



SYNTHESIS REPORT

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Experts

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INTRODUCTION

The survey phase of the INVOLVE project started in December 2015 and lasted up to April 2016. It took place in Greece (OBES), Italy (FAI CISL), Romania (CNSLR FRATIA) and Spain (UGT TCM), with the lead of OBES. INVOLVE project was co-financed by DG Employment.

NATIONAL CONTEXTS REGARDING INFORMATION AND CONSULTATION

Greece

Economic and financial crisis in Greece is on its 8th year. This at the macro-level has a very heavy impact on GDP (decrease by 25%), employment (raise of unemployment), on branches of the economy (e.g. construction) and at the micro-level on individuals and companies. There has been a legal reform in 2010 concerning industrial relations, nearly suspending collective bargaining and enhancing the use of flexible forms of employment (which nowadays prevail in the labour market). In this context, closures of companies, mergers acquisitions and restructuring are everyday phenomena and the role of information and consultation has become extremely important and useful.

Employees working in companies, where there is a company-based or even better a plant-based trade union are better placed to exercise their right to information and consultation. Where there is one or more sectoral or professional trade unions (e.g. secretaries, electricians) etc. the right to information and consultation remains inactive. Employees cannot exercise their right according to Opinion 390/2012 of the Legal Council of the State. Work councils are scarce in Greece and in practice not only negotiations but also information and consultation remain the work of company-based trade unions.

There is no diffused information and consultation culture in Greece. As a result, there are no Agreements recorded in the survey between the company management and employees, settling the details of Information and Consultation.

Italy

On the basis of article 6 of the National Collective Bargaining Agreement, it has been possible to implement information and consultation procedures with workers' representatives.

Article 6 of the CCNL (National Collective Bargaining Agreement) provides for "Information and Consultation Rights". In this regard, it states: "In order to allow the trade unions signatory of the agreement an adequate knowledge of issues concerning relevant phenomena related to development and restructuring processes and technical and organizational innovations, as well as their effects on the organization of work and on employment and professional levels, the information set out at different levels competence will be provided".

1. AT NATIONAL LEVEL At national level, the Parties shall normally meet in the first quarter of each year for a discussion on the restructuring programmes, reorganization and

business development. The discussion is divided by sectors and segments, and examines economic, industrial and trade strategies, with particular reference to the formation of new businesses in the South, the restructuring processes and new investments. On the basis of this information, a discussion shall take place on prospects for achieving the objectives, and the appropriate verifications shall follow.

2. AT REGIONAL LEVEL The parties, at the request of one of them, shall activate regional levels of information and consultation, with particular reference to development and investment programmes and to restructuring and reorganization processes. This level is not a negotiation level. It should not be confused with the 2nd level negotiation (local, group and company negotiation) widely practiced in large companies and multinationals, unlike what happens in the SMEs (small and medium industries), where the 2nd level negotiation encounters, at times, resistance by employers. To allow an adequate 2nd level negotiation in SMEs, CISL attaches great importance to territorial and/or industry bargaining, similarly to what happens in the agriculture sector.

3. AT COMPANY LEVEL Company representatives inform the single trade union representation and the competent territorial unions on the final situation of the company, on production programmes and investment forecasts and their repercussions on work organisation, employment levels, professional dynamics.

Romania

Even though last figures about Romanian economy show that “macroeconomic situation is stable, with low inflation and external deficits” and “Romania had one of the highest growth in the European Union” the situation of Romanian employees remain still bad. According to the last report of European Commission “Poverty and social exclusion are among the highest in the European Union” and “Social transfers have a limited impact on reducing poverty and the provision of social services is insufficient”. After legislative changes from 2011 the Social dialog has been seriously damaged. From the other hand we have to say that effect of crisis are visible in Romanian economy mainly concerning multinational Companies that are confronted with strong restructuration. These changes together the new legislation adopted in 2011(the new Labor Code and the Code of social Dialog) strongly affected the industrial relation evolution.

In Romania, the information and consultation culture is weak. I&C is seen much more as “fashion” of Social Europe than as an objective necessity. However, even if there is no practice of dedicated agreements addressing this issue, there are common, specific provisions about information and consultation in labor collective agreements. The situation itself is still unsatisfactory, and this is due to the following reasons:

- Legislation, which is confused, fragmented and ever-changing (affecting in a negative sense the employees). This makes difficult for trade unionists to follow and valorize effectively the employees’ rights and to set up tools in order to exercise these rights.
- The formal transposition of EC Directives related to information and consultation. The Law nr 467/2006 is an 80% copy-paste of the Romanian translation of directive text. The sanction section, excepting 3 very limitative aspects, doesn’t preview any sanction for violation of the 23 provisions of the law. In this way, legislation does not support in practice the application of the Directive.

- The general negative attitude of the employer side towards information and consultation under different pretexts and the insufficient legislation in terms of concrete obligations. It seems that the will to decide without informing anybody prevails for them than building positive industrial relations in the workplace
- In practice, the obligation of consultation is more visible than that of informing and failure to comply with this obligation is clearly sanctioned. We must emphasize though that one cannot conduct a consultation process properly without good information. Also situations that require consultation are less frequent.
- Worker representation. In Romania there is no tradition and no legal support for functioning working councils. Instead, there is a very strong tradition of trade unions at company level. This is the main feature of the organization of trade unions in Romania and provides any form of employee representation at this level. Although there are restrictions placed on the representativeness by the code of social dialogue - Law 62 of 2011-, it can ensure effectively the exercising of the right to information and consultation at company level.

Spain

In Spain information and consultation is almost exclusively undertaken in the case of the procedure for termination of employment contracts called ERE. This happens because legislation referring to ERE considers information and consultation as a prerequisite. Else, employers are very negative and in practice do not use information and consultation.

In recent years under the pretext of the economic crisis, companies have eliminated jobs citing "organizational economic, technical, or production" reasons.

And if dismissals were not enough, the aim to have “cheaper workers”, this has been achieved, through the implementation of changes in working conditions, decrease in salary, changes in working hours, changing the functions of workers etc. Most employment contracts terminated with ERE preview severance payment of 20 days and for a maximum of 12 months. From the 12th February 2012 on companies need not to justify losses of jobs and layoffs for economic reasons; they just need to have gained less in the previous three quarters of the year. In conclusion: the rules governing the regulation records of employment and labor relations in general are unfair for workers, inefficient regarding the economy and useless as far raising of employment is concerned. As of April 28, 2016 the number of unemployed in Spain is 20.9% of the population of working age, demonstrating that the labor reform had no impact on raising employment.

METHODOLOGY

Common methodology

OBES has implemented the survey previewed in the framework of the INVOLVE project using the following methodology:

- Experts have compiled the interview grid to be used.
- There were a few preparatory restricted trade union meetings in Athens to fix the template of the questionnaire to be used.
- There was a consultation with partners regarding the interview grid.
- Each partner translated the questionnaire in national language.
- Each partner conducted at least 10 in depth face to face interviews on the basis of the interview grid.

Greece

Employees' representatives in Greece, as far as information and consultation are concerned, usually come from company-based unions.

- Each interview in Greece was carried out by a member of the Board of OBES and an OBES expert.
- The expert visited the President of Food Federation and 5 local second degree Trade unions (Labour Centres-Ergatika Kentra) of Halkis, Thiva, Korinthos, Elefsis and Kiato, covering a perimeter of 85 km around Athens, where most of industries are. The Presidents of the Labour Centres described the situation of information and consultation in companies within their area of responsibility. They highlighted the fact that information and consultation does not take place in SMEs and in companies with no company-based trade union. Presidents of Local Labour Centres suggested additional companies to be interviewed.
- All interviews were face to face. In most cases participated more than one members of the Board of the trade union interviewed.
- The occasion of having the interview was used at the same time to diffuse information about the provisions of the legislation and for offering consultancy on specific problems they face.
- There are 15 interviews collected using the above methodology.
- There were additional cases participants described in the preparatory meeting of trade unionists, which took place in Athens on the 27 February 2016 with the participations of trade unionists coming from all over Greece.
- Although the number of interviews is 15, the general picture is reliable, because it covers a wide range of industry sectors, sizes and ownership of the share capital. This picture has also been confirmed by trade-unionists coming throughout Greece in the Athens preparatory workshop on the 27th February 2016. It will also be refined with visits to other Greek Labour Centres and trade unionists, with the double aim to enrich conclusions and disseminate results.

Italy

- In the vast majority of cases, workers' representatives in Italy are employees belonging to one of the local union organisations.
- FAI CISL has conducted this survey by interviewing trade unionists, who directly followed corporate negotiations. These are unionists with territorial, provincial and regional tasks.
- A first meeting was held in January 2016 in order to explain to them the objectives of the project and the purpose of the research that FAI is carrying out in partnership with OBES Greece.
- Then, in the following months, trade unionists were interviewed individually at the FAI national headquarters.
- The interviews were conducted jointly by the International Projects Manager and the person in charge for international policies. FAI CISL used the questionnaire template provided by OBES, Greece and interviewed 11 trade unionists who followed the negotiations of 11 Italian companies distributed throughout the country: 2 in the North (Lombardy and Friuli Venezia Giulia), 4 in the centre (Lazio), 4 in the south (Molise, Puglia, Calabria) and 1 operating throughout the country with regional and provincial structures, which have undergone major changes and for which, on the basis of Directive 2002/14 and art. 6 of the National Collective Bargaining Agreement.

Romania

In Romania the representation of workers at the company level is, generally speaking, the task of trade unions of the company level and, logically, and their representatives are the main persons concerned for the information and consultation process. CNSLR-FRATIA has implemented the survey previewed in the framework of the INVOLVE project using the following methodology:

- Interviews were carried out by an expert from the IESS side.
- The trade unions responsible aimed to be involved in survey received by mail general information about the Involve project
- The expert visited the trade union at their workplace. All interviews were face to face. In most cases participated more than one members of the Board of the trade union interviewed.
- The occasion of having the interview was used at the same time to diffuse information about the provisions of the legislation and for offering consultancy on specific problems they face.
- There are 11 interviews collected using the above methodology.
- Although the number of interviews is 11, the general picture is reliable for big size companies (more than 500 employees), because it covers a wide range of company sectors, and ownership of the share capital. From the interviewed 11 companies 2 are from Metallurgical industry, 1 from Metal processing industry, 1 from, petrochemical industry, 1 from glass industry, 1 from wood industry, 1 from cement

industry, 1 from alimentary industry, 1 from energy distribution sector, and 2 from commerce. The survey doesn't cover small and medium size companies.

Spain

- SMC-UGT Castilla y Leon has accomplished 10 interviews.
- Surveys were carried out among worker representatives by using the Spanish translation of the questionnaire grid developed by OBES.
- Employees' representatives interviewed came from several sectors, specifically Hotels (Hotel Plaza), supermarkets (El Arbol), casinos (Casino Boecillo), rail transport (Acciona) and transport in highways (Pardo Feijoo). Hospitality companies such as Hotel Valderrábanos, the Meson El Rastro and El Parador de Gredos; Electronics companies trade as Avila and social restoration companies like Albie, S.A. All companies surveyed have suffered redundancies – and wage cuts- in recent years as a result of the crisis.

CONCLUSIONS

CONCLUSIONS OF THE GREEK NATIONAL REPORT

- Although consultation is a distinct stage, in many cases it is confused with information. The company management calls the trade union, provides it with generic information and sustains that it has covered its obligation for information and consultation.
- Arrangements of information and consultation. In most cases they take place in the company offices and agenda is prepared by the employer side. Information received is seldom analytical and documented and in most cases oral. Time to examine data provided and prepare for consultation seems to be not enough. Clarifications on information received do not seem either to be the rule. Recursion to the confidentiality clause does not seem to be an often case, as when needed the management often omits information, invoking that it retains this information because of confidentiality reasons. Trade unions do not use their right, according to Article 6 of the Directive 2001/14 to bring the case to Court. Consultation either directly between the management representative(s) and the trade union or in the presence of a representative of the Ministry of Labour (Labour Inspectorate) is generally more substantial and more time consuming (reported up to 6 months). Justified and documented responses to opinions the trade union expressed remain still an unsatisfactory procedure. Experts used are lawyers. Information of the rest of employees of the companies seems to be a standard process through a General Assembly. It is also common that the company-based trade union uses a wide range of measures (by establishing alliances, addressing society, or undertaking trade union actions, such as strikes, threat of strikes and stoppages) to create pressure to the management. Analysis of the results of the individual cases reported in the survey shows that results of information and consultation procedures influence more management decisions, when there is sufficient time for consultation, written minutes, in which the trade union had the assistance of a lawyer and those in which it created conditions of internal and external pressure and positive attitude towards their case.
- European- scale company. Although EWCs exist for a considerable number of years now, coordination of action at the national and European level does not seem to be an *acquis* up to now. To this may contribute the fact that there may be more than one sites, and the one using information and consultation may not be directly represented in the EWC but indirectly, through a representative working in another site.
- Sanctions. Sanctions in case of offense of the Directive 2002/14 (and Presidential Decree 240/2006) are not effective, dissuasive and proportionate as previewed. Presidential Decree 240/2006 refers only to fines and to the general legislation about the Labour Inspectorate (Law 2639/98). Instead, Law 4052/12 for EWCs refers to penal sanctions as well. The respective Ministerial Decision 2063/11 characterizes the seriousness

of the employer offence regarding information and consultation as “low”. This reduces the fines that may be charged. The juridical system takes too much time in order to judge a case and issue the respective judgment, which makes it ineffective.

CONCLUSIONS OF THE ITALIAN NATIONAL REPORT

- In most of the cases interviewed, good industrial relations can be found and the rules on information and consultation are sufficiently applied in large companies and multinationals.
- On the contrary, in SMEs, joining the union and the resulting good industrial relations are more difficult. For an adequate assistance and representation of workers employed in SMEs, FAI-CISL supports the increasingly widespread application of the 2nd level of territorial contracts and industry contracts, as this has been proven positive over time and gave excellent results in the agricultural sector.
- As concerns multinational, EWCs complain about the lack of uniformity in industrial relations in all the countries where the multinational is present. In fact, the same company maintains excellent industrial relations in some countries but not so in others, adjusting its action according to the weight of the unions and the social and labour laws in force in that country. In addition, EWCs complain about the misuse by companies of the term "Absolute Secrecy and Confidentiality" of data and information communicated to them, considering that not all the information in reality should be confidential as some of it is already publicly known. Therefore, the "Secrecy" is a way adopted by companies to reduce the role of the EWC and the resulting information to workers.

CONCLUSIONS OF THE ROMANIAN NATIONAL REPORT

- Arrangements of information and consultation. In all the cases the meetings take place in the company offices and agenda is advanced by the employer side and agreed with the trade unions representatives.
- Information received is seldom analytical and documented and in most cases in written. 6 out of 11 of respondents to the survey assessed information received as satisfactory and other 4 appreciated that information improved during the process and became satisfactory, after solving the dispute between management and labor.
- Time to examine data provided and prepare for consultation seems to be enough. More clarifications on information received were offered following specific request.
- Recursion to the confidentiality clause was used in 6 cases and out of them in 2 situations it seems to offer a pretext to the management to omit information,

invoking that management had to retain this information because of confidentiality reasons.

- The reaction of Trade unions was limited to specifically pressing. Only in 3 situations there were recorded official labor disputes and no case was brought to the Court.
- Consultation between the management representative(s) and the trade union is generally more effective, when the necessary time is used. Justified and documented responses to opinions the trade union expressed were given in the big majority of the situations examined with only an exception.
- Experts used are lawyers and economists.
- Information of the rest of employees of the companies seems to be a standard process through direct meetings and posting in special places, inside of the workplace. It is also common that the company-based trade union uses a wide range of measures (by establishing alliances, addressing society, or undertaking trade union actions, such as strikes, threat of strikes and stoppages) to create pressure to the management. Analysis of the results of the individual cases reported in the survey shows that results of information and consultation procedures influence more management decisions, when there is sufficient time for consultation, written minutes, in which the trade union had the assistance of a lawyer and those in which it created conditions of internal and external pressure and positive attitude towards their case.
- European- scale company. Even though EWC should be a practice, in all multinational Companies this not the case. Raising the problem from local or national level seems to be considered as a formal thing without any real effect for the workplaces concerned. The situation is more difficult when there is not a direct representation in the EWC from the country.
- Sanctions in case of offense of the Directive 2002/14, as transposed in Romanian legislation by Law nr 467/2006, are not “effective, dissuasive and proportionate”. The reasons are: The situations that could be penalized, according to the law, are scarce and difficult to prove. The amounts of penalties are very low –between 210 and 11000 Euros. It isn’t clear, who is entitled to establish these sanctions. The juridical system takes too much time in order to judge a case and issue the respective judgment, which makes it ineffective.
- In Romania the information and consultation process is not entirely well understood. Not all the worker representatives know how and how much they should exercise their right to information and consultation. In order to have good effects an improvement of legislation, mainly concerning the representation of workers and to clarify the specific sanction authorities in case of violation of Law nr 467/2006 concerning information and consultation, is necessary. The trade union organisations should develop programmes in order to raise awareness, knowledge and skills of trade unionists concerning their right to information and consultation. The outputs of this project will be useful but supplementary other tools – training modules and sessions, dedicated handbooks, booklet etc – are necessary in order to improve the knowledge of social partners about the information and consultation process. The changing of the legislation, the setting-up of a friendly frame for social dialog, is also

fundamental in Romania having a positive effect to the information and consultation process.

CONCLUSIONS OF THE SPANISH NATIONAL REPORT

- In Spain companies are obliged by the Law to undertake information and consultation before proceeding to redundancies, so they have reduced information and consultation as a phase to redundancies and they consider it as a formal administrative obligation.
- In all cases recorded information and consultation referred to decisions already made, which is against Directive 2002/14.
- Information provided by management is mostly accounting and financial information (balance sheets etc.). Cases of falsifying or hiding information have also been recorded.
- In case of dispute, trade unions made recourse mainly to the Labour Inspectorate. The result depended on the person of the Labour Inspector.
- Employee representatives judged information received as non-satisfactory.
- Companies labelled all information they provided as confidential or refused to provide information.
- Employee representatives judged information and consultation as non-effective.
- The labor reform has enabled and facilitated layoffs, making them cheaper and easier.

GENERAL CONCLUSIONS

The survey in the 4 countries has shown that the situation as far information and consultation in Greece, Italy, Romania and Spain although facing different problems and situations, is far from desirable. The situation may be summarized as following:

- Only in medium and big companies there is practically the possibility to have information and consultation. In smaller companies, mainly those where there is no company-based trade union, there is no information and consultation at all.
- Employers show an aversion towards it and if not specifically obliged to respect information and consultation, they try to avoid it.
- Sanctions, with the exception of Italy, are not effective, proportionate and dissuasive. Courts take too much time to make judgements and there is not enough case law regarding Directive 2002/14 as trade unionists make very seldom recourse to the Courts for this reason.
- In many cases information provided is restricted or labelled as confidential, though in reality it is not so.
- There is not enough co-ordination between on one hand information and consultation at the national level and on the other the EWCs.
- Trade unions should take positive action to improve the situation.