new work organisation methods. Article 65(4) LC stipulates further that the employer shall provide to the works council information:

- 1) at least every 6 months, regarding the fundamental issues affecting the employer's economic situation;
- 2) regarding the planned major decisions pertaining to a significant change of the employer's activities and improvement projects;
- 3) at least every 6 months, regarding the trends in wages and salaries, the liquidity situation as regards their payment, the characteristic features of employment, the use of working time, and the characteristics of working conditions.

Similar information is provided to the trade unions according to Article 22(2) LC.

Works councils are also entitled to request information from the employer on all issues related to employees' economic and social interests in connection with employment. A similar provision is stipulated in Article 22(1) LC as regards trade unions.

With regard to the content of consultation, according to Article 15/B.2 LC, consultation shall cover at least the areas specified in Article 21(2), Article 22(1 and 2) and Article 65(3 and 4) LC, and the matters specified in the agreement between the employer and the works council or trade union.

**The Netherlands:** New Article 5 (6) WOR, introduced by Act of 2.12.2004 amending WOR, reiterates Article 4 (2) of the Directive. In addition, several other provisions regulate in more detail the area: In particular, the employer has the duty to provide the works council with all information and data reasonably required for the performance of the duties of the works council (art. 31 WOR). Art. 31a and 31b WOR impose on the employer the obligation to inform the works council twice a year on financial information in particular on the activities and results of the undertaking over the past period, and once a year on social information in particular on the number and different groups of persons who work in the undertaking and the

social policy conducted over the past year as regards such persons. Article 24, paragraph 2 WOR states that the business owner must notify to the works council at least twice per year all planned decisions relating to the matters indicated in Articles 25 and 27. Article 25 WOR regulates the right to prior consultation whilst Article 27 WOR deals with the right of approval. . The first applies in the case of important changes in respect of work organisation; the second applies in the case of important changes in respect of an employee's contract of employment.

**Austria:** Several provisions regulate, sometimes in detail, the involvement of employees at the workplace. Article 90 ArbVG stipulates that the works council is entitled to request from the possessor of the establishment (Betriebsinhaber) to take measures in all matters affecting the employees' interests. Article 91 ArbVG provides for a general right of the works council to be informed by the possessor of the establishment on all matters affecting the employees' economic, social, health or cultural interests. Furthermore, Article 92 ArbVG regulates the obligation of the possessor of the establishment to hold consultations with the works council every 3 months per year and – on demand – every month. These consultations cover current affairs, general principles of managing the establishment in social, personal, economic and technical matters as well as the organisation of labour relations. On the occasion of these consultations the owner of the enterprise has to inform about important matters. A works council is entitled to request documents that are necessary for the consultation. In addition, a series of other provisions specify that the possessor of the establishment and the works council co-operate (Mitwirkung) on social, personnel and economic matters. These include training, recruitment, posting, termination of employment relationships etc. (in particular Articles 94 ff ArbVG). Article 108 ArbVG deals, in detail, with the information, and consultation upon demand, on economic matters. Article 109 ArbVG provides that in certain cases, - i.e. on the occasion of a “business reorganisation” (which includes the reduction, shut-down or relocation of a [part of an] establishment, the termination of employment relationships with a considerable number of employees, a merger with other companies, a change of the company's object, of its facilities or of the work or business organization, the implementation of new working methods or of considerable measures of rationalisation or automation, or a change of the company's legal form or of its ownership structure) - the employer is obliged to inform the works council about the planned changes as soon as possible, and in any case in good time so that a consultation can still be held thereon. The works council is entitled to propose measures to prevent, eliminate or alleviate adverse effects of a business reorganisation for the employees. For these purposes a works agreement – a so called “social plan” (“Sozialplan”) - can be concluded in certain cases.

**Portugal:** As regards works councils, they are entitled to receive all information necessary for the performance of their activities and to participate in the restructuring of the undertaking, particularly with regard to training or when there is a need to change working conditions (Article 354(1) LGLC). According to article 356 LGLC, the right of information covers the following areas: a) general activity plans and the budget; b) the organisation of production and its impact on the staff and the equipment; c) the situation regarding supplies; d) sales forecasts, volume and management; e) staff management and drawing up of basic criteria, amount of the payroll and its distribution over the professional scale, social benefits, minimum productivity and extent of absenteeism; f) accounting situation of the undertaking, including the balance sheet, profit and loss accounts, and quarterly accounts; g) financing arrangements; h) taxes and parafiscal charges; i) plans to change objectives, share capital and diversification of the undertaking's production activities. Employers are also obliged to require the prior opinion of works councils with regard to a series of actions, in particular all measures which result in a substantial decrease of the undertaking's number of employees or

a substantial deterioration of their working conditions and all decisions likely to result in substantial changes in work organisation or in contractual relations, as well as in the closure of establishments or production lines (Article 357 LGLC).

As regards trade union representatives (shop stewards), Article 503 LC reiterates Article 4(2) of the Directive.

**Slovenia:** By virtue of Article 89 WPMA, the employer is bound to keep the works council informed about issues relating in particular to: the economic position of the company; the development targets of the company; the state of production and sales; the economic position of the branch as a whole; changes of activity; any decline in economic activity; changes in the organisation of production; technological changes; the annual accounts and annual report; other issues under mutual agreement.

At a request from the works council the employer is bound to allow inspection of the documentation required to obtain an insight into the abovementioned matters.

In addition to this, Article 89 WPMA states that the employer is bound to inform the works council and request joint consultations on the status of the company and personnel issues before taking decisions on these issues. The latter two types of issues are further specified in Articles 93 and 94 WPMA.

Moreover, Article 96 WPMA stipulates that the employer is bound to submit to the works council for consent certain decisions which may result in an increase or reduction of the staff affecting a significant number of workers.

**Slovakia:** The employer shall inform in an understandable manner and in an appropriate time the employees' representatives on its economic and financial situation and on the presumed development of its activities (Article 238(2) LC). In addition, by virtue of Article 237(2) LC, the employer shall negotiate in advance with employees' representatives on mainly: a) the state, structure and presumed development of employment and planned measures, mainly if employment is threatened, b) certain issues of the undertaking's social policy, measures for the improvement of hygiene at work and the work environment, c) decisions which may lead to basic changes in the organization of labour or in contractual conditions, d) organizational changes in connection with the reduction or cessation of the activities of the undertaking or a part of it, merger, incorporation, splitting or change of the legal form of the undertaking.

**Finland:** The Co-operation Act 2007 regulates in great detail the content and procedure of employees' information and consultation in the undertakings. In particular, Article 10 provides for information on the financial position, Article 12 on the employment relationships, Article 13 on the principles for use of external labour. The employees' representatives have furthermore the right to request additional information. Several issues are subject to co-operation negotiations, in particular the plan regarding personnel and training objectives; the principles of use of temporary agency work; the changes in business operations affecting the personnel and work arrangements; the transfer of the undertaking; the reduction of personnel, etc. Prior to commencement of the co-operation negotiations, the employer has to provide the information necessary for the discussions (cf. articles 22 and 36 Act 2007).

As regards the co-operation law concerning the local government, the co-operation procedure is drafted in a similar way as in Act 2007, although the structure of the two laws differs.

**Sweden:** Under Section 19 MBL, an employer is obliged to keep employees' organisations to which he is bound by a collective bargaining agreement informed on the development of the business in respect of production and finance, and the guidelines for personnel policy. Under Section 19a MBL, an employer not bound by a collective agreement is obliged to give the information indicated in Section 19 above also to employees' organisations that have members at the workplace.

In accordance with Sections 11-13 MBL, the consultation obligation also includes a duty to make information available. In connection with the negotiation procedure, an employer must, in good time, provide such information as is relevant to the matter under negotiation. The general right to negotiate, as provided for in Section 10 MBL, also includes the right to obtain relevant information prior to negotiations.

The right of negotiation covers decisions regarding any significant change in the employer's business activities as well as any decisions by the employer regarding significant changes in working or employment conditions of employees belonging to the employees' organisation with which the employer is bound by a collective bargaining agreement (Section 11 MBL).

Furthermore, when such an organisation so requires, the employer must also negotiate with it in instances other than those provided for in Section 11 above, in accordance with Section 12 MBL.

If a matter specifically concerns the working or employment conditions of employees belonging to an employees' organisation in respect of which the employer is not bound by a collective bargaining agreement, the employer is obliged, under Section 13, to enter into negotiations with the organisation.

Furthermore, where an employer is not bound by a collective agreement, he is also obliged to negotiate with all affected employees' organisations on matters relating to termination of employment due to shortage of work or the transfer of an undertaking, business or part of a business covered by Section 6 b of the Employment Protection Act (1982:80).

In addition, pursuant to Section 10 of the Co-determination Act, an employees' organisation has the right to negotiate with the employer in matters concerning the relationship between the employer and members of the organisation who are or have been employed by the employer. The employer has a similar right to negotiate with the employees' organisation.

**3.4.3 According to Article 4(3) of the Directive, "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."**

Some Member States reiterated or largely reproduced the aforementioned provision in their transposing legislation (EL, IE, IT, CY, MT, PL, RO, UK). Other Member States specified it further as follows:

**Belgium:** Article 4(3) of the Directive corresponds to a considerable number of, sometimes very detailed, provisions laid down in several laws, decrees, regulatory acts and collective agreements. The information, depending on its content, has to be provided once a year, every 3 months or occasionally, sometimes in writing (with a commentary or a summary) or by way of transmission of pertinent documentation. The timing is also defined in a detailed way in certain provisions, such as in article 3 CCT 9 which provides that the information and



consultation have to take place prior to the decisions and allow the works council to proceed to an exchange of views, in which its members will be able to present their opinions, suggestions or objections. Also, article 7 CCT 9 provides that the (occasional) information on collective dismissals or recruitments should be given as soon as possible and, in any case, prior to the decision (see also article 11 CCT 9 on mergers, closures or important structural modifications of the undertaking, and articles 25 and 30 AR 1973).

**Bulgaria:** In accordance with Article 7c LC, employees' representatives have the right to be informed by the employer in a way which would enable them to assess the possible implications of the envisaged measures and to request the necessary information from the employer if such information has not been provided within the established time limit. Article 130d (2) LC, defines the timing for the provision of information, in the cases that no agreement has been reached between the employer and the employees' representatives, according to the type of information: the information concerning the most recent and the forthcoming changes in the activities and the economic status of the undertaking should be transmitted within the deadlines governing the financial accounts; the information concerning the status, structure and possible development of employment in the undertaking, as well as the contemplated preparatory measures should be transmitted no later than one month before the implementation of the respective measures; the information concerning any decisions that might possibly lead to major changes in the organisation of work or in labour relations should be transmitted no later than one month before the respective changes are carried out.

**Czech Republic:** The undertaking (i.e. the employer) has to provide information sufficiently in advance and in a suitable manner so that employees could consider it and prepare themselves to consult on it and express their position before a certain measure is implemented (Article 278(2) LC).

**Denmark:** The information shall be provided regularly and at the appropriate time, so that employees' representatives have up-to-date information on the undertaking's situation. If possible, it shall be provided in writing or in such a manner and with such a content that the employees' representatives are able to examine and assess its content and prepare the consultation (Article 4(2) of Act n° 303/2005).

**Germany:** See in this regard the section under Article 4(2) of the Directive above.

**Estonia:** The employer has to provide to the employees' representatives information in a manner that makes it possible to become thoroughly acquainted with the information and where necessary prepare for the consultations. This information has to be provided in writing or in a form allowing written reproduction, unless otherwise agreed between the parties (Article 21 ERA). Article 19(1) ERA on definitions provides also important elements in this regard.

**Spain:** Article 64(6) WS provides that information must be provided by the employer to the works council, without prejudice to what is established in each case specifically, at such a time, in such a manner and with such a content as are appropriate to allow employees' representatives to adequately examine it in order to prepare eventually for a consultation and a report. In addition, several paragraphs of Article 64 WS specify the timing for providing specific information (periodically, annually or every 4 months depending on each case; see in this regard the section under Article 4(2) of the Directive above).

**France:** See in this regard the section under Article 4(2) of the Directive above. In addition, Article L 431-5 CT provides that, in order to be able to formulate a reasoned opinion, the works council has to be given precise and written information as well as a sufficient deadline for examination.

**Latvia:** Information to employees' representatives has to be provided in good time, in the proper way and sufficient volume (Article 11(2) LC).

**Lithuania:** The employer (employers' organisation) must timely provide free of charge information in writing to the employees and their representatives, and shall be responsible for the accuracy of the information (Article 47(3) LC). Furthermore, by virtue of Article 21 WCL, in the cases and under the terms and procedures defined in laws, collective agreements and agreements between the works council and the employer, the employer shall be obliged to provide, in writing and free of charge, to the works council information on labour relations and the undertaking's activities. In other cases, the information necessary for the performance of the functions of the works council shall be supplied by the employer in writing and free of charge within 10 days (in undertakings with 100 workers or less) and within 20 days in all other undertakings. The employer is also obliged to provide information on time and is responsible for its correctness (Article 23 WCL).

**Luxembourg:** See above under Article 4(2) of the Directive. The following may be added:

With regard to staff delegations, Article L 415-6 CT stipulates that the staff delegations have to meet at least three times per year with the direction of the establishment.

With regard to joint works councils, Article L 424-2-2 provides that the head of the undertaking has to convoke the council at least once every three months.

**Hungary:** The LC contains some elements related to the provision of art 4(3) of the Directive. In particular, according to Article 15/B.1.a LC, the employer shall provide information to the employees' representatives in such a way as to enable them to acquaint themselves with, examine, formulate and defend an opinion on the subject matter. Art 65(4) LC specifies also the timing of certain information provided to the employees' representatives.

**The Netherlands:** See in this regard the section under Article 4(2) of the Directive above as regards the provisions of WOR defining timing, fashion and content of the information. Furthermore, new Article 5 (7), introduced by Act of 2.12.2004 amending WOR, reiterates Article 4 (3) of the Directive.

**Austria:** See in this regard the section under Article 4(2) of the Directive above.

**Portugal:** Works councils are entitled to meet regularly with the undertaking's management body in order to discuss and analyse issues related to the exercise of the council's rights. The meetings must be held at least once a month (Article 355 LGLC). Furthermore, upon a written request from members of the works councils and sub-councils, the undertaking's management body or the management of the establishment must provide in writing the requested information within eight days, unless a longer period is justified because of its complexity (in any case, no longer than 15 days) (Article 358 LGLC).

**Slovenia:** Article 90 WPMA states that the employer is bound to inform the works council on certain matters cited in art 89 WPMA before taking a final decision on these issues. Furthermore, Article 91 WPMA states that the employer is bound to inform the works council and request joint consultations on the status of the company and personnel issues before taking decisions thereon. The necessary information should be given at least 30 days before

taking the decisions, whilst joint consultations should be organised at least 15 days before taking the decisions. In addition, according to Article 86, the employer and the works council shall typically meet at least once a month in order to exercise the rights and discharge the obligations stipulated in the WPMA.

**Slovakia:** By virtue of Article 238(2) LC, the employer has to inform in an understandable manner and in an appropriate time the employees' representatives on the undertaking's economic and financial situation and on the presumed development of its activities. In addition, for the purpose of negotiation (consultation), the employer has to provide to employees' representatives the necessary information, consultation and documentation and, within his/her possibilities, take into account their viewpoints (Article 237(4) LC).

**Finland:** The Co-operation Act 2007 regulates in great detail the content, fashion and procedure of employees' information in the undertaking. The timing of information is determined in several provisions (e.g. immediately after the publication of the final accounts or the information on profits; report on the undertaking's economic situation at least twice per (accounting) year; report on the numbers of fixed-term and part-time employees in the undertaking every three months; information on the transfer of the undertaking; information on the reduction of personnel, etc.). Prior to commencing the co-operation negotiations on the plan regarding the personnel or on the changes in business operations affecting the personnel and work arrangements, the employer has to provide the information necessary for the discussions (articles 22 and 36 Act 2007).

As regards the local government, see the section under article 4(2) of the Directive above.

**Sweden:** Under Section 19 MBL, an employer is obliged to keep the employees' organisation to which he is bound by a collective bargaining agreement regularly informed on the development of the business in respect of production and finance, and the guidelines for personnel policy. Furthermore, the employer must provide the employees' organisation with an opportunity to examine the books, accounts and other documents that concern his business, to the extent required by the organisation in order to protect the common interests of its members in relation to the employer.

New Section 19a MBL obliges the employer who is not bound by a collective agreement to provide the information indicated in Section 19, first sentence, to employees' organisations with members employed by this employer.

In accordance with Sections 11-13 MBL, the consultation obligation also includes a duty to make information available. In connection with the negotiation procedure, an employer must, in good time, provide such information as is relevant to the matter under negotiation. The general right to negotiate, as provided for in Section 10 MBL, also includes the right to obtain relevant information prior to negotiations.

#### **3.4.4 According to Article 4(4) of the Directive, "consultation shall take place:**

- (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 in accordance with Article 2(f) and of the opinion which the employees' representatives are entitled to formulate;**

**(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 powers referred to in paragraph 2(c)."**

Some Member States reiterated or largely reproduced the aforementioned provision in their transposing legislation (DK, EL, IE, IT, CY, MT, PL, RO, UK)<sup>29</sup>. Other Member States specified it further, but without providing explicitly, in certain cases, for one or more of the elements of the consultation procedure laid down in Article 4(4) of the Directive.

**Belgium:** Article 4(4) of the Directive corresponds to a considerable number of, sometimes very detailed, provisions laid down in several laws, decrees, regulatory acts and collective agreements. The information provided by the employer, depending on its content, has to be commented, examined, discussed or consulted upon. As an example, article 3 CCT 9 provides that the information and consultation have to take place prior to the decision and allow the works council to proceed to an exchange of views, in which its members will be able to present their opinions, suggestions or objections. Also, article 11 CCT 9 stipulates that in case of mergers, closures or important structural modifications of the undertakings, the works council has to be consulted effectively and prior to the decision on the impact and perspectives of employment, work organisation and employment policy in general. Article 15 (a) of Law 1948 provides that the works council gives opinions and suggestions and formulates objections on all measures which could affect work organisation and working conditions. While in certain cases there is explicit provision of consultation and negotiation with a view to conclude agreements (e.g. CCT 39; Law of 17/3/1987), it does not seem always clear that all the matters falling under article 4 (2, b and c) of the Directive are subject to consultation in the sense of the directive, which includes in particular the employers' obligation to obtain a reasoned response to the work council's opinions and the will to reach an agreement (article 4 (4, d and e) of the Directive).

**Bulgaria:** In accordance with Article 7c LC, employees' representatives have the right to participate in consultation procedures with the employer, to formulate their opinion on the measures envisaged, which should be taken into account, and to request meetings with the employer whenever they must advise him/her on issues raised by employees. Article 130d (2) LC) defines the timing for holding the consultation, in the cases that no agreement has been reached between the employer and the employees' representatives: These consultations should take place within two weeks following the date on which the information has been transmitted.

**Czech Republic:** The undertaking must arrange for a consultation to take place sufficiently in advance and in an appropriate manner so that the employees could express their views on the basis of the information supplied and these views could be taken into account before a certain measure is implemented by the undertaking. In consultation, the employees have the right to be provided with a reasoned reply to their views. (Article 278(3) LC).

**Denmark:** By virtue of Article 4 (3-5) of Act n° 303/2005, the employees' representatives, on the basis of the information provided to them, have to be given an opportunity to formulate an

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<sup>29</sup> In relation to the Standard Rules in IE, UK.

opinion, prepare themselves for and hold a meeting with the management, and obtain a reasoned response to any opinions they issued.

The consultation has to take place at such time, in such fashion and with such content that the employees' representatives are able to meet the employer, express their opinion on planned measures and table proposals to be taken into account in the further decision-making process. Such consultation has to take place at an appropriate level of management and representation, depending on the subject under discussion. Consultation on decisions, which are likely to lead to substantial changes in work organisation or contractual relations, must take place with a view to reaching an agreement thereon.

**Germany:** In the private sector, as a general principle, the employer and the works council should cooperate in good faith, discuss together at least once a month, negotiate on disputed questions with the sincere will to reach agreement and present proposals in order to overcome any differences of opinion (Articles 2 and 74 BetrVG). Several provisions of the BetrVG regulate in detail the content, method and timing of the consultation (see in this regard the section under Article 4(2) of the Directive above). In addition, Article 111 BetrVG provides for the obligation of the employer and the works council to negotiate the conclusion of an agreement balancing their interests (Interessenausgleich). In case such an agreement is not reached despite sincere efforts, the parties may appeal to the Einigungsstelle which may decide -at last resort- in their place a social plan regarding full or partial economic compensation of the employees. As regards the public sector, see the section under Article 4(2) of the Directive above.

**Estonia:** Employees' representatives or, if there is no representative, the employees themselves are entitled to submit a written opinion or make a proposal on the information obtained from the employer or notify the desire to open consultations within 15 days following receipt of the information. If the employer does not take account of the proposals made, he has to justify this at the first opportunity in writing or in a form allowing written reproduction. The employer has to open consultations within seven working days following receipt of a request. He/she has to explain the planned action and its consequences on the employees. The parties must endeavour to reach an agreement on the planned action. Employees' representatives or, if there is no representative, the employees themselves may involve experts in the consultations (Article 21 ERA). Article 19(2) ERA on definitions provides also important elements.

**Spain:** Article 64 (6, paragraph 2) WS provides that consultation must be undertaken, unless expressly established otherwise, at a time and with a content that are appropriate, at the relevant level of management and representation of the undertaking, and in such a manner that it allows employees' representatives, based on the information received, to meet with the employer, to obtain a reasoned answer to their eventual report and to be able to contrast their views and opinions with the aim, eventually, of reaching an agreement on the issues provided for in section 4; there should be no prejudice to the prerogatives of the employer with regard to each of these issues. In any case, consultation must allow the work council's criteria to be known to the employer at the time of adopting or executing his/her decisions.

The works' council's reports must be prepared within fifteen days at most after they have been requested and the corresponding information has been provided.

Furthermore, in accordance with Article 41 WS, substantial amendments to collective working conditions or which affect conditions laid down in a collective agreement, may only

be implemented by agreement between the undertaking and the employees' representatives and affect the following: timetable, schedule for shift work, remuneration system, and work- and performance system. In these cases, the decision must be preceded by a period of consultation with the employees' representatives, which should last no less than fifteen days. This consultation must deal with the reasons of the employer's decision and the possibility of preventing or mitigating its impact, as well as the necessary measures to lessen the consequences for the affected employees. During the consultation period the parties have to negotiate in good faith with a view to reaching an agreement. After the end of the consultation period the employer has to notify the employees of his/her decision on the amendment, which shall take effect after thirty days.

**France:** See the section above under Article 4(2) of the Directive. In addition, Article L 431-5 CT provides that the decision of the head of the undertaking has in principle to be preceded by a consultation with the works council. In order to be able to formulate a reasoned opinion, the works council has to be given precise and written information, a sufficient deadline for examination and the reasoned responses of the head of the undertaking to its proper comments. The head of the undertaking presents the follow-up given to the works council's opinions and suggestions together with his/her reasons.

**Cyprus:** Article 5 of Law 78(I) of 2005) reiterated this provision while adding that the employer ensures that information and consultation takes place before (s)he arrives at any decisions affecting employees.

**Latvia:** Consultation has to be held at the appropriate level, in good time and at an appropriate manner to enable the employees' representatives to receive reasonable answers (Article 11(3) LC). Furthermore, according to Article 11(1, point 2) LC, employees' representatives, when performing their duties, have the right to consult with the employer before the latter takes decisions that may affect the interests of employees.

**Lithuania:** Article 23 LC provides that the employer must hold consultations, consider the proposals submitted by the employees' representatives within one month and give a reasoned response thereto in writing. Furthermore, according to Article 22 WCL, in the cases and under the terms and procedures defined in laws, collective agreements and agreements between the works council and the employer, the employer shall consult the works council before taking a decision or have the works council review his proposed decision. For that purpose, the employer has to address the works council in writing and submit to it the motives of the decision and any other relevant information. The works council has to give its opinion on the employer's decision within the time limits set by the employer, which may not be shorter than ten days in companies with a staff under a hundred, or twenty days in all other companies. If necessary, the works council may ask the employer to provide additional information. At the agreement of the parties, the time limit may be extended. Having received the opinion of the works council, the employer must consider it and give a reasoned answer. The employer may initiate additional discussions or negotiations with the works council. If an agreement between the parties is reached, this agreement may be executed as a company's collective agreement or as a written agreement between the works council and the employer. The provisions of Article 22 WCL are applicable in cases where legislation, collective agreements or agreements between the works council and the employer do not provide for any other procedure.

**Luxembourg:** See above under Articles 4(2) and 4(3) of the Directive. The following may be added:

With regard to joint works councils, Article L 424-5 provides that, in all cases, the head of the undertaking has to present the follow-up given to the works council's opinions and suggestions together with his/her reasons.

**Hungary:** According to Article 15/B.3-5 LC, consultation shall be conducted in a manner and at a time appropriate to its designated purpose, with a view to reaching an agreement, ensuring that a) the parties are represented at the appropriate level for the subject under discussion, b) there is provision for direct, personal dialogue and exchange of views, and c) there is provision for genuinely substantive discussion on the information provided by the employer and on the views and position of the trade union or works council (or workers' representative) with regard to it. The trade union or works council (or workers' representative) may initiate consultation within 15 days of receiving information from the employer or notification concerning any planned measures. In addition to the aforementioned provisions, the employer may not implement the planned measures for the duration of the consultations in the case of matters falling under Article 21(2) and Article 65(3) a) and f) or, if no longer deadline has been agreed between the works council or trade union and the employer, for at least 7 days from the start of consultations, even if the 15-day period laid down in Article 66(1) has elapsed. Unless otherwise agreed, the employer shall close the consultations upon expiry of the deadline.

In addition, Article 66 LC lays down specific provisions related to works councils' opinions.

**The Netherlands:** New Article 5 (8), introduced by Act of 2.12.2004 amending WOR, reiterates Article 4 (4) of the Directive. Furthermore, as indicated above under Article 4(2) of the Directive, several provisions of WOR correspond to Article 4 (4) of the Directive. In addition, the following specifications are worth mentioning: Article 25, paragraph 4 of the WOR states that the business owner and the works council (OR) must consult each other with regard to the proposed decision at least once. Paragraph 5 of the same Article states that, in the event that the recommendation issued by the works council is not followed in full or in part, it has to be informed of the reasons for the rejection of this recommendation. If a works council objects to this (in writing), it may lodge an appeal against the proposed decision on the part of the business owner before the Enterprise Section of the Amsterdam Court of Appeal. Articles 25 and 27 WOR state that a request for consultation or approval must be submitted by the business owner in writing and in good time, i.e. at such time that it may have a material impact on the decision to be taken. With regard to the right of approval, the works council may in fact issue a veto: it is only possible to make amendments without the permission of the works council in the event that the business owner has obtained alternative consent from the sub-district court.

**Austria:** See the section above under Article 4(2) of the Directive.

**Portugal:** According to Article 357(2) LGLC, the works council must give its opinion within 10 days from receiving the written request from the employer. It has also the right to meet regularly the management to discuss and analyse issues related to the exercise of its rights. The meetings must be held at least once a month (Article 355 LGLC). In contrast to art 503(5) LC which provides that the management consults shop stewards with a view to reach agreement on certain issues, there is no such provision as regards works councils.

**Slovenia:** See the developments under Article 4(3) of the Directive above. In addition, Article 92 WPMA provides, as regards planned decisions on status and personnel issues, that the employer arranges consultations to keep the works council informed, to seek advice and to try

to harmonise points of view. Furthermore, Articles 95 and 96 WPMA regulate the issues subject to approval or consent of the works council.

**Slovakia:** In accordance with Article 238 LC, the employer shall negotiate in advance with employees' representatives, provide the employees' representatives with the necessary information, consultation and documentation and, within its possibilities, take into account their viewpoints. Negotiations shall be held in an understandable manner and at an appropriate time, with adequate contents and in the goal of achieving agreement.

**Finland:** The Co-operation Act 2007 contains several provisions regulating in great detail the content, fashion and procedure of employees' consultation in the undertaking. In particular, before the personnel plan and training objectives are implemented in an undertaking, they must be discussed in a spirit of cooperation, the aim being to reach a consensus (article 20). The employer must take an initiative in this regard in good time before commencement of the co-operation negotiations in order to enable the staff representatives to sufficiently prepare the negotiations (article 21). Also, with regard to changes in business operations affecting the personnel and work arrangements, the employer has to take an initiative as soon as possible and discuss the reasons, effects and alternatives to the intended changes, before he takes his/her decision thereon, in a spirit of co-operation in order to obtain consensus (articles 34 and 35).

As regards the local government, see the section under article 4(2) of the Directive above.

**Sweden:** Before the employer takes a decision regarding any significant change in his business activities, he must, pursuant to Section 11 MBL, seek negotiations with the employees' organisation to which he is bound by a collective agreement. This also applies to any decisions by the employer regarding significant changes in working or employment conditions of employees belonging to the organisation.

Under Section 12 MBL, when the employees' organisation referred to in Section 11 so requires, the employer must also negotiate with this organisation in instances other than those provided for in this Section, before he takes or implements any decision affecting members of the organisation. In extraordinary circumstances, the employer may take and implement a decision before fulfilling his duty to negotiate.

Other sections of MBL refer also to the provisions of Sections 11 and 12 MBL. For example, under Section 13 MBL, employers are in certain circumstances obliged to negotiate with employees' organisations not bound with a collective agreement with the employer.

In accordance with Section 14 MBL, the negotiations must initially take place at local level. However, if agreement is not reached, the employee may request that the negotiations take place at "associational" (central) level.

Under Section 15 MBL, a party who is obliged to negotiate must appear in person or be represented at the negotiations and, where necessary, submit a reasoned proposal for a resolution of the matter in question. Instead of a meeting the parties may jointly decide on another form of negotiation.

The party wishing to negotiate must make a formal request for consultation to the other party. This must be in writing, if so required, and provide details of why the consultation is being sought. Section 16 provides further for the timing and other procedural issues of such negotiation.



Under Section 18 MBL, a party who cites a written document in negotiations must make it available to the other party if so requested.

### 3.5 Information and consultation deriving from an agreement (Article 5)

**Article 5 of the Directive provides that Member States "may entrust management and labour at the appropriate level, including at undertaking or establishment level, with defining freely and at any time through negotiated agreement the practical arrangements for informing and consulting employees. These agreements, and agreements existing on the date laid down in Article 11, as well as any subsequent renewals of such agreements, may establish, while respecting the principles set out in Article 1 and subject to conditions and limitations laid down by the Member States, provisions which are different from those referred to in Article 4."**

Some Member States did not make explicit use of the option provided for in this Article (CZ, EE, LV, NL, AT, PT). However, social partners may, in certain Member States, conclude collective agreements in accordance to the general rules and/or practices, in particular where those agreements establish more favourable provisions for the employees (e.g. in LV, SK).

Other Member States merely reiterate the aforementioned definition in their transposing legislation (EL). Several Member States specify explicitly the possibility of social partners to define the practical arrangements for informing and consulting employees, whilst some make a distinction between agreements existing at the date of the expiration of the deadline for transposition (23.03.2005) or of the entry into force of the transposing act, and those adopted subsequently (IE, MT, PL, UK).

**Bulgaria:** In accordance with Article 130d (1) LC, the employer and the employees' representatives pursuant to Article 7a shall determine, in an agreement between them the following: 1. The type of information and the deadlines within which it will be transmitted; 2. The deadlines within which the employees' representatives shall prepare their opinion on the transmitted information; 3. The deadlines and issues for holding consultation with the employer; 4. The employer's representatives who are authorised to transmit information and to hold consultations. Furthermore, Article 130 (5) LC provides that the employer and employees may also agree on other practical measures for information and consultation in line with Article 7a LC, besides the ones indicated in the law, by means of a collective agreement for work or of another agreement.

**Czech Republic:** It does not use the option. However, in a specific case (Article 286(1) LC), it is provided that, where two or more trade union organisations exercise their activities within one undertaking in cases concerning all or a large number of employees and in which the employer is obliged to inform, consult, request consent or reach an agreement with the competent trade union organisations, the undertaking shall fulfil its duties in relation to all organisations unless the parties determine some other information and consultation procedure.

**Denmark:** The Act does not apply where the employer has an obligation to inform and consult employees under a collective agreement containing provisions which at least correspond to the provisions of Directive 2002/14/EC. If such collective agreement contains more detailed provisions on information and consultation of employees which are consistent with the object and principles laid down in Article 1 of the Directive, the provisions shall be regarded as meeting the minimum requirements of Directive 2004/14/EC, regardless of the provisions of Article 4 of the Directive (Article 3 of Act n° 303/2005).

**Germany:** In the private sector, in accordance with Article 117 (2) BetrVG, the social partners can establish own representative bodies for the employees occupied in the aviation business in establishments of this sector. In the public sector, the option was not used.

**Spain:** According to Article 64 (9) WS, with due respect to what is established legally or by regulation, collective agreements may stipulate specific provisions regarding the content and modalities to exercise the rights of information and consultation, as well as the appropriate level of representation for their exercise.

**France:** Article L431-5 CT provides that, without prejudice of the obligations imposed on the head of the undertaking with regard to consultation, an agreement at the level of the sector, the undertaking or the group, can adapt, in undertakings occupying more than 300 employees, the modalities of informing the works council and the organisation of the exchange of views. This agreement can substitute the information and documents foreseen in certain provisions with a report, submitted at least annually, and covering a number of enumerated issues. The agreement may also provide for giving information directly to employees.

**Ireland:** Act N° 9 of 2006 provides for several possibilities of determining the practical arrangements of information and consultation of employees in undertakings: by way of Pre-Existing Agreements (PEAs) (section 9), Negotiated Agreements (NAs) (section 8) or the Standard Rules (section 10 combined with Schedule 1).

Where the employer and the employees already have a PEA, the employer is not obliged to comply with an employees' request to enter into negotiations provided that the PEA meets certain requirements, such as: it is in writing; applies to all employees to whom the agreement relates; has been approved by the employees; includes the following: the duration of the agreement and the procedure, if any, for its review; the subjects for information and consultation; the method by which information is to be provided; the method by which consultation is to be conducted. There is no mention of any timeframe.

The employees may request the employer to negotiate an agreement on information and consultation. The employer himself may initiate the process (section 7).

The employees' request is valid if it has been made by at least 10% of all employees. However, this figure may not be inferior to 15 or superior to 100 employees. Act N° 9 of 2006 provides for detailed rules on the process of the negotiations. By virtue of section 8, a NA must, among others, be in writing, apply to all employees to whom the agreement relates, be approved by the employees, and include the following: the duration of the agreement and the procedure, if any, for its renegotiation; the subjects for information and consultation; the method and the timeframe by which information is to be provided; the method and the timeframe by which consultation is to be conducted; the procedure for dealing with confidential information.

As in the case of PEAs, NAs may provide either for the election of information and consultation representatives or for direct information and consultation of the employees.

Standard Provisions apply a) where the parties agree to it, b) where the employer refuses to enter into negotiations within 3 months, c) where the parties do not reach a negotiated agreement within the fixed time limit. The parties may enter into negotiations to change the rules after a minimum initial period of two years in accordance with section 10.

**Italy:** By virtue of Article 4 LD, collective agreements shall lay down the fora, timing, subjects, procedures and content of the information and consultation rights granted to

workers. However, this is without prejudice to collective agreements in existence as at the date of signature of this Legislative Decree.

**Cyprus:** Article 6(1) of Law 78(I) of 2005 provides that management and labour can, at the appropriate level, including at undertaking or establishment level, define freely and at any time through negotiated agreement the practical arrangements for informing and consulting employees. Article 6(2) of the Law stipulates that the agreements referred to in Article 6(1) of the Law, and the agreements which exist on 23 March 2005 as well as any subsequent renewals may provide for different provisions than those provided for in Article 5 of the Law (which corresponds to Article 4 of the Directive). The practical arrangements for informing and consulting employees established in accordance with Article 6(1) of the Law must respect the principles laid down in Article 1 of the Directive. It is not absolutely clear from the wording of this provision whether these principles must be respected also in the case of agreements which exist on 23 March 2005.

**Lithuania:** By virtue of Article 47(2) LC, the conditions and procedure for the furnishing of information and consultation shall be established by laws, collective bargaining agreements and agreements between the employer and the employees' representatives. The law on works councils refers also to laws, collective agreements and agreements between the works council and the employer which define the cases, terms and procedures under which the provision of information and consultation takes place (Article 21 and 22(1) WCL).

**Luxembourg:** Article L 417-1 CT provides that the provisions of title I CT regarding staff delegations are without prejudice to agreements containing more favourable clauses to workers.

**Hungary:** According to Article 64/A LC, the issues pertaining to the privileges of a works council and its relations with the employer shall be laid down in an operative agreement.

**Malta:** By virtue of regulation 3, sub-regulation 3, of LN 10/2006, the employer's general duty to inform and consult is without prejudice to any written agreement in force on 23.3.2005 which, whilst respecting the minimum requirements set out in these regulations, is more favourable to employees, provided that the agreement: a) applies to the whole workforce, b) clearly sets out how the employer is to give information to the employees or their representatives and to seek their views on such information, c) has been applied effectively. In addition, by virtue of regulation 3 sub-regulation 4, nothing in these regulations shall prevent the employer and employees from negotiating agreements on the practical arrangements for informing and consulting employees, provided that these respect the minimum requirements set out in these regulations.

**Poland:** Act 2006 provides for issues on which the works council has to reach consensus with the employer (such as the principles and procedure for providing information and carrying out consultations as well as the principles for covering costs of election/operation of the works council (Article 5 (1)), and for issues on which there may be agreement (such as the size of the works council, principles for covering costs of experts, or principles for relieving from work the council members (Article 5 (2))). . Article 5(4) specifies that provisions of the Act apply only in case of failure to reach consensus on the aforementioned issues. The agreement should ensure at least equal information and consultation conditions to those laid down in the Act.

In addition, Article 24 (1) of the Act stipulates that it does not apply to agreements concluded prior to the entry into force of the Act, provided that they guarantee at least equal information and consultation conditions to those laid down in the Act and safeguard both employer's and employees' interests; however, articles 15 to 17 apply, according to Article 24 (2) of the Act. It seems that Article 19 of the Act concerning protection of rights is not applicable in case of pre-existing agreements.

**Romania:** The practical arrangements for informing and consulting employees may be defined freely and at any time, in the collective contracts and agreements, concluded in accordance to the law (Article 6 of Law 467/2006).

**Slovenia:** Article 5 WPMA provides that the works council and the employer may agree on other modes of worker participation in management and adds that the exercise of rights and other questions may be defined in greater detail in a written agreement (on the condition that it does not regulate issues which are regulated by generally applied collective agreements).

**Slovakia:** Practical arrangements for informing and consulting employees may be specified further, in particular in work rules (art 84 LC) or in other agreements (articles 231 and 233 LC), provided that they are more favourable to employees.

**Finland:** In accordance with article 61 of Act 2007, nationwide associations of employers and employees may conclude agreements in derogation to the provisions of chapters 3-6 and 8 of this Act. However, agreements cannot be concluded in derogation from the provisions of articles 47 and 48 insofar as those provisions apply to serving notice to terminate the employment contracts of at least ten employees. These agreements have the same legal force and effect as those concluded under the Collective Agreements Act.

As regards the local government, the legal provisions in this regard are similar to those of Act 2007.

**Sweden:** Under Section 4 MBL, deviations from Sections 11, 12, 14 and 19 MBL may be made through collective bargaining agreements. There are no explicit limits to such arrangements, but case-law seems to provide for such limits based on the purpose of the law.

**United Kingdom:** The ICE Regulations 2004 create room for a wide diversity of practices and build on existing practices. The practical arrangements of information and consultation of employees in undertakings can be determined by way of Pre-Existing Agreements (PEAs) (regulation 2 on definitions and regulations 8 ff), Negotiated Agreements (NAs) (regulation 2 on definition and regulations 7 ff) or the Standard Provisions (regulations 18 ff).

Where the employer and the employees already have one or more Pre-Existing Agreements (PEAs), such arrangements are considered as compliant with the Regulations, if they meet the following conditions: they are in writing, cover all of the employees, have been approved by the employees, and set out how the employer is to give information to the employees or their representatives and seek their views on such information.

However, PEAs can be challenged by a valid employee request. If an employee request for new arrangements constitutes at least 10% but is less than 40% of all employees, the employer has two options. The employer can either agree to negotiate new arrangements or hold a ballot to seek the endorsement of the employee request. Where 40% of those entitled to vote and a majority of those voting approve the employee request for new arrangements then the employer is required to start negotiations with the employee representatives. Where the

employees do not endorse the request for new arrangements, the PEA continues and is subject to a three-year moratorium in respect of further employee requests.

The employees may request the employer to negotiate an agreement on information and consultation in accordance with regulation 7. The employer himself may initiate the process by issuing a written notification of his/her decision to launch negotiations (regulation 11).

The employees' request is valid if it has been made by at least 10% of all employees. However, this figure may not be inferior to 15 or superior to 2.500 employees. Regulations 2004 provide for detailed rules on the process of the negotiations. By virtue of regulation 16, a NA must, among others, be in writing, cover all employees and set out the circumstances in which the employer must inform and consult the employees to which it relates.

As in the case of PEAs, NAs may provide either for the election of information and consultation representatives or for direct information and consultation of the employees.

Standard Provisions apply a) where the employer is under a duty to initiate negotiations but does not do so and b) if the parties do not reach a negotiated agreement within the fixed time limit. However, the employer and the information and consultation representatives may, at any time, reach an agreement that provisions other than the standard information and consultation provisions shall apply.

### 3.6 Confidential information (Article 6)

**3.6.1 Article 6(1) of the Directive stipulates that Member States shall provide that the employees' representatives and any experts who assist them are not authorised to reveal to employees or to third party any information which, in the legitimate interest of the undertaking or establishment, has expressly been provided to them in confidence. This obligation shall continue to apply, wherever the said representatives or experts are, even after expiry of their terms of office. However, a Member State may authorise the employees' representatives and anyone assisting them to pass on confidential information to employees and to third parties bound by an obligation of confidentiality.**

Some Member States reiterate or largely reproduce the aforementioned definition in their transposing legislation (EL<sup>30</sup>, CY). Several other Member States transposed the confidentiality requirement by using the terms "in the legitimate interest of the undertaking or establishment", without specifying them further (BG, DK, IE, IT, RO, UK). Some Member States used instead (one or more of) the terms "commercial, industrial, business or professional secret" (DE, HU, LV, LT, NL, AT, PL, SI, FI)<sup>31</sup> or the "possibility to cause harm or prejudice to the undertaking" (BE, CZ, MT, SK). Some other Member States used merely the concept "information of a confidential character" without any further specification (EE, ES, LU). A few Member States focused on specific information which should be kept secret (FR<sup>32</sup>, LU<sup>33</sup>, FI<sup>34</sup>).

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<sup>30</sup> However, EL does not make use of the option of Article 6.1, last sentence.

<sup>31</sup> This concept has been further defined in certain Member States by referring to the possibility of causing harm to the undertaking (HU, SI).

<sup>32</sup> As regards in particular fabrication issues.

<sup>33</sup> As regards fabrication issues.

<sup>34</sup> As regards information on the undertaking's financial position and on its security.

Some Member States limited the confidentiality obligation to a certain period after expiry of the mandates of the concerned persons (CZ, IT, PL, SK)<sup>35</sup>, although the directive does not provide for any such limitation, whilst some others did not explicitly transpose the relevant directive's requirement (EE, FR, SI, FI). In MT, AT, UK the employer indicates the terms, including the timing, under which confidential information may be further disclosed.

A number of Member States imposed on the employer the obligation to indicate in writing which information (s)he considers confidential (LV), or even to justify the confidential nature of the information (EE, PT). A few Member States, such as FR and LU, make a distinction between obligation of secrecy and obligation of discretion.

**Belgium:** Article 33 AR 1973 concerning economic information provides that the employer may indicate to the works council the confidential character of the provided information, the diffusion of which could be prejudicial to the undertaking. Article 32 AR 1973 provides that, while the works council's members ensure the information of the staff on the basis of the information provided by the employer, they have an obligation of discretion to the extent necessary to the interest of the undertaking.

**Bulgaria:** In accordance with Article 130c (3 and 4) LC), if the information contains data the transmission of which may affect the legitimate interests of the employer, he has the right to transmit such information accompanied by a request for confidentiality. In these cases, the employees' representatives do not have the right to disclose such information to the other employees or to third parties. Article 7c (2, point 2) LC provides that employees' representatives are obliged not to disclose any information which has been provided to them in confidence during and after expiry of the term of their mandate.

**Czech Republic:** Members of the competent trade union organization, the works council or the representative(s) concerned with occupational safety and health protection are obliged to withhold any information and facts having been provided to them in confidence in connection with the performance of their function if a breach of their obligation of confidentiality might result in disclosure of confidential facts or infringement of legitimate interests of the undertaking or employees. This obligation of maintaining confidentiality shall also last for a period of one year after expiry of the term of their office, unless another Act provides otherwise. "Confidential information" („důvěrná informace") means such information the provision of which (to an unauthorized person) may put at risk or harm the undertaking's activity. Confidential information is not the information which the undertaking is obliged to provide, consult or publicize under this Code or under other statutory provisions (Article 276(3) LC).

**Denmark:** The employees' representatives or experts assisting them shall not reveal information which, in the legitimate interest of the undertaking, has been given to them in confidence. The confidentiality obligation shall continue to apply after expiry of representatives' terms of office. (Article 7 of Act n° 303/2005).

**Germany:** In the private sector, according to Articles 79 and 80 BetrVG, members of the works councils and experts are obliged not to disclose any commercial and business secrets, which came to their knowledge while executing their offices and which have been expressly indicated to them as secret. Although there is no mention of the term “legitimate interest of the undertaking” in the law, according to case law, such interest is an element of the definition

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<sup>35</sup> PL, IT: 3 years; SK, CZ: 1 year.

of the term "commercial and business secrets". The secrecy obligation continues to apply even after expiry of their terms of office. In the public sector, Art 10 BPersVG provides that all persons who exercise or exercised competencies by virtue of this law have to respect confidentiality concerning matters which came to their knowledge while executing their offices. The scope of the secrecy obligation seems to be very wide (excluded are matters which are public or do not need to be kept secret in view of their importance). It is not provided that the "employer" (Dienststelleleiter) has to expressly indicate that an information is confidential.

**Estonia:** By virtue of Article 11 ERA, representatives shall not disclose to third parties and/or shall not unlawfully use, during or after their mandate, personal data which they obtained for the performance of their duties or any information which the employer has expressly provided them in confidence. These obligations do not apply to communication of information by representatives to other representatives elected at the same employer or to experts involved in consultations. Representatives shall communicate the information received in confidence to other representatives or to experts with a clear indication of confidentiality.

By virtue of Article 12 ERA, the same obligations apply also to experts involved in consulting.

Article 15 ERA defines the term "confidential information" as any information which the employers expressly provide to representatives in confidence. Article 15 paragraph 2 ERA adds that the employer is required to justify the confidential nature of the information, if a representative does not agree with that confidentiality.

**Spain:** Article 65 (paragraphs 2 and 3) WS provides that works council's members, and the council as a whole, as well as any experts providing assistance, must abide by the duty of secrecy with regard to any information which, in the legitimate and objective interest of the undertaking or the establishment, has expressly been provided as confidential. In any case, no document provided by the undertaking to the Council may be used outside the strict scope thereof, neither for aims other than those for which it has been provided. The duty of secrecy will continue to apply even after expiry of the terms of office of the works council's members and irrespective of the place where they are.

**France:** Article L 432-7 CT provides that the members of the works council have to respect an obligation of discretion with regard to information of a confidential character which has been given to them as such by the head of the undertaking. They are also bound by an obligation of professional secrecy with regard to all questions relating to fabrication procedures. Some other provisions specify that certain particular information is considered to have a confidential character (Articles L 432-4 and L 432-5-V CT). The criteria to appreciate the confidential character of an information are determined by case-law and include, in particular, the possibility of the competitors to take advantage in order to harm the concerned undertaking. In accordance with Article L 434-6 CT, the aforementioned obligations of discretion and of secrecy apply also to experts.

**Ireland:** In accordance with section 14 of Act 9/2006, an individual who at any time is or was (a) a member of an Information and Consultation Forum, or (b) an employees' representative who is party to an information and consultation arrangement, or (c) an employee participant in an information and consultation arrangement, or (d) an expert providing assistance, shall not disclose to employees or to third parties any information which, in the legitimate interest of the undertaking, has been expressly provided to him or her by the undertaking in confidence.

The duty of confidentiality shall continue to apply after the cessation of the employment of the individual concerned or the expiry of his or her term of office. The individual concerned may, however, disclose information which has been expressly provided to him or her in confidence to employees and to third parties where those employees or third parties are subject to a duty of confidentiality.

**Italy:** Workers' representatives, and any experts that assist them, shall not be authorised to reveal either to workers or to third parties information that has been expressly provided to them on a confidential basis and defined as such by the employer or its representatives in the legitimate interests of the undertaking. This prohibition shall remain valid for a period of three years following expiry of the term of their office, regardless of where they are located. However, national collective labour agreements may authorise workers' representatives and, where relevant, their advisers, to pass on confidential information to workers or third parties who are bound by a confidentiality agreement, provided that relevant procedures have been identified in the collective agreement. In the event of infringement of this prohibition, and without prejudice to the possibility of civil action being taken, the disciplinary measures laid down in the applicable collective agreements shall apply (Article 5(1) LD).

**Latvia:** Employees' representatives and experts who provide them with assistance have the obligation not to disclose information brought to their attention that is a commercial secret of the employer. The employer has an obligation to indicate in writing what information is to be regarded as a commercial secret. The obligation not to disclose the information is binding on employees' representatives and experts who provide them with assistance also after completion of their activities (Article 11(5) LL).

**Lithuania:** By virtue of Article 47(3) LC, the employees or their representatives who have presented a written pledge not to disclose any commercial (industrial) or professional secrets, have the right of access to information that is treated as commercial (industrial) or professional secret, but is necessary for the performance of their duties. Irrespective of where the employees and their representatives are located and regardless of the termination of their labour relations or expiry of their term of office, they are prohibited from using for another purpose or from disclosing to third persons the information considered as commercial (industrial) or professional secret that has come to their knowledge. Furthermore, by virtue of Article 23(2) WCL, members of the works council, who have submitted a written confidentiality statement in respect of commercial (industrial) or professional secrets, have the right of access to information considered to be commercial (industrial) or professional secret, which is necessary for the performance of their duties.

**Luxembourg:** With regard to staff delegations, Article L 415-2 CT provides that its members as well as their advisors are bound by an obligation of secrecy regarding information which is of a confidential character and has been indicated as such by the head of the undertaking. They are also bound by professional secrecy with regard to all questions relating to fabrication procedures.

With regard to joint works councils, Article L 425-2 provides that its members as well as their advisors have to keep secret the information of a confidential character which has been given to them as such by the head of the undertaking.

**Hungary:** According to Article 22/A LC, persons representing or authorised to act on behalf of the trade union may not disclose to third parties, make public or otherwise use information released to them expressly as business secrets by the employer for any purposes other than those laid down in this Act. Such persons may make public information coming to their attention in the course of their activities only if such disclosure does not prejudice the



employer's legitimate business interests or the individual rights of employees. The aforementioned obligations shall continue to apply indefinitely following expiry of the mandate or termination of the employment relationship of the person acting on behalf of the trade union. Article 69 LC extends the application of Article 22/A LC to works councils.

**Malta:** Regulation 7 of LN 10/2006 stipulates that a person to whom the employer, pursuant to his obligations under the regulations, entrusts any information or document on terms requiring it to be held in confidence shall not disclose that information or document except in accordance with those terms. There is no mention of "legitimate interest of the undertaking" in relation to the requirement to hold an information in confidence, but workers' representatives may contest this requirement where it is unreasonable, in particular where the disclosure of the information or the document by the recipient of the information would not, or would not be likely to, prejudice or cause serious harm to the undertaking (see below under art 6.3 of the Directive).

**The Netherlands:** Works council members, members of Works council's committees and its secretariat as well as experts engaged by the Works council who may become aware of business and industrial secrets in their official capacity are bound by secrecy (Article 20 WOR). The business owner may also impose this obligation of secrecy (the works council may also impose this obligation on its committees or on external experts). In the event that an obligation of secrecy has been imposed, the following must be stated as soon as possible prior to the handling of the matter in question:

- which information provided orally or in writing falls under the obligation of secrecy
- the period during which the obligation of secrecy must be observed, and
- whether there are any individuals who are exempt from the obligation of secrecy.

**Austria:** According to Article 115 (4) ArbVG, the members of the works councils are obliged not to disclose any commercial and business secrets, which came to their knowledge while executing their offices. These include in particular information on technical equipments, arrangements and procedures of the establishment, which has been expressly indicated to them as secret. Although there is no mention of the term "legitimate interest of the undertaking" in the law, according to case law, such interest is an element of the definition of the term "commercial and business secrets".

**Poland:** The works council as well the experts are obliged not to disclose information which was obtained through fulfilment of their duties and which constitutes company secret if the employer has requested to keep such information confidential (Article 16(1) of Act 2006)). This obligation remains in effect for up to three years after expiry of the mandates of the concerned persons. However, according to Article 16(6), the aforementioned paragraphs do not prejudice separate provisions on confidentiality.

**Portugal:** According to Article 458 LC, the members of the bodies representing the employees shall not disclose to the employees or to third parties any information acquired during the legitimate exercise of their role and expressly identified as confidential by the undertaking or establishment. The duty of confidentiality persists even after the mandate of the members of the representational bodies has expired. The identification of information as confidential must be justified in writing and the justification must be based on objective, verifiable criteria which stem from management imperatives (Article 460 LC).

**Romania:** Article 7 (1) of Law 467/2006 reiterates Article 6 (1) of the Directive, but adds at the end that the type of information under confidentiality is agreed by the parties in the form of collective agreements or any other form, and are the subject matter of a confidentiality agreement.

**Slovenia:** Article 68 WPMA provides that works council members, experts from inside or outside the company, management personnel, trade union representatives in the company and representatives of employers' associations are not to disclose business secrets. In addition to this, Article 36 of the Employment Relationship Act states that a worker may not exploit for his private use nor disclose to a third person employer's business secrets, defined as such by the employer, which were entrusted to the worker or of which he has found out in any other way. Data, which would obviously cause substantial damage if they were disclosed to an unauthorised person, are considered as business secret. The worker is liable for the violation, if he knew or should have known for such nature of data.

**Slovakia:** The employer may refuse to provide information, which could harm the employer, or may require that this information be regarded as confidential (Article 238(3) LC). Employees' representatives and experts assisting them are obliged to maintain secrecy on issues which they found out in the performance of their duties and which were designated by the employer as confidential. This obligation applies also during one year following the termination of their term of office, unless specific rules provide otherwise (Article 240(4) LC).

**Finland:** In accordance with article 57 Act 2007, employees, employees' representatives and experts have to keep confidential information obtained in connection with the co-operation procedure:

- 1) relating to business and trade secrets;
- 2) information relating to the employer's financial position, which is not public according to other legislation and dissemination of such information would probably be prejudicial to the employer or any of his business partners or contracting parties;
- 3) information relating to the security of the undertaking and the corresponding security system, the dissemination of such information would probably be prejudicial to the employer or any of his business partners or contracting parties;

However, they may, after having informed of the confidential nature of the information, disclose this information to other employees or their representatives to the extent necessary taking account of the role of these employees in realising the purpose of co-operation.

A precondition for confidentiality is that:

- 1) the employer has indicated to the employees, their representatives or the experts what information shall be considered as business and trade secrets;
- 2) the employer has indicated to the employees, their representatives or the experts that the information referred to in subsections 1(2) and 1(3) is confidential; and
- 3) the employee and the representative of the personnel group have informed of the confidentiality to the employees or their representatives referred to in subsection 2 above.

The confidentiality continues during the entire duration of the contract of employment of the concerned persons.

As regards the local government, provisions on the obligation of authorities and their employees to maintain the confidentiality of information are set out in the Law on public access in relation to Government activities (621/1999). If, however, confidential information is an intrinsic part of the cooperation procedure, it may be disclosed to the extent that it is essential for discussion of the matter in question. Provisions on the right to disclose confidential information are set out in Section 6 of the Law on cooperation in the local government sector. The Law on public access in relation to Government activities applies to all participants in the cooperation procedure and its provisions on public access to documents and professional confidentiality are referred to separately in Section 17 of the Law on cooperation.

**Sweden:** Under Section 21 MBL, where the employer requires that specific information which he must make available to the employees' representative be subject to an obligation of confidentiality, he is entitled to hold negotiations with the employees' organisation thereon. If agreement is not reached, the employer may bring the matter of confidentiality before the court. The court must rule that confidentiality must be observed, if it considers that non-observance could engender the risk of substantial damage to a party of the proceedings or to any other person. The confidentiality of a matter that is under negotiation at the request of one of the parties must be observed until the issue has been resolved.

**United Kingdom:** In accordance with Regulation 25 of ICE Regulations, a person to whom the employer, pursuant to his obligations under these Regulations, entrusts any information or document on terms requiring it to be held in confidence shall not disclose that information or document except, where the terms permit him to do so, in accordance with those terms.

**3.6.2 By virtue of Article 6(2) of the Directive, Member States “shall provide, in specific cases and within the conditions and limits laid down by national legislation, that 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.”.**

Several Member States, whose legislation did not provide at the date of the transposition of the Directive for the possibility of employers to withhold information and/or refuse consultation, maintained this situation (LV, HU, NL, SI). Some Member States reiterated the provision of Article 6(2) of the Directive (EL). Other Member States transposed it with different wording or additions (see below). The majority of Member States did not specify further under which specific cases the employer is entitled to refuse information or consultation or which are the objective criteria for such refusal, leaving this task presumably to the instances referred to in Article 6(3) of the Directive, including the courts. One Member States allows the employer to withhold information invoking merely that its provision could harm him/her. The transposing legislation of some other Member States does not require explicitly that the appreciation of the confidentiality of the information should be based upon objective criteria. Some Member States provide for the conditions under which the employer may refuse to provide information, such as his/her obligation to give concrete justification as to why the provision of information would or could seriously harm him/her (e.g. EE, RO) or the written form of such refusal (e.g. LT, PT).

**Belgium:** Article 27 AR 1973 concerning economic information provides that the employer may be authorised to derogate from his obligation to provide to the works council certain information which could be prejudicial to the undertaking. This provision enumerates in detail the concerned information. The aforementioned possibility of derogation is subject to the prior approval of specially designated officials. Furthermore, the employer should request the derogation in writing. The relevant procedure is regulated in Articles 28 and 29 AR 1973. Article 3 CCT 39 provides also for the possibility of the employer not to communicate information relative to economic, financial or technical factors, if it could be prejudicial to the undertaking.

**Bulgaria:** In accordance with Article 130c (5) LC, the employer may refuse to transmit information or carry out consultation when the nature of information or consultation could seriously harm the functioning of the undertaking concerned or employer's legal interests.

**Czech Republic:** The undertaking is not obliged to provide or consult the information concerning facts protected under other statutory provisions (Article 276(3) LC).

**Denmark:** In special cases, an undertaking is not obliged to inform or consult employees where doing so might seriously harm or affect the functioning of the undertaking or be prejudicial to the undertaking (art 5 of Act n° 303/2005).

**Germany:** According to Articles 43(2), 53(2,2) and 106(2) BetrVG, employers are not obliged to comply with their obligations to provide information to the employees, to the extent that commercial and business secrets are put to risk. By virtue of case law, the existence of such risk should be appreciated according to objective criteria.

**Estonia:** By virtue of Article 16 ERA, the employer may refuse to provide information if disclosure of that information would or could seriously harm the employer's activities. Article 16 ERA paragraph 2 adds that, when refusing to provide information, the employer shall give justification based on objective criteria as to why the provision of information would or could seriously harm his/her activities. The employer may not refuse to provide information on the number of employees.

**Greece:** Article 7(2) of PD 240/2006 reiterates Article 6(2) of the directive. Yet, it is not entirely clear whether this provision, which refers explicitly to the existing legislation, limits the possibility of the employer to withhold information and consultation solely to the issues covered by Article 13(4) of law 1767/1988, i.e. banking secrets, lawyer-client privilege, national security issues or matters involving patents.

**Spain:** Article 65 (paragraph 4) WS provides that, exceptionally, the undertaking will not be obliged to communicate specific information related to industrial, financial or trade secrets, the disclosure of which could, according to objective criteria, harm the functioning of the undertaking or establishment or be seriously prejudicial to its economic stability. This exception does not cover information related to the level of employment in the undertaking.

**France:** Article L 432-1 ter CT derogates from Article L 432-5 and provides that the head of the undertaking is not obliged to consult the works council before launching a takeover bid. He/she has however to hold a meeting with the works council within two working days from the publication of the bid in order to provide written and precise information.

**Ireland:** In accordance with section 14 of Act 9/2006, an employer may refuse to communicate information or undertake consultation where the nature of that information or

consultation is such that, by reference to objective criteria, it would seriously harm the functioning of the undertaking, or be prejudicial to the undertaking. He/she shall refuse to disclose information where disclosure of the information concerned is prohibited by any enactment.

**Italy:** Employers are not required to engage in consultation or provide information which, for proven technical, organisational or production-related reasons, would create significant difficulties for the operation of the undertaking or damage it (Article 5(2) LD).

**Cyprus:** Article 7(2) of Law 78(I) of 2005 states that an employer does not have any obligation to provide information or to carry out consultation on matters which a) by their nature are such that, on the basis of objective criteria, would seriously harm the functioning of the undertaking or would be prejudicial to it; (b) are characterized as secret on the basis of existing legislation, such as banking secrets, lawyer-client privilege, national security issues or matters involving patents.

**Lithuania:** The employer (employers' organisation) may refuse in writing to furnish information deemed as commercial (industrial) or professional secret, where such information due to its character would be or could be very detrimental according to objective criteria to the undertaking or its activities. The granting of access to state, official secrets and the responsibility for disclosure or illegal use thereof are subject of special laws" (Article 47(4) and 5 LC. Furthermore, by virtue of Article 23(3) WCL, the employer may refuse, in writing, to provide information considered to be a commercial (industrial) or professional secret in cases where, due to its nature and according to objective criteria, the disclosure of the information could be detrimental to the company or its activities.

**Luxembourg:** With regard to joint works councils, Article L 423-2 provides that the head of the undertaking has to inform and consult the works council before he/she takes any important decision concerning in particular introduction, improvement or transformation of work methods and production processes, with the exception of fabrication secrets.

**Malta:** According to regulation 7(7) of LN 10/2006, 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.

**Austria:** The employer is not obliged to communicate information or undertake consultation with the works council only in the case of Tendenzbetrieben (Article 132 ArbVG).

**Poland:** Where particularly justified, an employer may withhold information from the works council if its disclosure may, according to objective criteria, seriously harm the functioning of, or cause considerable damage to the undertaking or establishment.

**Portugal:** The employer is not under any obligation to provide information or carry out consultation on matters the nature of which is likely to prejudice or seriously affect the functioning of the undertaking or establishment (Article 459 LC). The refusal to provide information or carrying out consultation must be justified in writing and the justification must be based on objective, verifiable criteria which stem from management imperatives (Article 460 LC).

**Romania:** Article 7 (2) of Law 467/2006 provides that the employer is not obliged to communicate information or undertake consultation when their nature is such that it would

seriously harm the functioning of the undertaking or would be prejudicial to its interests. The decision not to communicate this information or not to undertake consultation must be motivated to the employees' representatives.

**Slovakia:** The employer may refuse to provide information, which could harm him/her (Article 238(3) LC).

**Finland:** In accordance with article 59 of Act 2007, the employer is not obliged to provide to the employees or the representatives of the personnel group information the dissemination of which would, without prejudice, cause significant damage or harm to the undertaking or its operations.

**Sweden:** It is evident from the preparatory work to the Act and case law that, in certain cases, an employer may be permitted to refrain from disclosing information to employees' representatives or consulting them (e.g. in some situations involving objections, research and development work of a highly secret nature and information in competitive tendering situations). The Labour Court (*Arbetsdomstolen*) has also upheld confidentiality in a transaction involving a listed company invoking the risk of affecting the trading of the company's shares as well as the undertaking's competitiveness.

**United Kingdom:** In accordance with Regulation 26 of ICE Regulations, the employer is not required to disclose any information or document to a person for the purposes of these Regulations where 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.

**3.6.3 By virtue of Article 6(3) of the Directive, " Without prejudice to existing national procedures, Member States shall provide for administrative or judicial review procedures for the case where the employer requires confidentiality or does not provide the information in accordance with paragraphs 1 and 2. They may also provide for procedures intended to safeguard the confidentiality of the information in question."**

Some Member States did not provide for any specific administrative or judicial procedures for the cases at issue<sup>36</sup> (CZ, DK, FR, LV, HU, AT, SI, SK, FI). Other Member States transposed Article 6(3), as follows:

**Belgium:** In accordance to Article 33 AR 1973 concerning economic information, if there is any disagreement within the works council concerning the confidential character of the information, the works council will request approval from a designated official.

**Bulgaria:** In accordance with Article 130c (6) LC, in case of refusal to transmit information under the preceding paragraph and if there is a dispute whether the refusal is reasonable, in order to settle the dispute, the parties may ask for assistance the National Conciliation and Arbitration Institute.

**Germany:** Germany did not provide for specific administrative or judicial procedures concerning the existence or scope of the confidentiality obligation. Such disputes are solved by labour courts in accordance to general rules. However, in the case of the employer's refusal

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<sup>36</sup> In general, such cases are considered as employment-related disputes and fall, therefore, within the jurisdiction of the competent courts or other bodies.

to provide information on economic matters for reasons of confidentiality, Article 109 BetrVG provides that such dispute will be decided upon by the Einigungsstelle. Its decision may be appealed before the Labour courts. In the public sector, the staff council may lodge a complaint (Dienstaufsichtbeschwerde), as in the case of any refusal of information by the Dienststelle, and eventually appeal to the administrative courts.

**Estonia:** By virtue of Article 9, point 7 ERA, representatives are entitled to turn to the body responsible for resolving labour disputes to resolve disputes arising from the confidentiality of information obtained or a refusal to provide information.

**Greece:** Article 6(3) of PD 240/2006 assigns to the one-member District Court (“Monomeles Protodikeio”) the adjudication of disputes concerning the confidentiality issues. This court judges according to the “temporary injunction procedure” (“asfalistika metra”) and can take any appropriate measures concerning either the provision of information or the protection of confidentiality.

**Spain:** Article 65 (paragraph 5) WS provides that review of the undertaking’s decisions to attribute a confidential character to, or not to communicate, certain information to the employees’ representatives will be carried out in accordance with the procedure of collective conflicts which is regulated in chapter VIII, Title II, Book II of the Law on Labour Procedure, as revised and approved by Royal Legislative Decree 2/1995, of 7<sup>th</sup> April. Litigation regarding the compliance of employees’ representatives and experts assisting them with the duty of secrecy will be subject to the same procedure.

The aforementioned provisions are without prejudice of the provisions of the Law on infringements and penalties in the social sphere (revised text approved by Royal Legislative Decree No. 5/2000 of 4<sup>th</sup> August), which establishes sanctions in case that the employer refuses, without any justification, to provide the information and consultation to which the employees’ representatives are entitled to.

**Ireland:** In accordance with section 15 of Act 9/2006, disputes between an employer and one or more than one employee or his or her representatives (or both) concerning confidential information may be referred to the Court for determination. In deciding what constitutes confidential information, the Court may be assisted by a panel of experts. Section 17 provides for enforcement of the provisions of section 15 of the Act.

**Italy:** National collective labour agreements shall provide for the establishment of a conciliation committee for disputes concerning the confidentiality of the information provided and defined as such, and for establishing, in practice, the technical, organisational or production-related reasons according to which information would be liable to create significant difficulties for the operation of the undertaking concerned or damage it. Collective agreements shall also lay down the composition of the conciliation committee and its *modus operandi* (Article 5(3) LD). It is not clear whether such collective labour agreements have been adopted up to now in order to transpose this provision.

**Cyprus:** Article 7(3) of Law 78(I) of 2005 provides that an employer shall not be obliged, unless ordered to do so by a court decision, a) to inform the employees’ representatives on matters which are considered as secret or b) to remove the obligation of confidentiality.

**Lithuania:** If the employee or the employees’ representative disagrees with the decision of the employer (employers’ organisation), he/she may apply to the court within one year. After the court establishes that the refusal to provide information is unjustified, the employer

(employers' organisation) that submitted the refusal shall be obliged to provide such information within a reasonable period (Article 47(4) LC). Furthermore, by virtue of Article 23(4) WCL, upon receipt of a written refusal to provide information, the works council may bring the matter before the court within a month. In case the court decides that the refusal was unwarranted, the employer shall be obliged to provide the information within a reasonable period of time.

**Luxembourg:** The members of the staff delegation or the joint works council who consider abusive the qualification of information as confidential can seek redress before the director of the labour inspection who decides on the substance without possibility of appeal (Articles L 415-2, last sentence and 425-2-2 CT).

**Malta:** A recipient (of information) 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 of Malta for a declaration as to whether it was reasonable for the employer to require the recipient to hold the information or document in confidence (Section 7(4) of LN 10/2006). If the Industrial Tribunal considers that the disclosure of the information or the document by the recipient would not, or would not be likely to, prejudice or cause serious harm to the undertaking, it shall make a declaration that it was not reasonable for the employer to require the recipient to hold the information or document in confidence (Section 7(5)). If the Tribunal makes a declaration in this sense, the information or document shall not at any time thereafter be regarded as having been entrusted to the recipient who made the application to the Tribunal or to any other recipient, on terms requiring it to be held in confidence. This provision seems to imply that information is considered confidential by the mere fact that it is entrusted in confidence and loses this quality only after the competent instance decides that it does not have a confidential character<sup>37</sup>. According to Section 7(8), where there is a dispute between the employer and a recipient as to whether the nature of the information or document which the employer has failed to provide is such as to harm the functioning or would be prejudicial to the undertaking, the employer or a recipient may apply to the Industrial Tribunal for a declaration as to whether the information or document is of such a nature. If the Industrial Tribunal makes a declaration that the disclosure of the information or document in question would not, according to objective criteria, seriously harm the functioning of, or be prejudicial to the employer, the Industrial Tribunal shall order the employer to disclose the information or document, and the order shall specify: a) the information or document to be disclosed; b) the recipient or recipients to whom the information or document is to be disclosed; c) any terms on which the information or document is to be disclosed, and d) the date before which the information or document is to be disclosed.

**The Netherlands:** Article 6 (3) of the Directive has been implemented by means of adding a new, seventh, paragraph to Article 20 WOR, as follows:

“The works council, as well as each member of the works council or of a committee of said council, and also experts consulted in accordance with Article 16 and any person responsible for providing secretarial services to the works council or a committee of said council, may request the sub-district court to revoke the obligation of secrecy on the grounds that the business owner's decision to impose an obligation of secrecy was not reasonable.”

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<sup>37</sup> This question is also raised in the case of UK, whose legislation is similar on this point.



**Poland:** According to Article 16(3) of the Act 2006, if the works council believes that the request to keep an information confidential or the refusal to provide an information does not comply with the provisions of Article 16(3) and (4), it may appeal to the district court (economic division) to waive the confidentiality or order release of information or consultations. According to Article 16(6) of the Act, the previous paragraphs do not prejudice separate provisions on confidentiality.

**Portugal:** The identification of information provided as confidential and a refusal with justification to provide information or carry out a consultation may be challenged by the representational bodies in question in accordance with the provisions set out in the Code of Labour Procedure (Article 460 LC). Such provisions have not been adopted yet.

**Romania:** Article 7 (3) of Law 467/2006 provides that in the cases when the employees' representatives do not consider justifiable the employer's decision to require confidentiality of information or not to provide relevant information or not to initiate consultation, they may address to the competent courts (i.e. civil courts).

**Sweden:** See the sections under article 6 (1) and 6 (2) of the Directive above.

**United Kingdom:** In accordance with Regulation 25 of ICE Regulations, a recipient to whom the employer has entrusted any information or document on terms requiring it to be held in confidence may apply to the CAC for a declaration as to whether it was reasonable for the employer to do so. If the CAC considers that the disclosure of the information or document by the recipient would not, or would not be likely to, harm the legitimate interests of the undertaking, it shall make a declaration that it was not reasonable for the employer to require the recipient to hold the information or document in confidence. If such a declaration is made, the information or document shall not at any time thereafter be regarded as having been entrusted in confidence.

### **3.7 Protection of employees' representatives (Article 7)**

**According to Article 7 of the Directive "Member States shall ensure that employees' representatives, when carrying out their functions, enjoy adequate protection and guarantees to enable them to perform properly the duties which have been assigned to them."**

Most Member States provide that employees' representatives benefit from paid free time in order to fulfil their obligations (BG<sup>38</sup>, BE, DE, EE, EL, ES, FR, IE, IT, LT, LU, MT, NL, AT, PL, PT, RO, SI, SK, FI, SE, UK)

Several Member States, such as BE, CZ, DE, EL, ES, FR, IE, CY, LV, MT, NL, AT, PT, SK, SI, SE, UK provide for a general protection of employees' representatives during the performance of their tasks. Some Member States, such as BE, CZ, IE, HU, NL, PT, provide also explicitly that employers have to provide facilities or appropriate conditions for the proper performance of their tasks.

Several Member States provide also for specific protection against dismissal (BE, BG, DE, DK, ES, LT, NL, IE, RO, FI, UK), transfer (IT), or sanctions (ES).

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<sup>38</sup> Through collective agreements.

Furthermore, many Member States provide that dismissal or transfer of the representative or other changes of his/her working conditions have to be submitted to prior consent of the representative body to which he/she belongs (CZ, DE, EL, LT, HU, PL, PT<sup>39</sup>, RO, SI, SK, FI) or of the labour inspection (BG, FR, EE) or of a court (BE<sup>40</sup>, EL<sup>41</sup>, LU, AT).

In certain cases, protection is extended also after the expiration of the office (for three years: PT; two years: NL, RO<sup>42</sup>; one year: CZ, DE, EE, EL, ES, SI; six months: LU, FR, SK; three months: AT).

Some Member States provide also for protection for workers who get in any way involved in the election procedure as voters or candidates (BE, DE, FR, IT, LU, MT, NL, UK).

### 3.8 Protection of rights (Article 8)

**3.8.1 According to Article 8(1) of the Directive "Member States shall provide for appropriate measures in the event of non-compliance with this Directive by the employer or the employees' representatives. In particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced."**

**Belgium:** Article 24 of Law 1948 provides that the relevant disputes can be solved before the labour courts. In addition, the respect of legal and regulatory provisions as well as of collective agreements rendered obligatory by way of Royal Decree is subject to the control of social inspectors or controllers (e.g. art. 29-39 of Law 1948; art 56 of Law of 26/6/2002; art 10 of Law of 17/3/1987, various articles of CCTs).

**Bulgaria:** In accordance with Bulgarian labour law, disputes between the elected representatives of the workers/employees and the employer are labour disputes. When a labour dispute arises as a result of an infringement of rights, it is considered by the courts by expedited procedure as laid down in the Civil Procedure Code. If the employer does not provide information in accordance with the law or agreement, the employees' representatives are entitled to request it in writing and if this is refused to report it to the General Labour Inspectorate/Executive Agency which exercises overall control for compliance with labour law in keeping with its powers defined in the Labour Code.

**Czech Republic:** Non-compliance with the obligations imposed by the law may be brought before the competent civil courts (Article 2 of Act 99/1963 on Code of Civil Procedure). The labour inspection is entitled to monitor compliance.

**Germany:** If the employer does not respect the work council's rights to information and consultation, the work council may lodge a claim before the Labour court in order to have its rights enforced or recognised. A summary procedure can also be pursued. In addition, Art 23(3) BetrVG may be applicable in cases of severe violations of the employer's obligations. Furthermore, in case of disputes concerning information on the economic matters of the establishment, the Economic Committee may refer the question to the Einigungsstelle which has the power to decide thereon (Article 109 BetrVG).

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<sup>39</sup> In case of transfer of the representative.

<sup>40</sup> In case of serious misconduct.

<sup>41</sup> Ad hoc Committee including a judge, an employees' and an employers' representative.

<sup>42</sup> Regarding representatives elected in trade unions' managing bodies.

It is debateable (in the legal literature and in the case-law) whether the employer's failure to comply with his/her obligations by virtue of Article 111 BetrVG (changes of the establishment) may result in a Court's decision ordering the suspension of the employer's measures/decisions.

In the public sector, if the Dienststelle refuses the provision of information, the staff council may lodge a complaint (Dienstaufsichtbeschwerde), which may result in disciplinary measures. It may also appeal to the competent administrative courts.

**Estonia:** By virtue of Article 22 ERA, supervision over compliance with the requirements of certain clauses of ERA is exercised by the Labour Inspectorate under the conditions and pursuant to the procedure provided for in the Republic of Estonia Employment Contracts Act. Article 26 paragraph 2 ERA provides that the Labour Inspectorate is responsible for conducting extra-judicial proceedings concerning the misdemeanours provided for in Articles 24 and 25 of this act.

**Greece:** Article 8 of PD 240/2006 states that the employers or persons acting on their behalf are forbidden from performing acts or omissions with the purpose of inhibiting the exercise of the rights which employees' representatives derive from this Decree. The common civil procedure rules apply in this regard.

**Spain:** Spanish legislation provides for the possibility to seek redress before the Social Tribunals to obtain effective compliance with employer duties, in accordance with the general provisions of Law 2/1995 on Procedure in Industrial Disputes.

**France:** In case of violation of its rights, the works council can seek redress before the Tribunal de Grande Instance (interim measures) in order to suspend a planned measure or request damages. In certain cases, e.g. concerning collective dismissals, the nullity of the procedure can be requested. There exist also general provisions on administrative control (right of access of the authorities to certain documents of the undertaking).

**Ireland:** Under Section 13 of Act 9/2006, an employer must not penalise the employees' representative for performing his or her functions in accordance with this Act. In case of alleged contravention, Schedule 3 has effect. Relevant complaints may be presented to Rights Commissioner and to the Court, on appeal.

Section 15 of Act 9/2006 provides for dispute resolution regarding in particular sections 8 to 11 of the Act. Such disputes may be referred to the Court, but only after having recourse to the internal dispute resolution procedure and to the Labour Relations Commission. The Court may make a recommendation and/or a determination in writing. Parties may appeal to the High Court on a point of law. Section 17 regulates enforcement of the Court's determinations in case they have not been carried out by the concerned parties. In such cases, the Circuit Court is responsible to make an order.

Section 18 provides for the appointment of Inspectors responsible to examine compliance with the Act.

**Italy:** According to Article 7 LD, in case of infringement by employers of their obligations to provide information or engage in consultation, works councils may appeal to the competent Provincial Labour Directorate and, where appropriate, to the labour inspection and the authorities responsible for penal matters.

**Cyprus:** Article 10 of Law 78(I) of 2005 states that the Minister of Labour and Social Security can appoint inspectors and other officials for the better implementation of the Law. Article 11 states that the Court for Labour Disputes is competent to adjudicate any civil disputes arising from the application of the provisions of this Law.

**Latvia:** In general, the Labour Law provides that individual disputes regarding rights between an employee and an employer, if they have not been settled within the undertaking, shall be settled in the (civil) courts (Article 30 LL). The State Labour Inspectorate supervises and controls compliance with the law in the field of employment relations (Article 3 of the Law on the State Labour Inspectorate) and may impose fines in case of breaches.

**Lithuania:** Article 22(1) point 8 of Trade Unions Law entitles employees representatives to appeal to the court against the decisions and actions of the employer and persons authorised by him if the said decisions and actions are contrary to legal provisions and agreements or violate the rights of the represented persons. Article 36 LC regulates the protection of rights and recovery of damages by way of appeal to the courts. Furthermore, Article 295(2) point 3 LC establishes that disputes between trade unions or other employees' representatives and the employer concerning the non-performance of duties and the non-fulfilment of obligations established in laws or in agreements shall be heard directly in courts. In addition, Article 19(1, points 7 and 8) WCL entitles works council to initiate legal proceedings before the courts if the employer violates provisions of the law, collective agreements or agreements between the employer and the works council or does not respect statutory rights of the works council. In these cases the court of general jurisdiction will be competent.

**Luxembourg:** The labour courts are competent for solving the disputes which arise between the employer and the employees' representatives.

The labour inspection is responsible for the control of the application of the provisions concerning information and consultation of employees. It decides on the substance without possibility of appeal (Articles L 417 and 427 CT).

**Hungary:** According to art 199 LC, in case of non-compliance, works councils and trade unions may file legal action before the competent courts. Furthermore, Article 67 LC stipulates that any action taken by the employer in violation of Article 65 (1-3) shall be construed as invalid. The works councils may file for court action for the establishment of such invalidity. The court shall pass its decision within 15 days in non-litigious proceeding.

**Malta:** The enforcement system is primarily entrusted to the Department of Industrial and Employment Relations that prosecutes offending employers in the Criminal Court of Magistrates for offences against employment legislation including in the field of Information and Consultation of employees.

As a secondary remedy, trade unions or employees representatives may also bring a matter of non-compliance to the attention of the Industrial Tribunal which may make decisions on matters related to these regulations. Also, an offence under this regulation shall continue to subsist until the offender shall have conformed and complied with the infringed provisions of the regulations.

**The Netherlands:** The Law on works councils (WOR) is enforced under civil law. In accordance with Article 36 (1) WOR, any interested party may apply to the sub-district court which is empowered to decide that the business owner or the works council must observe the stipulations of the WOR with regard to setting up or maintaining a works council, the act of

laying down a provisional or definitive regulation on the part of the works council, as well as with regard to the disclosure of agendas and meeting reports, in so far as the business owner or the works council is responsible for this. Pursuant to Article 36(2) WOR, the works council and the business owner may summon one another to appear before the sub-district court in respect of failure to comply with the remaining points of the WOR.

In both cases, the sub-district court shall decide whether a sanction is required and which sanction is suitable.

An application to the sub-district court shall only be permissible in the event that the applicant has previously asked the joint sectoral committee to mediate (Art. 36(3) WOR). A joint sectoral committee is a committee of employees and employer representatives set up by the Social and Economic Council [*Sociaal-Economische Raad*] at a sectoral level and whose aim is to effect a settlement between parties (Articles 37 and 36(3) WOR).

In case of a dispute concerning the application of art. 25 WOR (the right to consultation and advice) a special procedure before a specific court is created: the Chamber of Business Affairs of the Court of Appeal of Amsterdam (CBA). The court may decide to impose on the employer an obligation to cancel the decision in its entirety or in part and to reverse the consequences of such decision or to impose an order prohibiting the employer from carrying out acts aiming at the implementation of the decision or any part thereof.

In case of violation of the provisions of art. 27 WOR (the right to approve) the remedy is the nullity of the decision or measure taken by the employer without the approval of the works council.

**Austria:** Austrian legislation provides for the possibility to seek redress before the Employment and Social Tribunal to obtain effective compliance with employer duties (labour disputes in the sense of Article 50 ArbSozGerG).

**Poland:** 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.

**Portugal:** In case that their rights to information or consultation are violated, works councils can use the judicial general procedure to have the employer condemned to provide the information or to conduct the consultation he has been denying (Articles 21(1.<sup>a</sup>), 48.<sup>o</sup> and 49.<sup>o</sup> of the Labour Procedure Code). However, there is no provision for a specific procedure of urgent nature (in contrast to the case regarding collective redundancies, dismissals of employees' representatives or work accidents (Article 26 of the Labour Procedure Code)).

**Slovenia:** Articles 99 to 106 WPMA provide for the settlement of disputes between the works council and the employer. Such disputes are settled by arbitration and, eventually, before the court of labour disputes.

**Slovakia:** Employment-related disputes shall be decided by courts (Article 14 LC). Labour inspection monitors also compliance with law.

**Finland:** In accordance with Article 64 Act 2007, if the employer fails to abide by the provisions of Articles 10-13 on provision of information, and therefore jeopardises the receipt

of this information, a court of law may, on the request of a staff representative and after having given the employer an opportunity to be consulted on the matter, oblige him/her to fulfil this duty within a specific time and set a fine to ensure that the order is complied with. Furthermore, if the employer fails in his/her duty to prepare the personnel plan and training objectives, the Ministry of Labour may on the request of a staff representative seek from a court an order forcing the employer to comply. In accordance with Article 66 Act 2007, supervision of compliance with this Act shall be exercised by the Ministry of Labour and by the employers' and employees' associations that have concluded a nation-wide collective agreement whose provisions are required to be observed in the employment relationships of the undertaking.

**Sweden:** Under Section 54 MBL, employers, employees and organisations contravening the Co-determination Act or collective agreements must pay compensation for the damage caused. Under Section 56, breach of the confidentiality obligation incurs liability for damages. Compensation proceedings are heard in the Labour Court or the District Court (*tingsrätt*).

**United Kingdom:** Regulation 22 of ICE Regulations provides for complaints to be presented to the CAC (Central Arbitration Committee) regarding the compliance with the terms of a negotiated agreement or the standard information and consultation provisions (PEAs are not mentioned in this regard). Regulation 38 enables the CAC to refer an application or a complaint to the Advisory, Conciliation and Arbitration Service (ACAS), if it is of the opinion that it is reasonably likely to be settled by conciliation. Where the CAC finds the complaint well founded, it shall make a declaration to that effect and may make an order requiring the employer to take the necessary steps in order to comply with the agreement or the standard provisions. Where a declaration is made by the CAC, the applicant may make an application to the Employment Appeal Tribunal for a penalty notice to be issued.

**3.8.2 Article 8(2) stipulates that Member States “shall provide for adequate sanctions to be applicable in the event of infringement of this Directive by the employer or the employees' representatives. These sanctions must be effective, proportionate and dissuasive.”**

**Belgium:** Several provisions (in laws, decrees or collective agreements) provide for penal sanctions in case of violation of the imposed obligations (e.g. art. 32 of law 1948; art 76 of law of 26/6/2002; articles 14-18 of law of 17/3/1987, various articles of CCTs). Administrative sanctions are also provided for in particular in the law of 30/6/1971 on administrative sanctions.

Article 30 of law 1948 provides that art 458 Penal Code applies in case of abusive disclosure of global information the nature of which is prejudicial to the undertaking. The sanction may be imprisonment or a fine.

**Bulgaria:** In accordance with Article 414 (4) LC, any employer who violates the provisions of Article 130c, paragraphs 1 and 2, shall be liable to a penalty payment or a fine of BGN 1500 to BGN 5000, and the guilty party shall be liable to a fine of BGN 250 to BGN 1000 for every individual violation. Furthermore, Article 7d stipulates that persons who have received information with a request to treat it in confidence shall be liable for any damages that may be caused to the employer as a result of their failure to comply with the request for confidentiality.

**Czech Republic:** Articles 10 and 23 of Act 251/2005 Coll. on labour inspection apply in case of violation of the relevant obligations imposed by law. The labour inspectorate may impose a fine up to 200,000.00 Kc.

**Denmark:** Infringements of the employer's obligation on informing and consulting employees shall be punishable by a fine. Furthermore, anyone who passes on information in contravention of the confidentiality obligation shall be fined, unless a more severe penalty is required under other legislation. Penalties may be imposed on companies etc. (legal persons) under the provisions of Part 5 of the Penal Code (Article 9 of Act n° 303/2005).

**Germany:** According to Article 121 BetrVG, in case of violation of the employer's obligation to information by virtue of a number of defined provisions, a fine of up to 10,000 € may be imposed. The violation of the obligation to consult is not sanctioned by a fine. However, the violation of the obligations to information or consultation can constitute an "obstacle or nuisance of the works council's operation", which is penally sanctioned (Art 119 (1, point 2) BetrVG).

In case of violation of the confidentiality obligation of works council's members, several sanctions are provided for, including eventually the termination of the office or the dissolution of the works council. Furthermore, the employee's (works council member's) dismissal could be justified and (s)he may be sued for damages. Penal sanctions are also provided for by virtue of Article 120 BetrVG.

In the public sector, in case of violation of the obligation to information, disciplinary measures may be taken; the imposition of fines is not provided for. If a member of the staff council discloses confidential information, he may be subjected to several sanctions, including eventually the termination of his/her office, his/her dismissal (in case of Arbeitnehmer), disciplinary measures, damages. Penal sanctions are also provided for by virtue of Article 353b StGB.

**Estonia:** By virtue of Article 24 ERA, failure to comply with the obligation of informing or consulting or the submission of false information by an employer is punishable by a fine of up to 200 fine units (approximately 767 €). The same act, if committed by a legal person, is punishable by a fine of up to 50,000 kroons.

By virtue of Article 25 ERA, infringement of the obligation not to disclose confidential information by an employees' representative is punishable by a fine of up to 100 fine units (approximately 383 €).

Article 26 ERA stipulates that the offences laid down in Articles 24 and 25 of ERA are regulated by the provisions of the General Part of the Penal Code and the Code of Misdemeanour Procedure.

**Greece:** Non-compliance to the obligations arising from Articles 4, 6, 7 and 8(1) of PD 240/2006 results to the imposition of the administrative fines foreseen by law 2639/1998 as amended (fines of 1000 to 30,000 €).

**Spain:** The law on infringements and penalties in the social sphere (revised text approved by Royal Legislative Decree No. 5/2000 of 4 August) establishes sanctions for employer offences regarding their obligation to inform. In general, the infringement of the rights of employees' and unions' representatives to information, hearing and consultation is a serious offence (Article 7(7)). Article 7(8) sanctions also the violation of the employees'

representatives' rights regarding the paid hours credit. For such serious offences, the corresponding penalty is a fine of €626 to €1250, at the lowest level, of €1251 to €3125 at medium level, and of €3126 to €6250 at the highest level (Sole Article 1 of Royal Decree No. 306/2007, of 2 March 2007). Likewise, the lack of information, consultation and participation of employees' representatives in specific decisions or proceedings may lead to these being declared null and void, insofar as the Law expressly requires involvement of these representatives in their adoption. These include, amongst others, geographical and functional mobility (Articles 39, 40 and 41 WS), company restructuring (Article 51 WS), and sanctions for serious or very serious offences towards employees' representatives (Article 58 WS and Article 115 of the Law on Procedure in Industrial Disputes). As regards protection of employers, violation of the confidentiality obligation of employees' representatives foreseen in Article 65 WS is included in the scope of the employer's disciplinary power (see also in this regard Article 58(1) WS).

**France:** Article L 483-1 CT provides for sanctions in case of any obstacle ("entrave") to the establishment or proper operation of the works council: imprisonment and/or fine of 3750 € (in case of recidivism, an imprisonment of up to 2 years and a fine of 7500 € may be imposed).

In case of violation of the obligation of secrecy with regard to fabrication, Art. L 152-7 of the Penal Code provides for sanctions: imprisonment of up to 2 years and a fine of 30,000 €. There is no penal sanction with regard to violation of the obligation of confidentiality (discretion). The employees are only subject to civil law remedies.

**Ireland:** Section 19 of Act 9/2006 provides that a person who fails to comply with sections 7, 8, 9, 10 or 13 is guilty of an offence. Furthermore, it is an offence for an individual to whom section 14(1) applies to disclose information to employees or third parties not subject to a duty of confidentiality where that information is expressly provided in confidence to the individual concerned.

Section 20 provides that a person guilty of an offence shall be liable (a) on summary conviction, to a fine not exceeding 3000 € or imprisonment for a term not exceeding 6 months or both, or (b) on conviction on indictment, to a fine not exceeding 30,000 € or imprisonment for a term not exceeding 3 years or both.

If the offence of which a person was convicted is continued after conviction, that person shall be guilty of a further offence on every day on which the act or omission constituting the offence continues, and for each such further offence the person shall be liable on summary conviction to a fine not exceeding 500 € or on conviction on indictment to a fine not exceeding 5000 €.

Section 18 provides that a person who impedes the work of an inspector is guilty of an offence (see list of such offences in Section 18(8)).

**Italy:** According to Article 7 LD, infringement by employers of the obligation to provide information or engage in consultation shall be punished by the administrative penalty of a fine of between EUR 3000 and EUR 18,000 for each infringement. Infringement by experts of the provisions on confidential information shall be punished by the administrative penalty of a fine of between EUR 1033 and EUR 6198. The competent body to which complaints should be addressed and which is responsible for applying the penalties referred to above is the competent Provincial Labour Directorate. To the extent that they are compatible, the



provisions of Law No 689 of 24 November 1981 (penal law) and Legislative Decree No 124 of 23 April 2004 (on labour inspection) continue to apply.

Furthermore, Article 5 LD provides that, in case employees' representatives breach their confidentiality obligation, and without prejudice to the possibility of civil action being taken, the disciplinary measures laid down in the applicable collective agreements shall apply.

**Cyprus:** Article 12 of Law 78(I) of 2005 states that any person who breaches any of the provisions of the Law shall be guilty of a criminal offence and, if convicted, shall be liable to a fine which shall not exceed two thousand Cyprus pounds (€ 3417.2). In case the offence is perpetrated by a legal person, the fine shall not exceed five thousand Cyprus pounds.

**Latvia:** According to Article 41 of the Law on Administrative Penalties the following administrative sanctions shall be applied to an employer in case of breach of labour legislation: warning and an administrative fine of up to 215 Lats, if the employer is a natural person, or an administrative fine of up to 500 Lats, if the employer is a legal person. In case of repetitive breaches of labour legislation within a year, the amount of the administrative fine shall be of up to 500 Lats, if an employer is a natural person, or of up to 1000 Lats, if an employer is a legal person.

The State Labour Inspectorate supervises and controls the respect of the law in the field of employment relationships. It is also competent to impose the aforementioned administrative sanctions in case of breach.

Article 5(2, point 3) of the Freedom of Information Law stipulates that an employer's commercial secret shall be deemed to be restricted access information. Article 16(2) of the same law states that if, due to illegal disclosure of restricted access information, harm has been caused to its owner or another person, or his or her legal interests have been materially infringed, these persons have the right to bring an action for damages for the harm done, or for restoration of the rights infringed. Also, pursuant to Article 16(3), if a person has unlawfully disclosed information, which has been recognised as restricted access information, he or she shall be disciplinarily or criminally liable. On this point Article 200(2) of the Criminal law states that for a person who commits unauthorised acquisition of economic, scientific, technical or other information in which there are commercial secrets, for use or disclosure by himself or herself or another person, or who commits unauthorised disclosure of such information to another person for the same purpose, or who commits unauthorised disclosure of inside information on the financial instruments market, the applicable sentence is deprivation of liberty for a term not exceeding five years or custodial arrest, or community service, or a fine not exceeding one hundred times the minimum monthly wage.

**Lithuania:** The State Labour Inspectorate has the duty to supervise the enforcement of labour laws and is entitled, by virtue of general provisions, to impose sanctions, including fines from 500 LTL to 5000 LTL for the violation of labour legislation (Article 41(1) of the Administrative Penalties Act).

**Luxembourg:** The persons who hinder intentionally the establishment or proper operation of the staff delegation can be sanctioned to a fine of 251 up to 15,000 €.

The persons who violate the confidentiality requirement can be sanctioned to the penalties provided for by article 458 of the Penal Code.

In case of recidivism, the aforementioned penalties can be doubled at most. In addition, an imprisonment of 8 days till 3 months can be imposed in case of the aforementioned intentional hindering of the staff delegation (Article L 417 CT).

Article L 427 CT concerning the works councils is similar to the above. However, the sanctions are not identical: the maximum amount of the fine can only be 10.000 €; furthermore, the possibility of imprisonment is not foreseen.

**Hungary:** According to Article 7 of Act LXXV of 1996 on Labour Inspection, the inspector is empowered in certain cases to impose a fine on the employer. The amount of the fine varies:

- a) for a first infringement of a legal provision: HUF 50,000 – HUF 1,000,000
- b) for multiple infringements or a repeat offence within three years of entry into effect of a previous decision imposing a fine: HUF 50,000 – HUF 3,000,000.

When establishing the amount of the fine, particular account is taken of the duration of the state of non-compliance occasioned by the infringement, the extent of the damage caused by the infringement and the number of workers affected. In addition, by virtue of Government Decree 218/1999 (XII.28.) on certain infringements (Article 95), any employer who infringes

- a) the employer's obligations in respect of providing for the organisation of representative bodies at the workplace to protect the economic and social interests of employees,
- b) the rules concerning the protection under labour law and benefits to be accorded to employees performing a workplace interest representation function, members of the works council or council of public service employees, or labour protection representatives, and
- c) the employer's obligations in respect of measures objected to by the workplace representation body shall be liable to a fine of up to HUF 100,000. The labour and labour safety inspectors and the mining authority are also competent to implement the procedure applying to the aforementioned infringements.

In case of violation of employment-related obligations by employees, they shall be subject to liability for any damages (Article 166 LC). The employer may enforce his claim for damages before the competent courts (Article 173 LC).

**Malta:** Under Regulation 11 of LN 10/2006, any person who fails to comply with any obligation imposed under the regulations shall be guilty of an offence and shall, on conviction, be liable to (a) a fine (*multa*) of not less than ten Maltese liri<sup>43</sup> and not more than 50 Maltese 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; (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 Maltese liri and not more than five thousand Maltese liri. Furthermore, under Regulation 7.3 of LN 10/2006, the confidentiality obligation is a duty owed to the employer and a breach of the duty is actionable accordingly.

**The Netherlands:** See above under article 8 (1) of the Directive.

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<sup>43</sup> One Maltese lira (I LM) is equivalent to 2.33 €.

**Austria:** The breach of certain provisions including those of Articles 108 and 109 ArbVG are sanctioned by way of administrative fines. In accordance with Article 160 ArbVG these fines may rise up to 2180 €. There is a particular sanction in case of breach of the employer's obligation to inform and to consult the employees' representatives in the case of restructuring. According to Article 109 (3) ArbVG, the conciliation board has to take into account the delay or inaccuracy of information provided by the employer, when it determines the measures which should be taken in order to compensate disadvantages employees are suffering from.

On the other hand, the members of a works council are liable to fines or even dismissal in case they breach their duty regarding confidential information.

**Poland:** 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 to information or consultation.

The same sanctions are provided in case of disclosure of confidential information by a works council member or an expert.

**Portugal:** Violation of the obligation to provide information and consultation established in Article 459 LC is punishable as a serious administrative offence, in accordance with Article 682 LC. Pursuant to the system of administrative offences established in Articles 614 ff of the LC, the fines applicable to serious administrative offences may be a maximum of between 6 and 95 accounting units (1 accounting unit = €89), according to the undertaking's turnover and the extent of the infringer's guilt.

Violation of the rights of the works councils and sub-councils by the employer is governed by Article 488(2) LGLC, which states that employers who fail to respect any of the following rights are guilty of a serious administrative offence:

- 1) right to meetings between the works council and the undertaking's management body (Article 355 LGLC);
- 2) content of the works council's right of information (Article 356 LGLC);
- 3) mandatory nature of the works council's prior opinion (Article 357 LGLC).

It is not clear whether violation of Article 358 LGLC constitutes also an administrative offence.

In case the workers' representatives fail to respect their obligation of confidentiality, they are exposed to civil liability in general terms, without prejudice to any penalties applied by disciplinary proceedings (Article 458(3) LC).

With regard to the members of the works councils and sub-councils and the coordinating committees, Article 470(1) LC lays down that abuse of their respective rights exposes them to disciplinary, civil or criminal liability in general terms.

**Romania:** Article 9 of Law 467/2006 defines the following contraventions and sanctions: (a) a fine from 1000 lei to 20,000 lei, if the employer does not respect the obligation to provide the information stipulated in art. 5 paragraph (1) of the law; (b) a fine from 2500 lei to 25,000 lei, if the employer does not respect the obligation to initiate consultations in accordance

with art.5 paragraph (3) of the law; (c) a fine from 5000 lei to 50,000 lei, for providing incorrect or incomplete information in bad faith, in accordance with art.5 paragraph (2) of the law. In accordance with Article 10 of the law, the Labour Inspection was designed as the competent body to carry out the inspection, establish contraventions and apply sanctions.

**Slovenia:** The works council has the right to stay the execution of individual decisions of the employer and to initiate procedures for the settling of the dispute a) within eight days of receiving information that the employer has adopted a decision on the issues regarding changes of activity, any decline in economic activity, changes in the organisation of production and technological changes without informing the works council in advance of its intention to adopt a final decision thereon and b) within eight days of receiving information that the employer has adopted a decision concerning the status and personnel issues without acquainting the works council in advance with its intention to adopt the decision, in violation of the legal time limits and without requesting joint consultations thereon. In these cases the employer is not allowed to execute the decisions until the final decision of the competent court is taken (Article 98 WPMA).

Furthermore, by virtue of Article 107 WPMA, a legal entity is to be fined for a number of breaches of the right of workers to be informed and consulted, in particular:

- 1) if it fails to keep the works council informed as stipulated by the Act;
- 2) if it fails to request joint consultations on corporation and employment issues at least 15 days before adopting the decision;
- 3) if it fails to submit for the consent of the works council the draft decisions which it is bound to submit and if it adopts decisions although the works council denied consent within eight days;
- 4) if it executes a decision before receiving the final decision of the competent body.

The WPMA as amended in 2007 states that a legal entity is to be fined for a misdemeanour between 4000 and 20,000 €, whereas the penalty for the responsible person of a legal entity is between 1000 and 2000 €. In addition, a single entrepreneur breaching the Act may be fined with a penalty of 2000 to 4000 €.

A breach of the workers' right to information and consultation may also be defined as a criminal activity '*breach of the right to be involved in decision-making*' according to 207 of the Slovenian Penal Code. The sentence may be in form of pecuniary penalty or imprisonment of up to one year.

In accordance with Article 36(2) ERA, a worker is liable for the violation of the confidentiality obligation if he knew or should have known the nature of the data he/she disclosed.

**Slovakia:** Labour inspection may impose a penalty of up to 1 million of SKK in case the employer breaches his/her obligations regarding information and consultation (Act No. 125/2006 Coll. on labour inspection).

**Finland:** Article 67 Act 2007 provides that the employer or his representative, who intentionally or negligently fails to observe or violates the provisions of certain articles (articles 17, 20 or 22, 28(1) or (2), 30, 31, 34, 36, 41, 43 or 55, 56(1) or article 65 with the

exception of the provisions in articles 55 or 56 on the employer's payment liability) shall be sanctioned to a fine for violation of the co-operation obligation.

If an employer has dismissed, laid off or reduced the hours of an employee without complying, intentionally or negligently, with the requirement on cooperation, he must pay damages to that employee (Articles 62 and 63 Act 2007).

Furthermore, infringement of staff representatives' rights may be subject to penal sanctions by virtue of the Penal Code (Chapter 38).

Punishment for violation of the obligation of confidentiality as prescribed in section 57 Act 2007 is imposed pursuant to chapter 38, section 2(2) of the Penal Code, unless more severe punishment for the act is prescribed elsewhere than in chapter 38, section 1 of the Penal Code.

As regards the local government, breach of the local government cooperation requirement may be punished by a fine (Article 24 of law 449/2007). The law provides also, in a similar way as in Act 2007, for damages to an employee in case that his/her employer dismissed, laid off or reduced his/her hours of work without complying with the legal requirements in the area of co-operation.

**Sweden:** Under Sections 54 ff MBL and the relevant case-law, contraventions of the Co-determination Act entail both financial and general penalties. The Labour Court has, to a large extent, determined the level of damages according to the type of action, with the aim of counteracting actions which contravene the Act or collective agreements. An important principle, according to the explanatory memorandum, is that it should not be profitable for an employer to disregard employees' rights in favour of other interests.

The established practice of the courts is that damages for serious violations of the right of association can amount to SEK 200,000, and to SEK 300,000 for serious infringements of Section 11 MBL, for any given employees' organisation.

**United Kingdom:** Regulation 23 of ICE Regulations provides that the penalty notice issued by the Employment Appeal Tribunal will specify the amount of penalty payable and the date before which the penalty must be paid. No penalty set by the Employment Appeal Tribunal under these Regulations may exceed £75,000, which would be paid into the Government's Consolidated Fund.

With regard to the breach of the confidentiality obligation by employees, Regulation 25 states that this obligation is a duty owed to the employer, and a breach of the duty is actionable accordingly, except where the recipient reasonably believed the disclosure to be a "protected disclosure". Regulation 30(4) provides that, where an employee has disclosed any information or document in breach of his/her confidentiality duty, he cannot be regarded as unfairly dismissed where the reason (or principal reason) was the disclosure of confidential information, unless that employee reasonably believed it to be a "protected disclosure".

### **3.9 Link between this Directive and other Community and national provisions (Article 9)**

**1. This Directive shall be without prejudice to the specific information and consultation procedures set out in Article 2 of Directive 98/59/EC and Article 7 of Directive 2001/23/EC.**

**2. This Directive shall be without prejudice to provisions adopted in accordance with Directives 94/45/EC and 97/74/EC.**

**3. This Directive shall be without prejudice to other rights to information, consultation and participation under national law.**

**4. Implementation of this Directive shall not be sufficient grounds for any regression in relation to the situation which already prevails in each Member State and in relation to the general level of protection of workers in the areas to which it applies.**

Some Member States reproduced the terms of this article including the regression clause (EL, CY, MT).

Other Member States, such as BG, IE, IT, RO provided explicitly that the act transposing directive 2002/14/EC does not affect or is without prejudice to the national provisions transposing the aforementioned directives 98/59/EC, 2001/23/EC, 94/45/EC and 97/74/EC. In UK, Regulation 20(5) of ICE Regulations provide that the employer's duties to inform and consult the information and consultation representatives on decisions, which are likely to lead to substantial changes in work organisation or in contractual relations, including those relating to collective redundancies and to transfer of undertakings, cease to apply once the employer is under a duty to inform and consult representatives under another Act, and he has notified the representatives in writing that he will be complying with this duty under the aforementioned Act, instead of under these Regulations.

The interaction between the different directives on information and consultation may raise certain issues of coherence, in particular in those Member States which transposed the aforementioned directives in different acts and not in a single one.

In certain Member States (such as PL, SI), the employees' representatives who have the right to be informed and consulted under Directive 2002/14 are not the same as those entitled to information and consultation on issues falling under other directives (e.g. collective redundancies or transfer of undertakings).

### **3.10 Transitional provisions (Article 10)**

**Notwithstanding Article 3, a Member State in which there is, at the date of entry into force of this Directive, no general, permanent and statutory system of information and consultation of employees, nor a general, permanent and statutory system of employee representation at the workplace allowing employees to be represented for that purpose, may limit the application of the national provisions implementing this Directive to:**

**(a) undertakings employing at least 150 employees or establishments employing at least 100 employees until 23 March 2007, and**

**(b) undertakings employing at least 100 employees or establishments employing at least 50 employees during the year following the date in point (a).**

The transitional provisions have been used by the following Member States, which did not dispose of a general, permanent and statutory system of information and consultation nor a general, permanent and statutory system of employee representation: BG, IE, IT, CY, MT, PL and UK.

**ANNEX 1: STATE OF IMPLEMENTATION OF DIRECTIVE 2002/14/EC**

**The attached table sets out which national laws implement the Directive in each Member State, on the basis mainly of the information notified to the Commission by the Member State concerned.**

<p><b>Belgium</b></p>	<p>Partial transposition only. Several laws and collective agreements:</p> <ul style="list-style-type: none"> <li>-Loi du 20/09/1948 portant organisation de l'économie</li> <li>-Arrêté royal du 27/11/1973 portant réglementation des informations économiques et financières à fournir aux conseils d'entreprises</li> <li>-Convention collective de travail n° 5 du 24 mai 1971 concernant le statut des délégations syndicales du personnel des entreprises, modifiée et complétée par les conventions collectives de travail n° 5 bis du 30 juin 1971 et n° 5 ter du 21 décembre 1978 (aucune ratification demandée).</li> <li>-Convention collective de travail n° 24 du 2 octobre 1975 concernant la procédure d'information et de consultation des représentants des travailleurs en matière de licenciements collectifs, modifiée par les conventions collectives de travail n°s 24 bis du 6 décembre 1983, 24 ter du 8 octobre 1985 et 24 quater du 21 décembre 1993 (ratifiées par les AR des 21 janvier 1976, 3 février 1984, 20 décembre 1985 et 28 février 1994 parus au MB des 17 février 1976, 22 février 1984, 15 janvier 1986 et 15 mars 1994</li> <li>-Convention collective de travail n° 9 du 9 mars 1972 coordonnant les accords nationaux et les conventions collectives de travail relatifs aux conseils d'entreprise conclus au sein du Conseil national du Travail, modifiée par les conventions collectives de travail n° 15 du 25 juillet 1974, n° 34 du 27 février 1981, n° 37 du 27 novembre 1981 et n° 9 bis du 29 octobre 1991 (ratifiées par les AR des 12 septembre 1972 et 17 décembre 1991 parus au MB des 25 novembre 1972 et 10 janvier 1992).</li> <li>-Convention collective de travail n° 32 bis du 7 juin 1985 concernant le maintien des droits des travailleurs en cas de changement d'employeur du fait d'un transfert conventionnel d'entreprise et réglant les droits des travailleurs repris en cas de reprise de l'actif après faillite ou concordat judiciaire par abandon d'actif, modifiée par les conventions collectives de travail n°s 32 ter du 2 décembre 1986, 32 quater du 19 décembre 1989 et 32 quinquies du 13 mars 2002 (ratifiées par les AR des 25 juillet 1985, 19 janvier 1987 et 6 mars 1990 parus au MB des 9 août 1985, 28 janvier 1987 et 21 mars 1990).</li> <li>-Convention collective de travail n° 39 du 13 décembre 1983 concernant l'information et la concertation sur les conséquences sociales de l'introduction des nouvelles technologies (ratifiée par l'AR du 25 janvier 1984 (articles 1 à 7) paru au MB du 8 février 1984).</li> <li>-Convention collective de travail n° 42 du 2 juin 1987 relative à l'introduction de nouveaux régimes de travail dans les entreprises, modifiée par la convention collective de travail n° 42 bis du 10 novembre 1987 (ratifiées par les AR des 18 juin 1987 et 14 janvier 1988 parus au MB du 26 juin 1987 et 3 février 1988).</li> <li>-Loi du 19/03/1991 portant un régime de licenciement particulier pour les délégués du personnel aux conseils d'entreprise et aux comités de sécurité, d'hygiène et d'embellissement des lieux de travail, ainsi que pour les candidats délégués du personnel.</li> <li>-Art 458 du Code pénal</li> <li>-Loi du 05/12/1968 sur les conventions collectives de travail et les commissions paritaires</li> <li>-Loi du 28/06/1966 relative à l'indemnisation des travailleurs licenciés en cas de fermeture d'entreprises</li> </ul>
<p><b>Bulgaria</b></p>	<p>-Labour Code, as amended (entry into force: 01/07/2006):</p>

	Кодекс на труда
<b>Czech Republic</b>	<p>Labour code and several laws.</p> <p>-Zákon č. 262/2006 Sb., zákoník práce  -Zákon č. 72/2006 Sb., kterým se mění zákon č. 65/1965 Sb., zákoník práce, ve znění pozdějších předpisů a zákon č. 549/1991 Sb., o soudních poplatcích, ve znění pozdějších předpisů  -Zákon č. 264/2006 Sb., kterým se mění některé zákony v souvislosti s přijetím zákoníku práce  -Zákon č. 30/2000 Sb., kterým se mění zákon č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů, a některé další zákony  -Zákon č. 519/1991 Sb., kterým se mění a doplňuje občanský soudní řád a notářský řád  -Zákon č. 99/1963 Sb., občanský soudní řád  -Zákon č. 412/2005 Sb., o ochraně utajovaných informací a o bezpečnosti způsobilosti  -Zákon č. 251/2005 Sb., o inspekci práce  -Zákon České národní rady č. 549/1991 Sb., o soudních poplatcích a poplatku za výpis z rejstříku trestů  -Zákon č. 65/1965 Sb., zákoník práce  -Zákon č. 74/1994 Sb., kterým se mění a doplňuje zákoník práce č. 65/1965 Sb., ve znění pozdějších předpisů, a některé další zákony  -Zákon č. 148/1998 Sb., o ochraně utajovaných skutečností a o změně některých zákonů  -Zákon č. 188/1988 Sb., kterým se mění a doplňuje zákoník práce  -Zákon č. 3/1991 Sb., kterým se mění a doplňuje zákoník práce  -Obchodní zákoník  -Zákon č. 155/2000 Sb., kterým se mění zákon č. 65/1965 Sb., zákoník práce, ve znění pozdějších předpisů, a některé další zákony  -Zákon č. 435/2004 Sb., o zaměstnanosti</p>
<b>Denmark</b>	<p>Collective agreements and law.</p> <p>-Act No. 303 of 2005 regarding information and consultation of employees:  Lov om information og høring af lønmodtagere nr 303 af 2/5/2005 (Gældende)</p>
<b>Germany</b>	<p>-Betriebsverfassungsgesetz 1972, as amended  -Bundespersonalvertretungsgesetz 1974, as amended</p>
<b>Estonia</b>	<p>-Employees' Representatives Act- RT I, 2, 6:  Töötajate usaldusisiku seadus, adopted on 13.12.2006 and in force since 01/02/2007</p>
<b>Greece</b>	<p>-Presidential Decree 240/2006 on establishing a general framework on information and consultation of employees, which entered into force on 16/11/2006:</p> <p>Π.Δ. 240/2006 περί θεσπίσεως γενικού πλαισίου ενημερώσεως και διαβουλεύσεως των εργαζομένων σύμφωνα με την οδηγία 2002/14/EK</p>
<b>Spain</b>	<p>- Law 38/2007 of 16 November 2007 modifying the Law on Workers' Statute in the area of information and consultation of workers.</p> <p>LEY 38/2007, de 16 de noviembre, por la que se modifica el texto refundido de la Ley del Estatuto de los Trabajadores, aprobado por el Real Decreto Legislativo 1/1995, de 24 de marzo, en materia de información y consulta de los trabajadores y en materia de protección de los trabajadores asalariados en caso de insolvencia del empresario</p>
<b>France</b>	<p>-Code du travail (Labour Code) as amended</p>



	-Loi N°2005-32 du 18 Janvier 2005 de programmation pour la cohésion sociale
<b>Ireland</b>	Employees (Provision of Information and Consultation) Act 2006, n° 9 of 2006, which entered into force on 24/7/2006 under Commencement Order n° 382 of 2006.
<b>Italy</b>	Decreto legislativo n° 25 (attuazione della direttiva 2002/14/CE che istituisce un quadro generale relativo all'informazione e alla consultazione dei lavoratori), which entered into force on 21/03/2007.
<b>Cyprus</b>	-Law No.78(I)/2005, which entered into force on 08/07/2005: Ο περί της Θέσπισης Γενικού Πλαισίου Ενημέρωσης και Διαβούλευσης των Εργοδοτούμενων Νόμος του 2005.
<b>Latvia</b>	-Labour Code (Darba likums) of 20/6/2001, which entered into force on 1/6/2002, as amended -Grozījumi Darba likumā of 13/10/2005, which entered into force on 16/11/2005. -Darba strīdu likums, adopted on 26/9/2002 -Latvijas administratīvo pārkāpumu kodekss, adopted on 17/3/2005
<b>Lithuania</b>	Labour Code as amended: -Law IX-926/2002 (Labour Code) of 4 June 2002 -Law IX-2500/2004 - LIETUVOS RESPUBLIKOS DARBO KODEKSO PATVIRTINIMO, ĮSIGALIOJIMO IR ĮGYVENDINIMO ĮSTATYMAS IX-926/2002 -Lietuvos Respublikos darbo tarybų įstatymas Nr. IX-2500/2004
<b>Luxembourg</b>	-Labour Code: Loi du 31 juillet 2006 portant introduction d'un Code du Travail.
<b>Hungary</b>	Mainly Labour Code (1992/XXII), as amended by Act 2005/VIII in March 2005  -2005. évi VIII. törvény a Munka Törvénykönyvéről szóló 1992. évi XXII. törvény jogharmonizációs célú módosításáról, 2005/ VIII -1999 A Kormány 218/1999. (XII. 28.) Korm. rendelete az egyes szabálysértésekről -1996. évi LXXV. törvény a munkaügyi ellenőrzésről -1992. évi XXII. törvény a Munka Törvénykönyvéről -1959. évi IV. törvény a Magyar Köztársaság Polgári Törvénykönyvéről
<b>Malta</b>	L.N. 10 of 2006 EMPLOYMENT AND INDUSTRIAL RELATIONS ACT (CAP. 452) Employee (Information and Consultation) Regulations, 2006, which entered into force on 13/1/2006.
<b>Netherlands</b>	-Works Councils Act, as amended on 2 December 2004 (entry into force on 1/1/2005): Wet tot Wijziging van de Wet op de Ondernemingsraden ter Uitvoering van Richtlijn Nr. 2002/14/EG, Staatsblad, 2004-12-21, No. 652, pp. 1-6.
<b>Austria</b>	Austria stated that its existing legislation satisfies the requirements of the Directive:  -Arbeitsverfassungsgesetz 22/1973, as amended, and specific laws: -Behinderteneinstellungsgesetz 22/1970 as amended -Landarbeitsgesetz 1984 287/1984 as amended -Arbeits- und Sozialgerichtsgesetz 104/1985 as amended -Post- Betriebsverfassungsgesetz 326/1996 as amended -Wiener Landarbeitsordnung 1990 as amended : 6/2004 & 11/2006 -Wiener Personalvertretungsgesetz 44/2004
<b>Poland</b>	-Employees' Information and Consultation Act of 7 April 2006, which entered into force

	<p>on 25/5/2006 n° 79, item 550:  Ustawa z dnia 7 kwietnia 2006 r. o informowaniu pracowników i przeprowadzaniu z nimi konsultacji, 2006/79/550.</p>
<b>Portugal</b>	<p>-Labour Code (n° 99/2003), which entered into force on 1/12/2003.  -Law governing the Labour Code (LGLC, n° 35/2004), which entered into force on 4/8/2004:  -Lei 99/2003 (Código do Trabalho);  -Lei n.º 35/2004-Assembleia da República - Regulamenta a Lei n.º 99/2003, de 27 de Agosto, que aprovou o Código do Trabalho</p>
<b>Romania</b>	<p>Mainly law 467/2006 on establishing a general framework on information and consultation of employees, which entered into force on 1/1/2007:  Lege privind stabilirea cadrului general de informare și consultare a angajaților, n° 467/2006  -Legea sindicatelor, n° 54/2003  -Lege privind contractul colectiv de muncă, n° 130/1996  -Lege pentru aprobarea Ordonanței de Urgență nr.65/2005 pentru modificarea și completarea Legii nr.53/2003 -Codul Muncii, n° 371/2005  -Ordonanță privind stabilirea perioadelor de conducere și a perioadelor de odihnă ale conducătorilor vehiculelor care efectuează transporturi rutiere naționale, n° 17/2003  -Lege pentru aprobarea Ordonanței de Urgență 55/2005 privind modificarea și completarea Ordonanței Guvernului nr.17/2002 privind stabilirea perioadelor de conducere și a perioadelor de odihnă a conducătorilor vehiculelor care efectuează transporturi rutiere naționale, n° 335/2005  -Lege pentru aprobarea Ordonanței Guvernului nr.17/2002 privind stabilirea perioadelor de conducere și a perioadelor de odihnă ale conducătorilor vehiculelor care efectuează transporturi rutiere naționale, n° 466/2003  -Ordonanță pentru modificarea și completarea Ordonanței Guvernului nr. 17/2002 privind stabilirea perioadelor de conducere și a perioadelor de odihnă ale conducătorilor vehiculelor care efectuează transporturi rutiere naționale, n° 55/2005  -Ordonanță de urgență pentru modificarea și completarea Legii nr.53/2003 - Codul Muncii, n° 55/2006  -Ordonanță de Urgență privind modificarea și completarea Legii nr.53/2003 - Codul muncii, n° 65/2005  -Lege - Codul Muncii, n° 53/2003</p>
<b>Slovak Republic</b>	<p>Mainly Labour Code (amendment No 210/2003, which entered into force on 01/07/2003)  -Zákon č. 348/2007 Z. z., ktorým sa mení a dopĺňa zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov a ktorým sa menia a dopĺňajú niektoré zákony  -Zákon č. 125/2006 Z. z. o inšpekcii práce a o zmene a doplnení zákona č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní a o zmene a doplnení niektorých zákonov (entry into force: 1/7/2006)  -Zákon č. 513/1991 Zb. Obchodný zákonník  -Zákon č. 249/1994 Z. z. o boji proti legalizácii príjmov z najzávažnejších, najmä organizovaných foriem trestnej činnosti a o zmenách niektorých ďalších zákonov  -Zákon č. 311/2001 Z. z. Zákonník práce  -Zákon č. 210/2003 to amend the Act No. 311/2001 (Labour Code) publication Zbierka zákonov, 2003-06-21, čiastka 102, pp. 1222-1235  -Zákon č. 433/2003 Z. z. úplné znenie zákona č. 311/2001 Z. z. Zákonník práce, ako vyplýva zo zmien a doplnkov vykonaných zákonom č. 165/2002 Z. z., zákonom č. 408/2002 Z. z., zákonom č. 413/2002 Z. z. a zákonom č. 210/2003 Z. z.</p>
<b>Slovenia</b>	<p>-Worker Participation Act of 9 July 1993, No. 42/1993, as amended in 2001 and 2007</p>

	<p>- Employment Relationships Act of 24 April 2002, as amended:</p> <p>-Zakon o sodelovanju delavcev pri upravljanju of 9 July 1993, No. 42/1993</p> <p>-Zakon o spremembah in dopolnitvah zakona o sodelovanju delavcev pri upravljanju, of 20/6/2001, No. 56/2001</p> <p>-Zakon o spremembah in dopolnitvah Zakona o sodelovanju delavcev pri upravljanju of 8/3/2007, which entered into force on 7/4/2007</p> <p>-Zakon o delovnih razmerjih of 24 April 2002</p>
<b>Finland</b>	<p>-Law on cooperation in undertakings 334/2007, which entered into force on 1 July 2007</p> <p>-Law on cooperation in the State civil service and agencies (651/1988)</p> <p>-Law on cooperation between employers and staff in local government (449/2007):</p> <p>Laki yhteistoiminnasta yrityksissä 334/2007, <i>yhteistoimintalaki</i>; lisäksi laki yhteistoiminnasta valtion virastoissa ja laitoksissa (651/1988); laki työnantajan ja henkilöstön välisestä yhteistoiminnasta kunnissa (449/2007)</p>
<b>Sweden</b>	<p>Mainly Co-determination Act 1976, as amended in 2005:</p> <p>-Lag (1976:580) om medbestämmande i arbetslivet</p> <p>-Lag om ändring i lagen (1976:580) om medbestämmande i arbetslivet, which entered into force on 1/7/2005.</p>
<b>United Kingdom</b>	<p>-Information and Consultation of Employees (ICE) Regulations 2004 S.I. No. 3426 of 2004, which was adopted on 21/12/2004 and entered into force on 6 April 2005.</p> <p>-Northern Ireland: Information and Consultation of Employees Regulations (Northern Ireland) 2005, No 47 of 2005, which was adopted on 23/2/2004 and entered into force on 6 April 2005.</p>

**ANNEX 2: OVERVIEW OF THE REPLIES TO THE GENERAL QUESTIONS OF THE QUESTIONNAIRE ON THE TRANSPOSITION AND REVIEW OF DIRECTIVE 2002/14/EC ESTABLISHING A GENERAL FRAMEWORK FOR INFORMING AND CONSULTING EMPLOYEES IN THE EU**

**General Questions**

<b>Question</b>	Which is your view on the practical application of the Directive in the Member States? Does it meet its objectives, in particular to ensure adequate, effective and timely information and consultation (hereafter: I&C) of the employees in the interest of both the employer and the employees?
<b>Belgium</b>	Regardless of the non-resolved issue of the threshold of application of the I&C mechanism in Belgium, existing legislation provides since many years for such I&C.
<b>Bulgaria</b>	Yes. However, the application is at an early stage. Although real results have been achieved in certain important sectors, in other sectors there has been no practical application.
<b>Czech Republic</b>	The objectives of the Directive have been met.
<b>Denmark</b>	The objectives of the Directive are fulfilled given that the right to I&C can be exercised now also where co-operation agreements have not been in effect.
<b>Germany</b>	Well-established system of I&C ensuring the Directive's aims.
<b>Estonia</b>	Given the brief amount of time since the transposition, it is too early to assess.
<b>Greece</b>	Despite the brief amount of time since the transposition, it achieves its objectives to a great extent.
<b>Spain</b>	Given that the Directive will result in few, mainly terminological, changes of the existing legislation, its application will not have a great impact, apart from the provision on confidentiality which may be difficult to apply.
<b>France</b>	Already existing legal tradition in France in the area of I&C of employees.
<b>Ireland</b>	Given the novelty of the concept and the transitional period, it is too

	early to assess.
<b>Italy</b>	Given the brief amount of time since the transposition, it is too early to assess.
<b>Cyprus</b>	Yes, it meet its objectives
<b>Latvia</b>	The practical application of the directive does not give rise to any problems. The transposing legislation improved and made more effective the procedure, exercising thus a positive influence on social dialogue and the work environment.
<b>Lithuania</b>	Given the novelty of the I&C requirements, the practice is rather limited, and it is too early to assess whether the Directive's objectives are met. However, no particular difficulties of application have been encountered. Social partners noted that a case-law has already been formed but expressed doubts regarding the accuracy of the transposition and the possibilities for imposing liability in case of inappropriate I&C.
<b>Luxembourg</b>	
<b>Hungary</b>	It may be difficult to ensure the Directive's objectives in workplaces where there is no works council or trade union. Furthermore, the legal provisions tend to outweigh autonomous discussions between the social partners in social dialogue in Hungary.
<b>Malta</b>	Although it is premature at this stage to assess the attainment of the Directive's objectives, the increased awareness of the reciprocal rights and obligations and of the value of I&C to both employers and employees augurs well for the future.
<b>Netherlands</b>	The Directive resulted in marginal changes of the existing legislation
<b>Austria</b>	Well-established system of I&C in Austria
<b>Poland</b>	The objectives of the Directive have been met, as witnessed by the number of agreements (4 040) concluded before Act 550/2006 entered into force, and by the number of employers (1 950) who have set up works councils. The one-year period since entry into force is insufficient to fully assess the effectiveness.
<b>Portugal</b>	The Portuguese authorities do not dispose of global elements concerning the impact of its application.
<b>Romania</b>	Given the brief amount of time since the transposition, it is too early to assess.
<b>Slovenia</b>	There was already legislation on I&C of employees.

<b>Slovak Republic</b>	The aims of the Directive shall be fulfilled.
<b>Finland</b>	Given the long tradition in this area and the correspondence between the Directive and the existing regulations, application has been problem-free.
<b>Sweden</b>	Yes, according to the views of both employers and employees. Co-determination plays a central role in the Swedish system since many years.
<b>United Kingdom</b>	The extensive consultation carried out before the transposition ensured that the latter meets the Directive's objectives in the most effective way possible. The transposing legislation builds on existing methods but also sets minimum rights for employees who did not dispose of them so far.

<b>BUSINESS EUROPE</b>	Still uncertain impact. In a large number of countries, it adds to pre-existing system using a one-size-fits-all approach. No achievement of objectives regarding the empowerment of social partners through adoption of agreements in several countries. Shortcoming relating to Article 6.2
<b>UEAPME</b>	Difficult evaluation, because of pre-existing I&C procedures in several Member States. Need to respect national traditions. Generation of more red tape in Germany.
<b>ETUC</b>	Positive impact through introduction or enhancement of I&C rights in the EU. However, its application is too fragmented due to vagueness of certain provisions, misleading interpretations, weaknesses of procedures and sanctions, absence to any reference to trade unions and attempt to deviate from existing procedures and representative bodies.
<b>CEEP</b>	The national implementing measures meet its objective. It is now in the hands of those involved to make the best use thereof.

<b>Question</b>	Do you consider the provisions of the Directive sufficiently flexible and suitable?
<b>Belgium</b>	Yes
<b>Bulgaria</b>	Yes
<b>Czech Republic</b>	Yes
<b>Denmark</b>	Yes
<b>Germany</b>	Yes
<b>Estonia</b>	Yes
<b>Greece</b>	Yes
<b>Spain</b>	Yes
<b>France</b>	See reply to first question above.
<b>Ireland</b>	Yes
<b>Italy</b>	The social partners received the directive with interest and proposed, in a joint opinion, the basic principles which guided the government's transposing measures.
<b>Cyprus</b>	Yes
<b>Latvia</b>	Yes
<b>Lithuania</b>	Yes
<b>Luxembourg</b>	
<b>Hungary</b>	Yes
<b>Malta</b>	Yes
<b>Netherlands</b>	Yes
<b>Austria</b>	Yes
<b>Poland</b>	Yes
<b>Portugal</b>	Yes

<b>Romania</b>	The provisions of the Directive are relatively well structured, yet a clearer and more concise outline is needed.
<b>Slovenia</b>	There was already legislation on I&C of employees.
<b>Slovak Republic</b>	Yes
<b>Finland</b>	Yes
<b>Sweden</b>	Yes
<b>United Kingdom</b>	The directive does not impose a "one-size fits all" approach and allows taking into account historic industrial relations.

<b>BUSINESS EUROPE</b>	Sufficiently flexible.
<b>UEAPME</b>	Generally flexible.
<b>ETUC</b>	Flexible and suitable enough
<b>CEEP</b>	Generally flexible



<b>Question</b>	How do you evaluate the impact of the legislation transposing the Directive upon the national system of industrial relations? Can you identify any particular benefit? Or shortcoming?
<b>Belgium</b>	Existing legislation provides since many years for I&C. However, an exhaustive reply would need to take into account the situation of the undertakings employing more than 50 workers, an issue which is not yet settled.
<b>Bulgaria</b>	The transposing legislation encourages social dialogue and contributes to the competitiveness of undertakings and the labour market.
<b>Czech Republic</b>	Given that the Directive did not result in substantial changes of the existing legislation, little impact is expected.
<b>Denmark</b>	Given the coverage of I&C by collective agreements before the transposition of the Directive, its impact was limited to situations where such co-operation agreements were not in effect.
<b>Germany</b>	The Directive does not have any particular impact, given the already long tradition of I&C in DE. However, it is an important milestone of social Europe in the EU.
<b>Estonia</b>	It is too early to assess, but a positive impact is expected.
<b>Greece</b>	Generally positive impact: it promotes industrial relations.
<b>Spain</b>	Given that the Directive will result in few, mainly terminological, changes of the existing legislation, little impact is expected.
<b>France</b>	See reply to first question above.
<b>Ireland</b>	It is too early to assess, although early indications point to an absence of difficulties. I&C should lead to higher productivity, happier staff and lower costs. It is a challenge which can be overcome with the support of all concerned stakeholders.
<b>Italy</b>	Given the brief amount of time since the transposition, it is too early to assess. A positive element was certainly the interest shown by the social partners.
<b>Cyprus</b>	Positive impact
<b>Latvia</b>	Positive impact
<b>Lithuania</b>	No specific data on any impact. However, LT is of the opinion that it promotes the working environment and the competitiveness.

<b>Luxembourg</b>	
<b>Hungary</b>	The Directive has strengthened the objectives of the Hungarian regulations and is therefore beneficial to industrial relations.
<b>Malta</b>	The Directive resulted in that I&C became obligatory in Malta, strengthening thus the involvement of all employees, even non-unionised, in decision making affecting their employment in their undertaking.
<b>Netherlands</b>	Given the marginal changes of the existing legislation, it was not possible to determine any impact.
<b>Austria</b>	No
<b>Poland</b>	Act 550/2006 is the latest stage of the development of social dialogue in Poland and works councils are the new employees' representatives. For the immediate future, the development of social dialogue will, above all, take the form of the creation and operation of works councils.
<b>Portugal</b>	The Portuguese authorities do not dispose of information concerning the impact of the Directive on the industrial relations system in PT. In any case, there was already legislation in this area before.
<b>Romania</b>	There are hopes for positive effects.
<b>Slovenia</b>	No particular impact, given that there was already legislation on I&C of employees.
<b>Slovak Republic</b>	Absence of any negative impact.
<b>Finland</b>	Same as first question above.
<b>Sweden</b>	Given the few changes needed to transpose the Directive, it affected only a small part of the labour market and had thus no noticeable impact.
<b>United Kingdom</b>	UK is committed to evaluate the impact by way of the "Workplace Employment Relations Survey" (last: 2004; next: 2010) and of a longitudinal study under way currently by academics (expected to be completed in 2009).

<b>BUSINESS EUROPE</b>	Limited impact where already pre-existing I&C system. Danger of accumulation of legislation on I&C and of imposition of one-size-fits-all system.
<b>UEAPME</b>	No influence in some Member States. In other MS, imposition of a

	unified model. In Belgium, generation of a social crisis.
<b>ETUC</b>	The Directive made EU industrial relations more participative and triggered a debate on their future and nature. However, there are shortcomings, in particular with regard to the role of trade unions and the attempt to deviate from existing procedures and representative bodies.
<b>CEEP</b>	The impact depends on the precedent situation (more or less developed systems of I&C). In some countries, the implementation favoured certain types of representatives. In general, the directive is sufficiently flexible to allow an implementation which is sympathetic to the industrial relations traditions of each MS.

<b>Question</b>	Do you consider that the Directive needs review? If yes, what would your priority issues for review be?
<b>Belgium</b>	No specific desiderata in this regard.
<b>Bulgaria</b>	Not at this stage.
<b>Czech Republic</b>	No
<b>Denmark</b>	No
<b>Germany</b>	Not at this stage. It is too early. The priority is to apply it in practice in all Member States which did not have developed mechanisms of I&C.
<b>Estonia</b>	No
<b>Greece</b>	It is too early to assess. In any case, the specificity of the maritime sector should be duly taken into account.
<b>Spain</b>	No
<b>France</b>	This is the first Directive providing for a general definition of the terms "information" and "consultation". It is not opportune to simplify this reference-text.
<b>Ireland</b>	It is too early to assess, due to the late transposition.
<b>Italy</b>	Given the brief amount of time since the transposition, it is too early to make specific requests with a view to its possible review.
<b>Cyprus</b>	No
<b>Latvia</b>	Not at present
<b>Lithuania</b>	No
<b>Luxembourg</b>	
<b>Hungary</b>	Priority should be given to the opinion of the consulted social partners. In any case, greater care should be taken to give employees direct information bearing in mind that in Hungary trade union organisations are unfortunately declining and there are no elections for works councils although many rights are provided in law.
<b>Malta</b>	No

<b>Netherlands</b>	No
<b>Austria</b>	No
<b>Poland</b>	Yes, in particular as regards the scope.
<b>Portugal</b>	Not at this stage.
<b>Romania</b>	No
<b>Slovenia</b>	No special difficulty requiring legislative change.
<b>Slovak Republic</b>	Yes, the Directive should cover the situation where no employees' representatives exist in the undertaking, providing for direct I&C of employees in this case.
<b>Finland</b>	Not at this stage. A longer experience in all Member States is needed.
<b>Sweden</b>	No
<b>United Kingdom</b>	Not at this stage.

<b>BUSINESS EUROPE</b>	No need for review at EU level.
<b>UEAPME</b>	No need for review.
<b>ETUC</b>	Yes, see reply to next question.
<b>CEEP</b>	No need for review now (the implementing regulations are just bedding down in many MS).

<b>Question</b>	Do you consider that any provision of the Directive needs clarification? If yes, please specify.
<b>Belgium</b>	No
<b>Bulgaria</b>	No, at this stage.
<b>Czech Republic</b>	No
<b>Denmark</b>	No
<b>Germany</b>	Same reply as in previous question.
<b>Estonia</b>	No
<b>Greece</b>	No
<b>Spain</b>	No
<b>France</b>	See reply to the previous question.
<b>Ireland</b>	Yes, to the extent that the interpretation of "economic activity" in the definition of "undertaking" might prove to be problematic. This issue is common with other directives.
<b>Italy</b>	Given the brief amount of time since the transposition, it is too early to make specific requests with a view to its possible review.
<b>Cyprus</b>	No
<b>Latvia</b>	No
<b>Lithuania</b>	No
<b>Luxembourg</b>	
<b>Hungary</b>	No specific reply to this question.
<b>Malta</b>	No
<b>Netherlands</b>	No
<b>Austria</b>	No
<b>Poland</b>	Yes: the provisions relating to the scope of the information to be provided and of the consultations.
<b>Portugal</b>	Not at this stage.

<b>Romania</b>	No
<b>Slovenia</b>	No special difficulty requiring legislative change.
<b>Slovak Republic</b>	No
<b>Finland</b>	No specific reply to this question.
<b>Sweden</b>	No
<b>United Kingdom</b>	No

<b>BUSINESS EUROPE</b>	No need for clarification at EU level.
<b>UEAPME</b>	No need for clarification.
<b>ETUC</b>	Directive 2002/14 can be improved. If so, the European Commission should better specify the role of trade unions, the content of certain issues on which employees have the right to be informed and consulted (such as the economic and financial situation of the undertaking), and the extent to which Article 5 can be applied. It should also introduce limits to the use of the confidentiality clause and rights for training and education of employees' representatives. Finally, exemptions for tendency-undertakings and seafaring vessels should be deleted.
<b>CEEP</b>	The Directive is brief and probably sufficiently detailed. However, a number of CEEP members pointed out the lack of definition of the concept "group of undertakings".

<b>Question</b>	Taking into account the links between Directive 2002/14/EC and the other EU directives <sup>44</sup> on information and consultation of employees as transposed in your country, can you identify any difficulties that are connected to such links? Do you consider that there is a need for improving coherence between these directives?
<b>Belgium</b>	No
<b>Bulgaria</b>	No, at this stage.
<b>Czech Republic</b>	No. The recasting of the directives is not opportune for the reasons set out in the meeting of Directors-General for Industrial relations on 9 May 2007.
<b>Denmark</b>	No
<b>Germany</b>	No problems of interaction have been encountered. The multitude of directives is justified, taking into account that they cover a wide and complex range of subjects which deal with very different situations.
<b>Estonia</b>	No
<b>Greece</b>	No
<b>Spain</b>	No
<b>France</b>	One could consider the opportunity of consolidating the specific directives to the extent that they cover I&C of employees. This is an ambitious challenge which requires to reconcile, on one hand, coherence and accessibility and, on the other hand, integral maintenance of the existing rights.
<b>Ireland</b>	It is too early to assess the interaction.
<b>Italy</b>	It is too early to identify potential difficulties related to the interaction of the directives.
<b>Cyprus</b>	No
<b>Latvia</b>	No, at present.
<b>Lithuania</b>	No. No difficulties of interaction have been encountered in practice.
<b>Luxembourg</b>	

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<sup>44</sup> Directives 98/59/EC, 2001/23/EC and 94/45/EC (97/74/EC).



<b>Hungary</b>	In the interest of better, more transparent regulation an update consolidating the various legal provisions on informing and consulting employees in a single mechanism would be appropriate. A potential general requirement could be the provision of Article 7(6) of Directive 2001/23/EC concerning the direct information of the employees where they have no representatives in an undertaking.
<b>Malta</b>	No. No difficulties of interaction have been encountered as yet.
<b>Netherlands</b>	No
<b>Austria</b>	No
<b>Poland</b>	No problems have been encountered in this area.
<b>Portugal</b>	No special difficulties have been encountered in this area.
<b>Romania</b>	The provisions of Directive 2002/14/EC should be linked with the provisions of the European Works Council Directive.
<b>Slovenia</b>	No special difficulty requiring legislative change.
<b>Slovak Republic</b>	There is need to harmonise the other EU Directives with Directive 2002/14/EC in order to make procedures easier and more general.
<b>Finland</b>	FI is sympathetic to the Commission's suggestion on recasting these directives to avoid overlap and conceptual inconsistencies and to remove loopholes.
<b>Sweden</b>	No problems of conflict.
<b>United Kingdom</b>	No major problems, hence, no need for improved coherence. Such a task is very complex and would entail enormous amount of legal and policy effort.

<b>BUSINESS EUROPE</b>	Important to check under the better regulation initiative if the different EU provisions are still necessary, given that national laws already provide for comprehensive rules on I&C.
<b>UEAPME</b>	The main point is not the need for better coherence between the EU directives but the thorough evaluation of the existing EU provisions and of their added value under the better regulation initiative.
<b>ETUC</b>	It would be necessary to harmonise the existing directives on information and consultation in order to avoid “double tracks” in which different actors are called to deal with the same issue. The EWC directive urges an update to keep it coherent with the standards set in directive 2002/14, which is more advanced in certain aspects.

<b>CEEP</b>	The specific directives take precedence over the present general directive. Given that the former apply to situations which are more likely to require the need for I&C, some of CEEP members question the need of Directive 2002/14/EC.
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