"FROM LAW TO PRACTICE-PRAXIS" PROJECT

SURVEY ASSESSING THE LEVEL OF AWARENESS REGARDING LEGISLATION ON INFORMATION AND CONSULTATION RIGHTS

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31, KANIGOS STR., 106 82 ATHENS - GREECE, TEL.: +30.210.3304120-1,
FAX: +30.210.3825322, e-mail: info@obes.gr

This survey has been conducted by trade unions: OBES (Promoter, Greece), CGIL (Italy) and CNSLR- FRATIA (Romania).

Scientific experts- coordination:
Panagiotis Kastambanis, Electrical-Mechanical Engineer MSc
Sofia Spiliotopoulou, Chemical Engineer, Economist MSc

Authors of National reports:
Greece
Panagiotis Kenterlis, Economist MSc
Ignatios Litsas, Chemical Engineer MSc
Romania
Mocanu Valentin
Italy
Giorgio Verrecchia

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FOREWORD

The last decades, the European Union has introduced more than 15 EU Directives and Regulations dealing with Information and Consultation of workers' representatives, the most important of them being:

i. Directive 2002/14/EC on general framework on information and consultation
ii. Directive 98/59/EC on collective redundancy
iii. Directive 2001/23/EC on the transfer of undertakings
iv. EWC Directive 94/45/EC and Recast Directive 2009/38/EC
v. EU Regulation 2157/2001 on European Company

The definitions of the terms information and consultation have been improved over time in favour of employees.

The Directive 2002/14 previews that in cases of offence of employees' rights to information and consultation, there should be sanctions that are effective, dissuasive and proportionate to the seriousness of the offence. The type of sanctions, though, is a subject left to national legislations.

It appears that there is a distinction between EU member-states as far as the tradition of information and consultation and industrial relations is concerned. In some countries e.g. Germany, Austria and France, there have been established procedures for information and consultation, even before the directive 2002/14. For this reason, the transposition of the Directive in the national Laws was not needed, as they have already had more favourable provisions.

Other Member States as Finland, Netherlands and Denmark have amended their national laws in order to conform to the Directive 2002/14.

In Southern European countries as well as in Ireland and UK there had been no similar laws to Directive 2002/14 or official consultation bodies preview. In most of these countries, there is uncertainty about not only the application of the Law concerning information and consultation, but even about the awareness of workers as far as the existence of this Law is concerned.

To conclude, the present study addresses the need to assess the level of awareness of workers' representatives regarding European and national legislation on information and consultation rights and also the point of sanctions in Greece, Italy and Romania.

CONTENTS

EXECUTIVE SUMMARY

The objectives of the present report summarising the results of the survey undertaken in the framework of the "From Law to Practice-PRAXIS" project are to explore and compare the level of awareness of employees regarding the European and national legislation on information and consultation in Greece, Romania and Italy, to record problems in the implementation and based on them made some policy recommendations.

The survey has taken place in the first 8 months of 2013, by national experts using a common questionnaire, translated into Greek, English and Italian. It was addressed to trade unionists in the three respective counties.

Greece, Romania and Italy have different systems of workers' representation, historical background of industrial relations, legislative framework and culture of consultation in the workplace. Directive 2002/14 has been transposed in a different way (Presidential Decree in Greece, law in Romania and Legislative Decree in Italy) using a different procedure of consultation between social partners.

This difference in culture and procedure is reflected as well on the level of trade unionists' awareness about the Directive 2002/14 noted in the three countries. However, there are some common trends observed in the results of field research in all three countries, namely:

- There is a deficit of information of trade unionists on good cases of information and consultation at company level.
- The same deficit of information is observed as far as infringement of the information and consultation Law is concerned.
- Sanctions, preview by national transposition Laws, have proved to be not effective, dissuasive and proportionate as preview by the Directive 2002/14 and this is suspect to encourage employers to breach the law.
- Labour inspectorate and Courts may play a more active role. In the case of Italy for example, there are no court decisions related to Directive 2002/14.
- Trade unionists in all three countries complain about the poor quality of information provided by the employer and about the fact that it is provided after important decisions are made or that they have not time enough to formulate a grounded opinion to present in the consultation.
- Confidentiality clause is another subject arising from all three countries. It has to be better defined by the Law (EU and national ones) because there is a tendency of employers to over-exploit it and to override their obligations for information and consultation.

As a conclusion, trade unionists in all three countries think Directive on information and consultation is very important, all the more in cases of economic crisis, where difficulties faced are multiple. However, there are some suggestions or recommendations hat would improve the present situation and these could be:

- Better information of trade unionists on the provisions of Directive 2002/14 by trade union Federations and Confederations.
- Organisation of training courses, exchange of experience workshops and repository of positive and negative case studies, to which trade unions may recur if needed.
- A data base with Court decisions on infringement of Directive 2001/14.
- Sanctions to those that infringe the Directive 2002/14 have to be preview in an amended Directive in order to be really effective, dissuasive and proportionate and not let to national transposition Laws, as they are today, which proved to be ineffective.
- Labour inspectorate has to be instructed by the Ministry of Labour in each country to play a more active role.
- An updated definition of information and consultation as well as provisions about timing and arrangements permitting it to be substantial have to be included in an amended Directive (in the model of the Directives for the European Works Councils).
- Confidentiality clause has to be better defined by the Law (EU and national ones) not leaving a window for abusing it.

AIMS

The objectives of the present report summarising the results of the survey undertaken in the framework of the "From Law to Practice-PRAXIS" project are:

1. To assess the level of awareness of employees regarding the European and national legislation on information and consultation and the actual situation as far as implementation is concerned in Greece, Italy and Romania.
2. To compare findings as far as legislation, level of awareness of trade unionists and practices in the three countries are concerned and to draw some conclusions about implementation of the Law and potential policies in the future.

METHODOLOGY

The present survey is one of the activities of the "From Law to Practice- PRAXIS" project. The survey is based on a structured questionnaire, with the objective to assess the level of awareness of trade unions representatives regarding the legislation on information and consultation, at European and national level.

The main topics that the survey deals with, through the questionnaire, are:

Level of awareness

- Are the trade union representatives aware that there is a legislation regarding information and consultation rights at EU level and national level?
- Do they know what this legislation previews?
- Do they know how the terms information and consultation are defined?
- Do they know what the national legislation previews as far as the sanctions are concerned?

Current practice regarding information and consultation in their company

- In case of restructuring, did the management inform the employees using the procedures foreseen?
- Did the management arrange for consultation with employees?
- Did the management give the employees the time and the means for proper consultation?
- In case of infringement, what were the sanctions? Were these sanctions effective, proportionate and dissuasive?

The questionnaire has been developed by OBES experts and was finalised following a consultation with OBES board. Experts tried to formulate the questionnaire in order to investigate all above-mentioned issues, giving space for expression of open answers

as well, keeping however its extent limited in order that trade unionists are not discouraged to answer it. The questionnaire was first developed in Greek and then translated into English, Italian and Romanian (Annex I, Annex II, Annex III, Annex IV respectively).

Following that, the questionnaire has been distributed to trade union representatives in the three participating countries, mainly members of the partners' organisations, representatives from other federations, trade unions and work councils. Each national partner has been responsible to send out the questionnaire and gather the responses in its respective country. Distribution has been performed in person and by fax and e-mail. The gathering of questionnaires has involved travelling of OBES staff and experts from Athens to other cities in Greece.

Each partner has allocated an expert responsible to primary process the questionnaire responses and to write the respective national report, while OBES has done the comparative analysis of the results and the compilation of the survey report.

A possible bias is caused by the fact that trade unionists, who have answered are maybe the most active and willing to learn. This only affects results in that it may give a more positive and optimistic picture as far as knowledge and sensititisation about provisions of Directive 2002/14 are concerned.

The present report contains the commented results of qualitative and quantitative data deriving from responses to the questionnaires as well as an introduction on the background situation as far as information and consultation is concerned in Greece, Italy and Romania. It also includes the comparison results and policy recommendations.

BACKGROUND INFORMATION (GREECE)

Legislation on information and consultation

There are a few cases in the Greek Law previewing information and consultation between employers and workers' representatives, namely:

- Law 1387/1983 on "Control of collective dismissals and other provisions", amended by Law 2736/1999, which transposed Directive 98/59/EC
- Law 1568/1985 on "Workers' health and safety". This law previews the establishment of Health and Safety Committees to this end
- Law 1767/1988 on "Works councils"
- Presidential Decree 40/1997 on "Workers' right to information and consultation in community-scale undertakings and groups of undertakings", which transposed Directive 94/45/EC/94
- Presidential Decree 178/2002 on "Measures for the protection of workers' rights in the event of transfer of undertakings, businesses or parts of businesses" in compliance with Council Directive 98/50/EC
- Law 452/2012 on "Workers' right to information and consultation in community-scale undertakings and groups of undertakings", which transposed the Directive 2009/38.

Transposition of Directive 2002/14

Directive 2002/14 was transposed into the Greek legislation by the Presidential Decree 240/2.12.2006. The date of the transposition of Directive 2002/14 surpassed the time limit set, which produced a series of notices from the side of the Commission (first a warning letter on 31.5.2005, then a reasoned opinion on 2.2.2006 and lastly an action communicated to the Court of Justice of the European Communities on 26.9.2006).

According to the Legal Bulletin 32/November 2007 of the Greek General Confederation of Labour (GSEE), the transposition of the Directive 2002/14 through a Presidential Decree stands against GSEE' s permanent position that Directives should be transposed through laws, in order to allow the Parliament to fully discuss them.

The PD 240/2006 is applicable to undertakings with at least 50 employees and enterprises with at least 20 employees. GSEE has proposed that branches or plants of the same company, situated in different locations should be considered as separate enterprises for the purpose of information and consultation, but this was not included in the final text of the Presidential Decree 240/2006.

Views of social partners

No opinion of the Hellenic Federation of Enterprises on the subject of the Directive 2002/14 has been published to our knowledge (see also eironline. The impact of the information and consultation directive on industrial relations-Greece).

GSEE has noted the following observations:

- The definition of information and consultation should be further specified.
- There should be specification of cases, where information is considered as confidential
- Sanctions to employers for infringement of the Directive 2002/14 should be not only administrative but penal as well.

Application of Directive 2002/14 in Greece

In Greece, there is not a year-long tradition of participatory processes within enterprises. Works councils exist in a very limited number of companies, as indeed the trade union movement has not favoured them, with the exception of Health and Safety Committees. The reason for this was first the fear that employers would promote works councils (easier to control) as their interlocutors and second the members of the works councils (with the exception of EWC) did not enjoy the same protection as trade union representatives.

Only very few cases of infringement of Directive 2002/14 have arrived to Greek Courts; most of them concern rotation of work. In a major case, in which the Federation of workers in the Greek Telecommunication Organisation- OTE (OME-OTE) made appeal for protective measures to Court because their right to information and consultation was infringed in the case of sale of a decisive percentage of shares to Deutsche Telecom, the Court rejected it, because:

"…Furthermore, **the referred Directive (2002/14/EC) has not been fully adapted to the Greek legal order**, through the form of establishment of a separate system of measures of provision of juridical protection and processes that would ensure rights of information and consultation more effectively.

Appeal to the juridical process (in front of the First Instance Court, which judges the protective measures) as preview by Article 6 of PD 240/2006 refers to the subject of confidentiality of the asked information…"

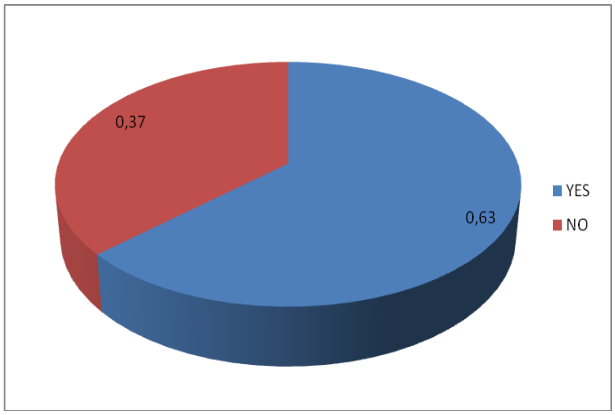
Application of the Directive 2002/14 and consecutively of PD 240/2006 has not proved to be effective up to now. According to the lawyer Mrs Dionysopoulou, this is also due to the fact that "article 8 of the PD 240/2006, in case of infringement of the obligation to information and consultation makes reference to the administrative sanctions of article 16 of law 2639/98. The respective fine is from Euro 1.000 up to 30.000, depending on the decision of the administrative organ, fine that cannot be considered as dissuasive. In parallel, there is the threat of closing the company for up to 3 days following decision of the Labour Inspector or for more days by decision of the Minister of Labour following proposal of the competent Inspector. In order to apply the above-said sanctions, there must exist serious reasons, like repeated commission of the same or more infringements, showing indifference about repeated recommendations and suggestions of the competent organs imposing administrative and penal sanctions, to which the company does not comply etc..

On the other hand, the above Presidential Decrees doesn't preview any administrative or juridical process in order to force the obligation of the employer to inform and consult with workers' representatives in the planning phase.

FINDINGS (GREECE)

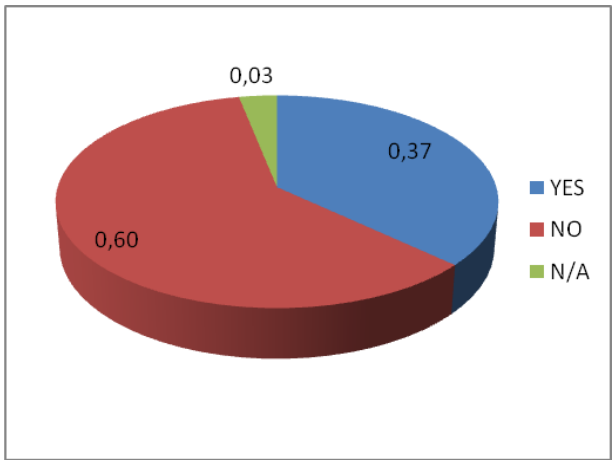
Question 1. Are you aware of the provisions of Directive 2002/14 and the respective transposition Law concerning information and consultation between workers and employers?

The majority of responders (63%) answered that they are aware of both the Directive and Presidential Decree 240/2006. Yet, there are comments like "I learnt it now but I suspected that such provisions should exist".



Question 2. Do you know other trade unionists that have applied Directive 2002/14 and the respective transposition Law in practice?

Here the affirmative answers are considerably less (37%), which may be interpreted as either that there are not many cases of application of the Directive 2002/14 and the Presidential Decree 240/2006 or that there is a deficit of exchange of information between trade unionists or both. Only three answers indicated concrete cases, where information and consultation were implemented in practice.



Question 3. EC Directive 2002/14 and the respective transposition Law preview that information and consultation must cover:

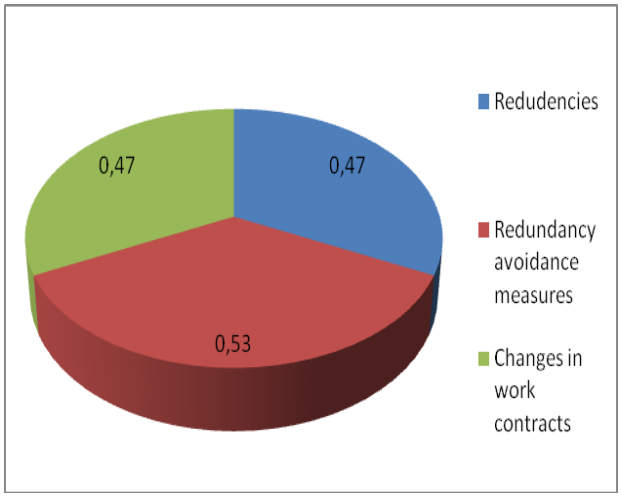
- The evolution of employment in the company
- Preventive measures in case employment is at risk e.g. redundancies
- Changes in work contracts.

Does your employer inform you in written **before** decision making concerning:

Redundancies	YES ☐	NO ☐
Measures preventing redundancies	YES ☐	NO ☐
Changes of work contracts	YES ☐	NO ☐

This question corresponds to three separate instances, for which the obligation of the employer to provide information and engage in consultation is preview by the Directive.

In the following chart, we see that about half of respondents have answered positively for the occurrence of information in all three instances.



Qualitative answers about redundancies include comments as:

- *suddenly*
- *after the decision is made*
- *1 month before the redundancies*

There was only one comment concerning measures preventing redundancies, which stated that information was forwarded in written. During consultation it was discussed to have work rotation or to reduce salaries but the process lead to a dead end.

There were no specific qualitative citations concerning the instance of change of work contracts.

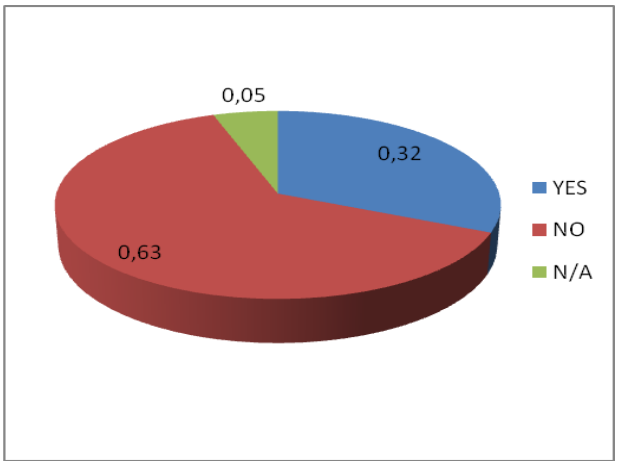
The next two questions further detail practices followed in companies as far as information procedures in the companies of participating trade unionists' are concerned.

Question 4. Does your employer inform you in written using analytical and documented texts about the above-referred changes in employment?

Question 4 is closely related to the previous Question 3. Yet, positive answers are considerably inferior (only 32%) to those received in Question 3 (around 50%).

Comments of respondents included:

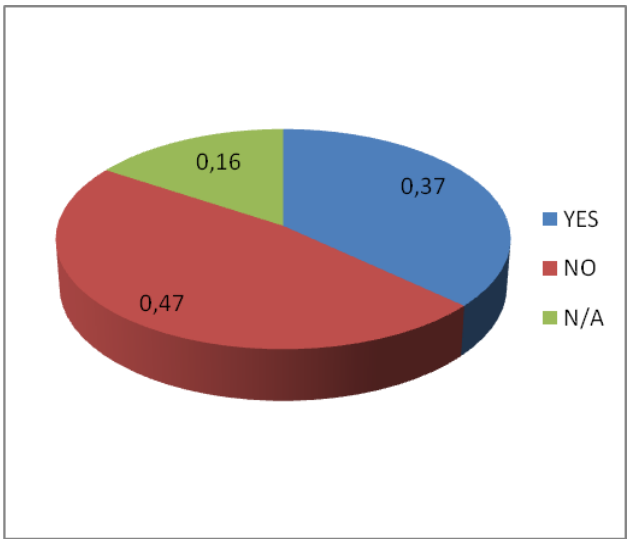
- *Information given is very generic, full of vague phrases. To take additional data is feasible only in the EWC meeting.*
- *Many times decisions to change terms of employment are made by the employer without prior information.*



Question 5. In the case your employer provides you with that information, do you have time to examine data provided in order to form and express your opinion during consultation?

Only 37% of trade unionists replying to this question have answered positively. Nearly the half of respondents have answered negatively. Worth-noticing is that 16% have no specific knowledge or opinion on this subject.

It is also worth-noticing that comments on this question underlined that information received does not have sufficient data and therefore, trade union representatives are not in a position to form an opinion based on facts, in order to express it in the consultation process.



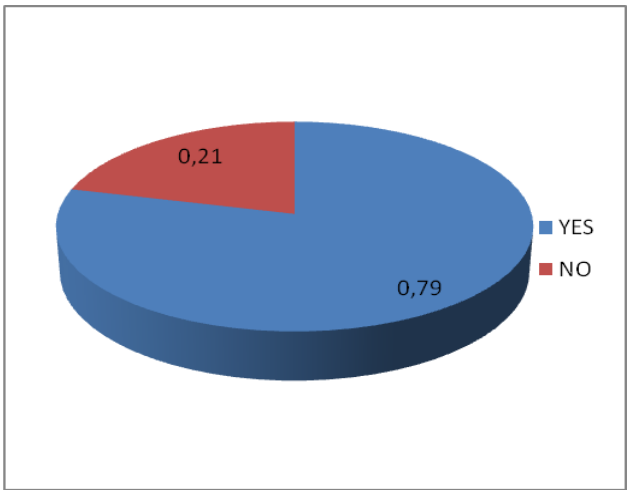
The following questions 6-8 aim at inquiring and collecting the responses of workers' representatives whether they have specific knowledge concerning the provisions of Directive 2002/14.

Question 6. Do you know that consultation, apart from exchange of views and establishment of dialogue between workers' representatives and the employer previews that the employer has to give justified responses to the opinions that you expressed?

To this question a very high percentage of respondents (79%) replied yes. Comments, however, are only two and very diversified:

- *Answers are very technocratic, this makes them very difficult to understand and gives the employer the possibility to manoeuvring.*

- *This constitutes their obligation, but they very seldom respect it in practice.*

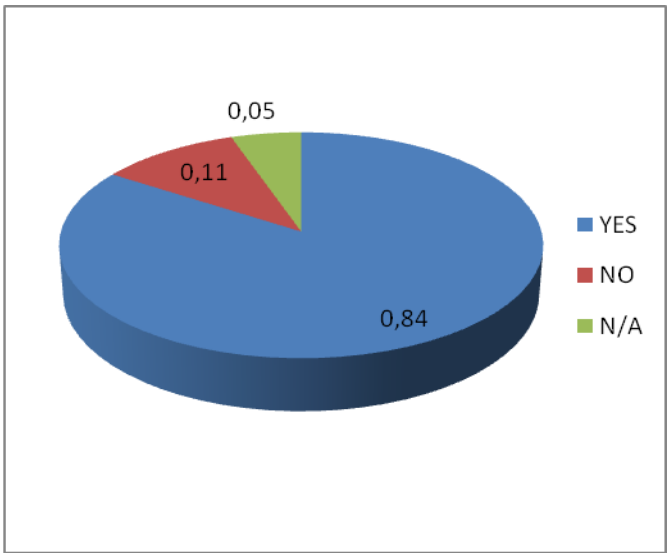


Question 7. Do you know that you may proceed to juridical measures in case the employer refuses to provide information or does not apply information and consultation processes?

An even higher percentage (84%) replies that they know it is their right to proceed to juridical measures in case the employer infringes their rights to information and consultation.

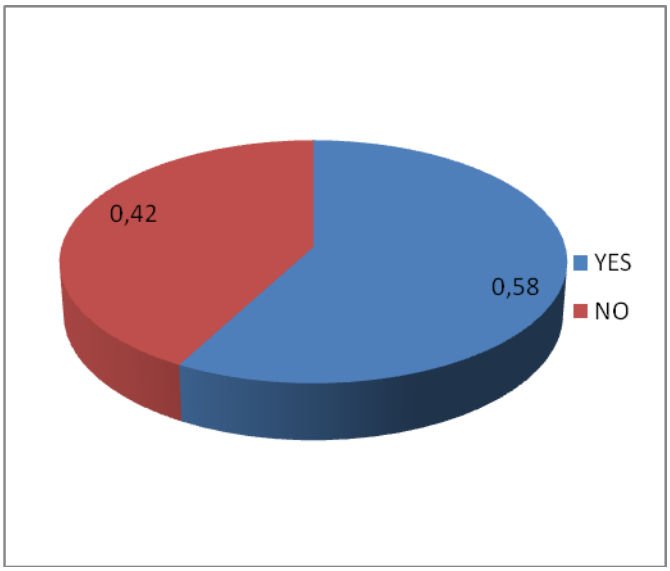
Answers though follow three axes:

- *In the first case, trade unionists admit that their knowledge is rather general "We know that we may proceed to the Courts, but we ignore on which occasions".*
- *In the second case, which seems to be rather common in times of crisis, trade unionists mention their fear concerning their employment if they move to appeal for their case to Court against their employer. One has to stress the fact that in Greece there is protection of trade union leaders by the respective labour law 1984/82.*
- *In the third case, trade unionists say that juridical measures are the last solution, as first one has to exhaust all possibilities of dialogue.*



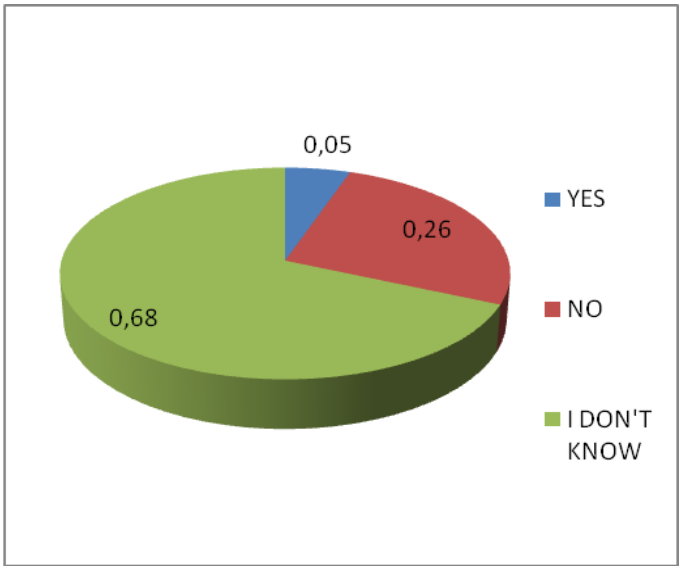
Question 8. Do you know that EC Directive 2002/14 previews that when employers do not comply with it, each Member State should preview sanctions that are **effective, dissuasive and proportionate to the seriousness of the offense?**

Although this question is very closely related to the previous one, the positive answers drop substantially (58% in Question 8 against 84% in Question 7). Trade unionists admit that they do not know in which cases they have the right to address to the mechanisms of the State and that in Greece sanctions do not take place.



Question 9. Does the transposition Law in your country preview sufficient sanctions for the employers?

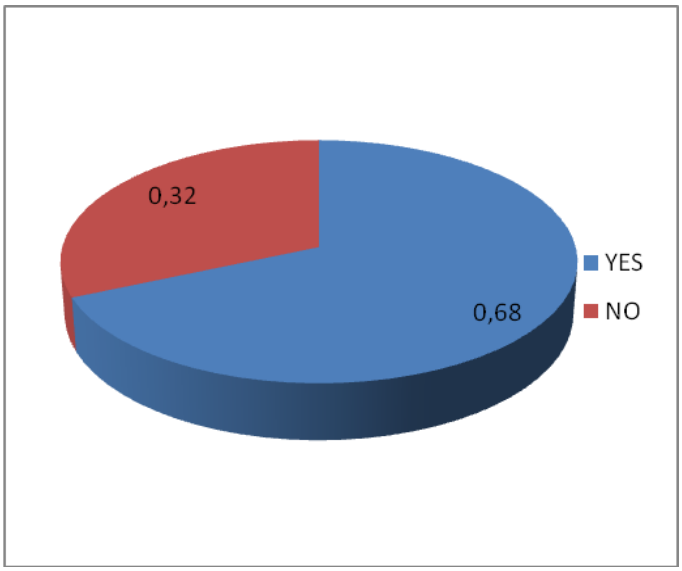
Sanctions preview are a very critical point as far as enforcement of the implementation of Directive 2002/14 (in fact of any Directive and any law) in practice is concerned. This is left to the national transposition laws. In the case of Greece, sanctions preview are not sufficiently specified. This fact is reflected to the answers received in this question, where the majority of respondents admit their ignorance on the subject of sanctions.



Question 10. Do you know that information and consultation in multinational companies is preview at European level through the European Works Councils and how this is applied in praxis?

The level of knowledge about the Directives concerning the EWCs is elevated (68%), considering that multinational companies are a minority and the subject of worker representation at a European level has a lot of technical provisions. This is possibly due to the years long efforts of OBES to promote knowledge on the provisions of Directive 94/45 and the more recent 2009/38.

Qualitative answers to this question are specific and correct (number of minimum meetings preview per year, need for training), which confirms the hypothesis of the previous paragraph.



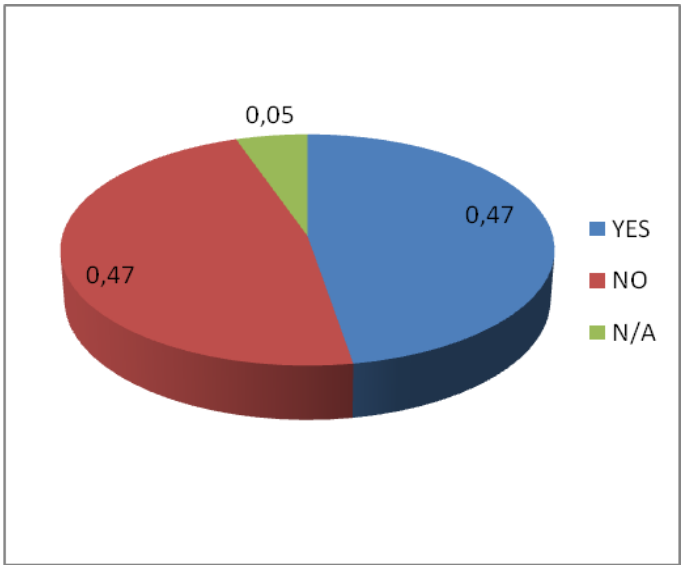
Question 11. Do you know any other labour issues, for which the European Law or your national Law preview consultation between the employer and the workers' representatives? Can you note some of these issues?

There is an equal distribution between those, who say that they know other labour issues, for which is preview consultation of employer and workers' representatives and those, who say they don't.

Specifically, issues that trade unionists made reference to are:

- *Health and safety*
- *Collective agreements*
- *Sectorial issues*
- *Work conditions, e.g. working time*
- *Social insurance*
- *Working experience*
- *Work contracts*
- *Temporary lay-offs*

By examining the above issues one may observe that for some of them e.g. health and safety consultation between the employer and workers' representatives is indeed preview, for other issues e.g. collective agreements it is preview that there must take place negotiations and, other issues e.g. social insurance or are set by the Law.



The following Questions 12, 13 and 14 are open questions. Answers received to these are remarkably less in number than to the closed questions.

Question 12. Which are the positive and negative points of the current Law on information and consultation? In which points do you think this legislation has to be improved?

This question is an open one. Answers received vary a lot:

- *The existence of a law concerning information and consultation is positive insofar it is applied.*
- *It is not clear where consultation stops and where negotiations begin*
- *The Law should press more the employers to provide correct and full information*
- *Sanctions for employers should be more austere*
- *All points should be improved*
- *I don't know*
- *The negative thing is that in Greece legislation is not respected*
- *Relations between employer and employees should be improved*

- *The application of the Law in praxis should be improved*
- *Employers should provide sufficient information on issues preview by Presidential Decree 240*
- *There should be further clarification of terms like "on-time consultation"*
- *Answers given by the employer should be binding for him*
- *Sanctions should be dissuasive*

Question 13. In case that in your company information and consultation process is applied, in which way do you inform workers/employees about it?

Most frequent answer is that information is passed to workers/employees through General Assemblies. Other answers include:

- *Meetings of the Managing Board*
- *Through posting announcements*
- *Through e-mails*
- *In written*
- *By phone*

Combination of various ways is also mentioned.

Question 14. In case that in your company information and consultation process is applied, do you judge positively or negatively the result of its application as far as the defense of the workers'/employees' interests is concerned?

Answers are divided as shown in the following table.

Positively	***Negatively***
Positively	*Incomplete up to now*
Positively with many points that are still to be improved	*It is not applied*
Positively because it helps defending interests of workers	*Negatively because trade unionists may lose their jobs*

Positively	*The process is used as a pretext for typically complying with the Law, as additional legislative regulations are needed to facilitate substantial operation*
Positively	

Additional replies are more skeptical as they state:

- *It depends on the specific situation and conditions*
- *It depends on the contribution of the workers' side to the process.*

CONCLUSIONS AND RECOMMENDATIONS (GREECE)

Findings of the survey in Greece may be summarized as follows:

Level of awareness

As a first remark, one has to note that most respondents are trade unionists active also at federation level. One has thus reasons to assume that their level of awareness about Directive 2002/14 and its transposition P.D.240/2006 is above the level of awareness of the average trade unionist.

- A considerable percentage of respondents (63%) have answered that they are aware about the existence of both the Directive 2002/14 and the Presidential Decree 240/2006. However, this awareness seems to be at an abstract level as from answers in subsequent questions it is evident for most of them that:
- 63% are not aware of concrete cases the Directive is applied
- They are uncertain as far as the cases in which consultation between the employer and the workers' representatives are preview. In the respective question only 47% have answered that they know. Answers collected of this 47% though, clearly show that there is confusion as cases indicated, along with those that are indeed preview as subjects of consultation, include also issues that are the subject of negotiations (e.g. collective agreements) or are established by Law, therefore they are not subject to any consultation or negotiation (e.g. social insurance).
- The majority (79%) says that they know about the employer's obligation to give justified responses to the opinions expressed by workers' representatives, none the less they do not specify their answer.
- The same stands in the question concerning the right of the trade union to proceed to juridical measures. The affirmative answer is very high (84%), but many trade unionists admit that they do not know on which occasions they can exercise this right. This answer is consistent with answer to the question about sanctions, where respondents answer that they do not know in which cases they have the right to address to the mechanisms of the State.

From the all above we may conclude that the level of awareness of trade union representatives is rather limited at least as far as the details of the Directive 2002/14 and its transposition P.D.240/2006.

The situation is different concerning the awareness about the Directive 94/45 and the Directive 2009/38 concerning the EWCs. A majority of 68% declares being aware of these Directives. Comments made in the respective question confirm that their knowledge about them is accurate.

This paradox, that awareness about the Directive 2002/14 which has more general application is inferior to the respective Directives about the EWCs, which are more restricted (only for Community scale companies) and specific, may be explained by the fact that OBES has undertaken a variety of actions to inform and train trade unionists on this subject. This is also a positive feedback as many of these actions have been co-funded by the DG Employment.

Current practice regarding information and consultation in the respondents' companies

Answers collected referring to the implementation of Directive 2002/14 in Greece, confirm the observations stated in the Chapter Background information (Greece). Although cases, for which the obligation for information and consultation is preview, have raised much during the last few years of economic crisis, practices followed seem to be far for satisfactory.

Specifically, answers show that:

- Trade unionists complain that information does not take place on time; indeed in many cases changes take place without prior information. Even in the case information is forwarded it is very generic and vague. In a series of three questions a rather low percentage (32-37%) of trade unionists that have responded answered positively and even those underline the fact that they had neither enough time nor sufficient data to form an evidence-based opinion.
- A gap is also noted in the small minority of cases that have been reported, where the employer gives information. In this case trade unionists complain that they are not in a position to fully understand this information because it is too technocratic.
- It is also worth-mentioning that, because of the economic crisis and the high rate of unemployment and the fact that even some trade unionists do not have a permanent work contract, several trade union representatives have replied that they are afraid to raise issues concerning their right to information and consultation because they are afraid of losing their jobs. This fear persists although the Labour Law 1284/82 protects trade union leaders, possibly because a lot of acquits have been cancelled lately.
- Sanctions preview in the P.D.240/2006 not only are not effective, dissuasive and proportionate to the seriousness of the offense but they do not seem to be clear either. Nearly all respondents either admit their ignorance on the subject of sanctions or they firmly sustain that sanctions preview in Greece in the case of infringement of Directive 2002/14 are not sufficient. The general mood, present also in the events organised in the framework of the PRAXIS project, is summarised in the comment received in the survey that in Greece sanctions do not take place.
- Information of workers by their trade union representatives seems not to be a problem as there is a variety of ways used and no problem recorded. The commonest way reported seems to be by far through General Assemblies.
- Respondents are positive referring to the existence of a Law about information and consultation. A considerable number think that relations between employers and workers should be improved and consultation may contribute to this end. Some respondents make concrete suggestions for improvement.

Recommendations

There is an almost unanimous position of participants to the survey that further action should be taken in order to improve the picture as far as information and consultation are concerned.

Suggestions for improvement may include several directions:

1. As far as legislation is concerned:

   a) **Better definition of concepts "information" and "consultation".** Terms information and consultation must be better defined. They are not the same in different Directives and this produces confusion. Definitions of information and consultation are continuously improving through newer Directives as time passes.

   b) **Clarification of the term appropriate time.** The Directive states that *"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*". Respondents to the survey think that the time should be further specified. This is done anyway by some national legislations.

   c) **Provision of effective, dissuasive and proportionate** sanctions by the Greek Law. Administrative sanctions, at least as preview by the Greek Law, are not effective, dissuasive and proportionate. The text put in the draft Directive showing the will of the Commission: "*In case of serious breach by the employer of the information and consultation obligations, where such decisions would have direct and immediate consequences in terms of substantial change or termination of the employment contracts or employment relations, these decisions shall have no legal effect on the employment contracts or employment relationships of the employees affected. The non production of legal effects will continue until such time as the employer has fulfilled his obligations or, if this is no longer possible, adequate redress has been established*" would be much more effective and would better insure the workers' right to information and consultation, as preview by article 7 of the chart of fundamental rights of the EU.

   d) **Further elaboration of the Directive.** Directive on information and consultation should be more elaborated in the model of Directive 2009/38, which describes confidential information, previews subsidiary requirements and that the employer has to allocate financial and material resources in order that workers' representatives are enabled to understand information and conduct consultation. Additionally, Directive 2009/38 previews the signing of a specific agreement on the terms and the process of information and consultation, in order to ensure the right of workers/employees to understand information and participate in consultation. Furthermore, Directive 2009/38 previews a more "structured" procedure of information and consultation. Directive 2002/14 instead has no such provisions.

   e) **More accurate transposition of the Directive into the Greek Law.** As the Court decided in the instance of the appeal of workers' Federation (OME-OTE), when the Greek Telecommunications Company (OTE) was going to be sold to Deutsche Telecom without prior procedure of information and consultation (ΜΠρΑΘ 4904/2008): "*the referred Directive (2002/14/EC) has not been fully adapted to the Greek legal order through establishing specific system of providing juridical protection and processes that make more effective the right to information and consultation established by it* ". The

P.D.240/2006 (which is the transfer of Directive 2002/14 in the Greek Law) does not preview sanctions that comply with the spirit and the letter of Directive 2002/14, which previews sanctions to be effective, dissuasive and proportionate, which in practice they have proved not to be.

f) **Application of the Directive in different countries.** Directive 2002/14 is pan- European, this meaning that it stands both for countries, where there is an established tradition of information and consultation as well as for countries where information and consultation in practice was not applied before the transposition of the Directive to national laws. This fact, coupled with the refusal of employers to effective information and consultation and the non-conformity of national transpositions with the EU Directive, especially concerning the provision that sanctions should be "**effective, proportionate and dissuasive**" creates a negative environment for the implementation of the Directive. It is reasonable that in countries, where information and consultation have a long history of implementation, this "gap" does not exist. On the opposite, in countries where information and consultation were not previously applied in practice, the European Directive should ensure effective implementation of these procedures through its transposition into national Laws.

g) **Positive instead of negative national legislation for ensuring workers' right to information and consultation.** Finally, concerning the transposition of Directive 2002/14 into the national laws of the member States, existing or future provisions of the national legislations should not contradict the spirit and the letter of the Directive 2002/14. An example is the recent Greek Law 3846/2010 titled "Guarantees for job security and other provisions", which previews that "information is carried out by simple notice in a visible place of the company and consultation in a time and place designated by the employer".

2. As far as information of the trade unions is concerned:

a) **Need for information of trade unionists on their right to information and consultation.** Co-funding more information and training projects would be beneficial as there is a great gap of information as far as the right to information and consultation is concerned.

b) **Trade Union action for information on employees' rights.** The Greek General Workers Confederation (GSEE) as well as trade union Federations should take action to spread information on and explain what Directive 2002/14 and PD240/2006 preview.

c) **Dissemination of good and negative practices of application of the Directive.** Information on cases where the Directive 2002/14 has been applied, or cases that have been successfully (or unsuccessfully) been resolved by the Courts of Justice should also be diffused.

3. As far implementation of the Law is concerned:

a) **Clear instructions to competent public authorities about the application of the Directive.** In many cases, all the more in periods of economic crisis, trade unions are willing to find a common solution to resolve actual difficulties faced by companies. Competent public authorities, namely the Labour Inspectors as well as the members of the Mediation and Arbitration Body should be instructed to facilitate this.

b) **Transnational meetings for exchange of experiences.** Transnational exchanges of experiences are very crucial to form ideas of ways to tackle common problems.

c) **Application of the Directive under normal conditions not only in periods of crisis.** In countries, where there is no culture of consultation, trade unions should seek implementation of the Directive including situations of normal operation of the company, not only in periods of crisis. This however requires the adequate provisions of the Law, as referred above.

BACKGROUND INFORMATION (ROMANIA)

Legislation on information and consultation

In Romania**,** legislation on information and consultation consists of a package of laws regulating all the aspects of this process, respectively defining partners and beneficiaries, timing and procedures, particularities, etc. The main regulatory acts are:

- Law 467/2006 regarding information and consultation of employees;
- Law 53/2003-Labour Code;
- Law 217/2005 regarding the constitution, organization and operational aspects of the European Workers' Councils
- Law 62/2011- The Law on Social Dialogue;
- Law 188/1999 regarding the status of civil servants;

Transposition of Directive 2002/14

Directive 2002/14 was transposed into Romanian legislation by the Law 467/2006, as part of the more complex and ample process of legislative harmonization in view of the integration of Romania in the European Union. The Law was adopted in December 2006, only a few days before the 1st of January 2007, the moment of acceding of the country in the EU. Considering the previews legislation on this issue, the new law came to unify and clarify, in accordance with the Directive, the procedures regarding the information and consultation process and it is applicable by enterprises with at least 20 employees. The Law also brings clarifications on penalties in case of infringement of the law's provisions and procedures.

The Law 467/ 2006 was adopted after fulfilling the whole procedure of consultation with the social partners, accomplishing its unanimous acceptance by both parties, trade unions and employers' associations at national level.

Views of social partners

In Romania, there are five trade union Confederations recognized as representative at national level. The pluralism of trade union movement is manifested, in fact, at all levels, including at the company level. Frequently, in case of medium or big enterprises, there can be observed 2, even 3 trade unions acting at the same time. The new law on social dialogue (Law 62/2011) limited, in a way, this practice. The necessary membership for a trade union to be representative at company level is 50% of the total employee number of the enterprise.

At national and sectorial level, the representative trade unions consider the Law 467/2006 as a useful tool for the improvement of the bipartite social dialogue at company level, complementary to the other laws and norms on this field.

Despite a positive appreciation generally expressed by the national associations of the employers, in specific cases this opinion is more nuanced. Due the general provisions of the Law 467/2006, this law is not subject of criticism from the part of the employer associations as other laws are. In the same trend existing at global level,

they criticize the labour code and the law on social dialogue that they are not flexible enough, imposing too many procedures, also in the field of information and consultation.

Application of Directive 2002/14 in Romania

In Romania, social dialogue at the company level is carried out by the trade unions, representing the interest of the workers. With the exception of European Works' Councils, where this is the case, the trade unions neglect setting up workers' councils in the non European-scale companies. They fear that employers will replace them, with those councils as partners, in the whole process of social dialogue. Only the Health and Safety Committees are set up in case of companies with more than 50 employees, which is mandatory in those cases.

The legislation creates the general framework for the information and consultation procedures and represents an important factor for a successful social dialogue. In the same time, the role of the partners in the application of the legal procedures remains essential. In this respect, important practical factors as membership, experience, expertise, structure, communication capacity, but also managerial culture, are influencing a lot the capacity for social dialogue of the social partners and particularly the result of this process.

In case of infringement of the law, the injured part has the possibility to appeal either to administrative institutions, respectively to the Minister of Labour and to the Inspectorate Labour, or to the Courts of Justice, depending on the particular instances previewed by the Law. Also, in some situations previewed by law, particularly in the case of collective redundancies, the measures disposed without respecting the information and consultation procedures are null and void.

In practice, for the large majority of cases, the decisions of the Courts, in such cases, have been in favor of employees.

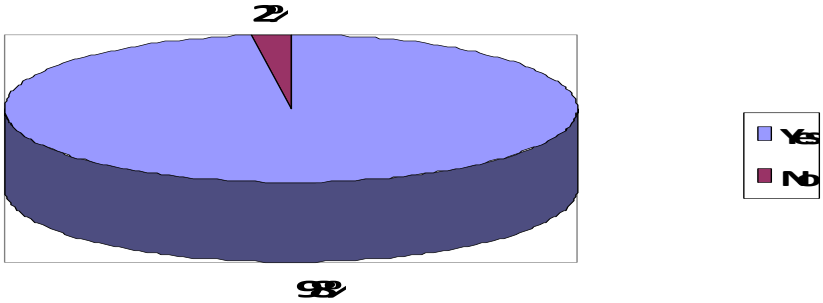
On the other hand, except of cases of complains related to the low quality or useless information or lack of serious reasons in the process of information and consultation and apart of employers neglecting the right for full information (confidentiality, etc.), there are reported difficulties in application.

Better results in application of the legislation can be ascertained in case of the good cooperation between trade unions and the organisations acting at superior level, respectively Federations and Confederations, but also in case of solidarity manifested between the trade unions acting in different companies of the same sector of activities.

FINDINGS (ROMANIA)

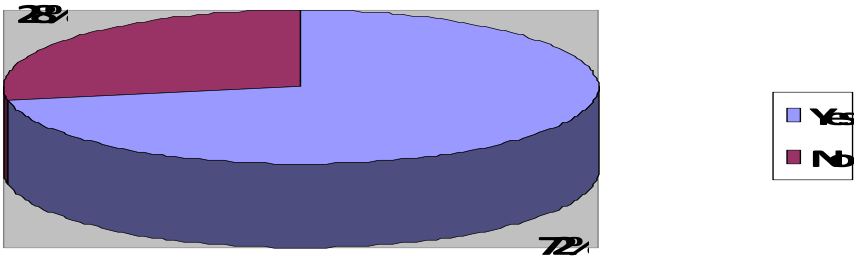
Question 1. Are you aware of the provisions of Directive 2002/14 and the respective transposition Law 467 concerning information and consultation between workers and employers?

The large majority of participants (98%) responded they are informed of the Directive 2004/14, but also about the national legislation provisions concerning information and consultation between workers and employers. There are no additional comments on this subject.



Question 2. Do you know other trade unionists that have applied Directive 2002/ and the respective transposition Law 467 in practice?

The considerably lower number of affirmative answers may be an indicator of a deficit of information between trade unions on this issue. It can also be the result of the difference between the information about existence of the norms and its transposition in practice.

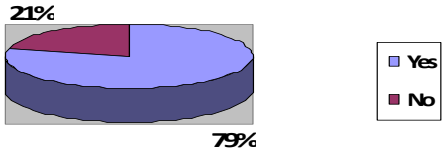


Question 3. EC Directive 2002/14 and the respective transposition Law 467 preview that information and consultation must cover:

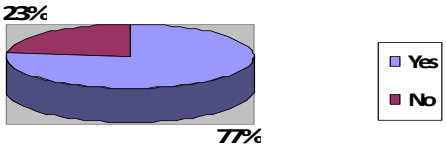
- The evolution of employment in the company
- Preventive measures in case employment is at risk e.g. redundancies
- Changes in work contracts.

Does your employer inform you in written **before** decision making concerning:

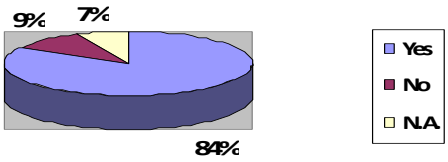
Redundancies YES ☐ NO ☐



Measures preventing redundancies YES ☐ NO ☐

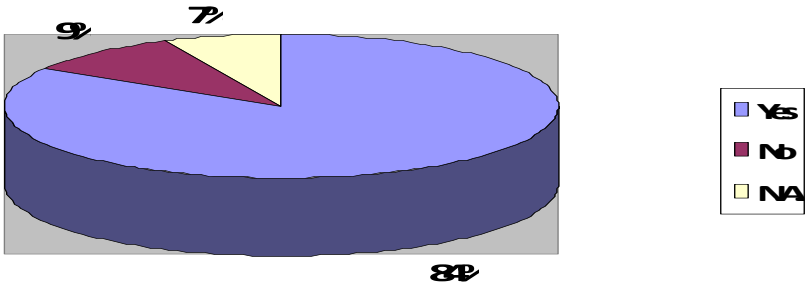


Changes of work contracts YES ☐ NO ☐

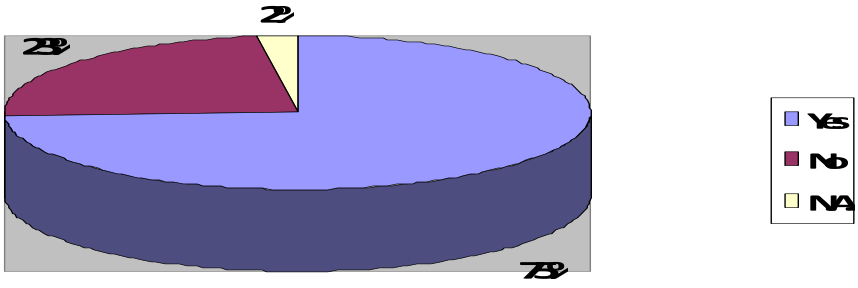


Considering the information provided by employers about redundancies, measures preventing redundancies and changes of work contracts as mandatory, according to EC Directive 2004/14, the percentage of positive answers for all three questions can be considered low rated and represents an important indicator of the transposition of norms into practice. Several comments invoke formality (lack of effectiveness) of the information process, and excessive appeal to the confidentiality of the individual labour contracts, avoiding the necessary information procedure.

Question 4. Does your employer inform you in written using analytical and documented texts about the above-referred changes in employment?

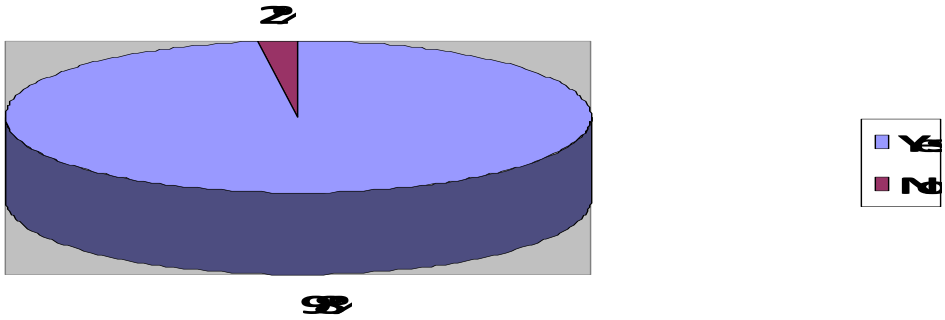


Question 5. In the case your employer provides you with that information, do you have time to examine data provided in order to form and express your opinion during consultation?



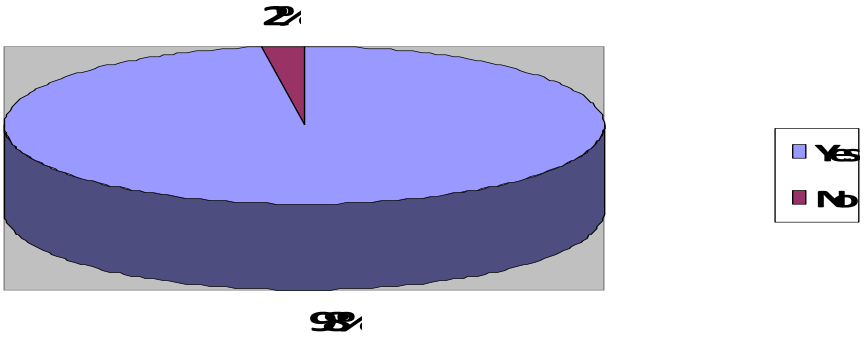
Both questions # 4 and # 5 are related to the quality and utility of information offered by employer about the previewed changes in employment. The percentages of positive answers are similar to those offered for question #3. The comments witch accompany the negative answers confirm the lack of effective and useful information in managing this kind of situations.

Question 6. Do you know that consultation, apart from exchange of views and establishment of dialogue between workers' representatives and the employer, previews that the employer has to give justified responses to the opinions that you expressed?



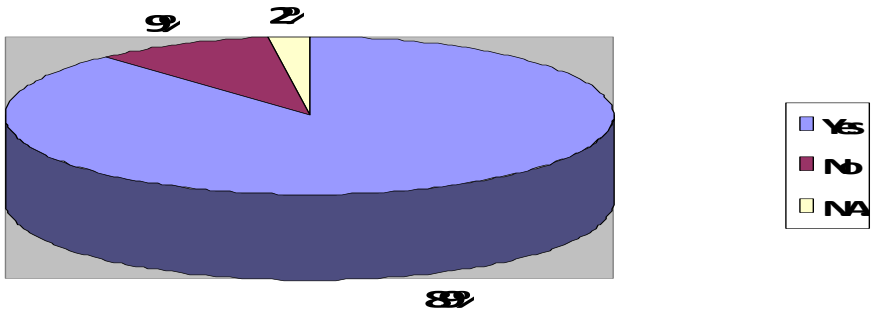
The high percentage of positive answers offered to this Question, combined with fewer comments on substantial aspects on this matter indicates the good knowledge the subjects trade unionists have about the substance of the information and consultation process.

Question 7. Do you know that you may proceed to juridical measures in case the employer refuses to provide information or does not apply information and consultation processes?



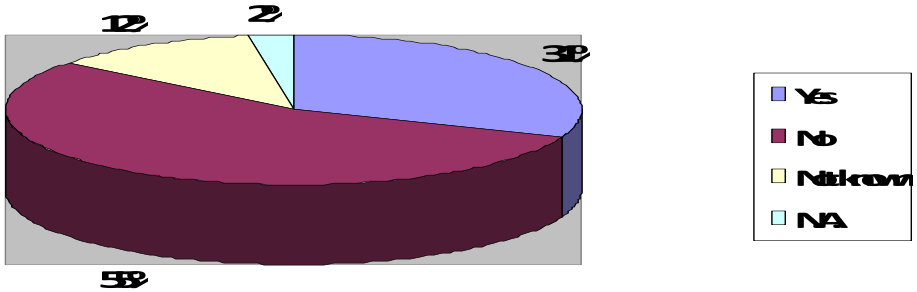
The same high percentage of positive answers, similar to previous question, reveals the same good knowledge on the subject. At the same time, the comments are more substantial on this matter, tackling following aspects: procedure difficulties, pressure from the part of the employer, risk for potential bankruptcy in case of a trial, etc.

Question 8. Do you know that EC Directive 2002/14 previews that when employers do not comply with it each Member State should preview sanctions that are **effective, dissuasive and proportionate to the seriousness of the offense?**



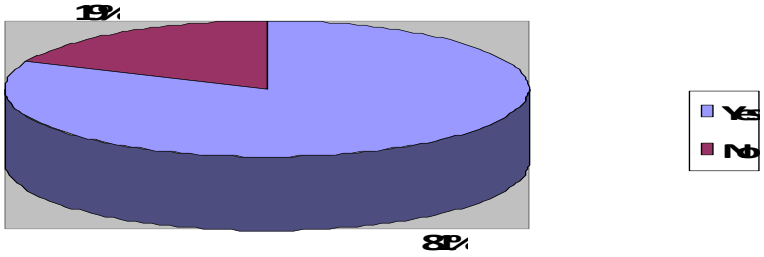
According to the percentage of positive answers to this question, the punitive aspect of the legislation on information and consultation at European level is relatively well known by the respondents. There are no consistent comments related to this question

Question 9. Does the transposition Law 467 in your country preview sufficient sanctions for the employers?



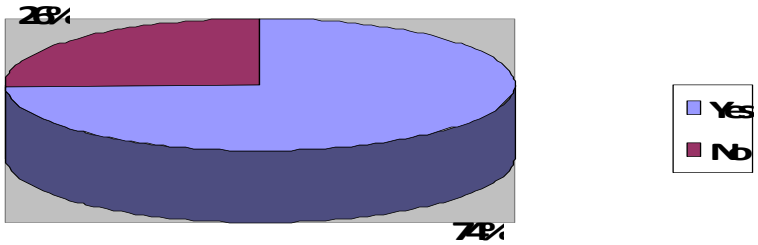
Only 31% of the respondents consider that the sanctions for the employers who do not respect the European and national legislation on information and consultation are sufficient. Some comments relate the existence of a great number of cases of infringement of the law to the insufficiency of penalties. Others consider the workers' rights as simple formalities and that the penalties are not in measure to discourage the negative attitude of the employers.

Question 10. Do you know that information and consultation in multinational companies is preview at European level through the European Works Councils and how this is applied in praxis?



An important percentage of the respondents (81%) offer a positive answer for this question. Analysing the negative answers and the comments on them, they come from respondents, who do not work in multinational companies.

Question 11. Do you know any other labour issues, for which the European Law or your national Law preview consultation between the employer and the workers' representatives? Can you note some of these issues?



Apart from the positive answers, the respondents indicate a large number of domains in labour relations where the legislation previews consultation between the employer and the workers' representatives. They mention labour conditions, Health and Safety Committees, collective redundancies, transfer of the enterprise, rate-setting, vocational training, new technologies, consultation on legislation and norms (at national level).

Question 12. Which are the positive and negative points of the current Law on information and consultation? In which points do you think this legislation has to be improved?

Considering that it is an open question, the variety of answers is normal. In order to improve the information and consultation at all levels, the respondents' proposals cover both changes in legislation and better implementation. They refer to:

- *Increase penalties in legislation and application*
- *Clear and simple procedures*
- *Implication of the control institutions-Labour Inspection- and cooperation with the trade unions for achieving more efficiency and effectiveness in case of infringement of the law of information and consultation*

Some respondents mention the fact that the employers invoke ill-founded, condition of confidentiality to avoid proper and effective information.

There are also some non-answers for this question.

Question 13. In case that in your company information and consultation process is applied, in which way do you inform workers/employees about it?

Most frequent answers to this question refer to the information spread in the frame of statutory institutions of the trade unions (ex.: General assembly). Other methods for disseminating information are mentioned:

- *Posting announcements*
- *E-mail and other IT means*
- *Mass-media*
- *Direct discussion with members*

Some non-answers are recorded for this question as well.

Question 14. In case that in your company information and consultation process is applied, do you judge positively or negatively the result of its application as far as the defense of the workers'/employees' interests is concerned?

The answers to this question refer to positive results of the information and consultation process. Details on positive results on defending the workers' rights are emphasized. Some comments refer to the necessity of improvement of legislation and procedures.
In case of negative answers, lack of effects and lateness of the process are invoked.

CONCLUSIONS AND RECOMMENDATIONS (ROMANIA)

Analysis of the results of the survey in Romania can lead to the following conclusions:

Level of awareness

As first remark, the results of the survey must take into account that most respondents are trade union leaders, but also activists at Federation or regional level. One has thus reasons to resume that their level of awareness about Directive 2002/14 and its transposition at national level through Law 467/2006 is above the level of awareness of the average trade unionist. The survey was oriented from the beginning to this target group, considering that trade union activists are the persons who represent the interests of employees and are also responsible for the result of information and consultation process. Starting from this point, the following must be highlighted:

- Almost unanimously (98% of respondents) have answered that they are aware about the existence of both the Directive 2002/14 and internal legislation transposing this Directive into national legislation, namely Law 467/2006.
- Similar level of awareness results is also recorded on the issue of the consultation procedure. Same percentage of respondents (98%) stated that they are aware that employers must provide justified answers to the comments, observations and position of the trade unions during the consultation procedures, but also when they answered the question related to the possibility to appeal to Courts in case of infringement of law and procedures.
- A lower level of awareness (89% positive answers) can be observed when it is related to the obligation of the member states to preview adequate and efficient sanctions in the national legislation, in case of law violation.
  A relatively important part of respondents (74%) are informed about other domains of industrial relations being the subject of the information and consultation procedures. In the additional comments they have enumerated subjects as labour conditions, Health and Safety Committees, collective redundancies, transfer of the enterprise, rate-setting, vocational training, new technologies, consultation on legislation and norms (at national level)

As a conclusion after analysing the answers to the above mentioned questions, the respondents can obviously be considered rather well informed regarding the Directive 2002/14 and its transposition in Romanian national legislation, namely Law 467/2006. On the other hand, concerning the Directive 94/95 and the Directive 2009/38, as well as the transposition of these Directives in Romanian legislation, namely Law 217/2005, the lower level of awareness (81% positive answers) is explained through the application of these norms only in case of European-scale enterprises.

Final conclusion for this part is that analysis reveals a satisfactory level of awareness on the European and national legislation concerning information and consultation procedures.

Current practice regarding information and consultation in the respondents' company

Analysing the answers to the questions referring to the application of the legislation and norms, the discrepancy between the high level of awareness and the perception on its application must be taken into account, as following:

- Only 72 % of the respondents are aware of concrete cases of application of the Directive and national legislation on information and consultation. This percentage can be interpreted also as a deficit of communication between trade unions in different companies and sectors of activities.

Lower level of positive answers is also recorded when it comes to the subject of quality of information. The percentage of positive answers and the comments reveal too that:

- There is high level of negative answers on the subject of written information, before the decision-making on important matters like redundancies, measures preventing redundancies and changes in work contracts.
- There is negative perception also regarding the timing of the provided information. The respondents complain they don't have the necessary time to analyse the information, evaluate the consequences and prepare an adequate package of answers and proposals.

Among the negative aspects related to the national legislation, especially on Law 467/2006, the most important aspects revealed by the respondents are:

- Sanctions previewed are not effective and efficient. They are not dissuasive enough considering the importance and dimension of injuries.
- The respondents claim for more and efficient involvement of the authorities, specifically the Labour Inspection, in case of infringement of the law on the subject of information and consultation procedures.

With regard to spreading the information to workers, the trade union representative use equally classic procedures and new forms: e.g. discussion in the framework of statutory organs of the trade unions, posting announcements, e-mail and other IT mean, mass-media, direct discussion with members.

The general perception of respondents about the Directive and also about national legislation is rather positive, considering both legislation and procedures. It is appreciated as a good legal framework for improvement of the relations between the employers and workers through social dialogue.

Recommendations

The participants at the survey consider, almost unanimously, the need for improvement, both in legislation as well as in application of information and consultation procedures. Considering the answers to the questions as well as the supplementary comments, suggestions may be directed to several topics:

1. As far as legislation is concerned:
    - Terminology used concerning the information and consultation procedures and partners must be clarified.
    - Starting from the previews of the Directive, which state the obligation of the employers to provide information "*at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representative to conduct an adequate study and, where necessary, prepare for consultation"* and considering the comments of the respondents about the lack of consistency and timing of information, it may be recommended these aspects to be reviewed and edified in the national legislation.
    - Administrative sanctions, at least as preview by the Romanian law, are not effective, dissuasive and proportionate. The text put in the draft Directive showing the will of the Commission: "*In case of serious breach by the employer of the information and consultation obligations, where such decisions would have direct and immediate consequences in terms of substantial change or termination of the employment contracts or employment relations, these decisions shall have no legal effect on the employment contracts or employment relationships of the employees affected. The non production of legal effects will continue until such time as the employer has fulfilled his obligations or, if this is no longer possible, adequate redress has been established*" would be much more effective.
    - Directive on information and consultation, as well as the transposition in the national legislation should be more elaborated clarifying the aspects related to confidential information, the provision of subsidiary requirements and the creation of the necessary background, including allocating financial and material resources in order that workers' representatives are able and have the expertise to analyse information and to conduct properly the whole consultation process.
    - The necessary subsequent legislation must be amended in order to create a better framework allowing the entitled institutions (ex. Labour Inspection) to intervene and correct eventual infringement of the law.
2. As far as information of the trade unions is concerned:

- More co-funded information and training projects would be beneficial, as there is a great gap of information as far as the right to information and consultation is concerned.

- Trade union organisations, at all levels, should continue to act in order to spread information on and explain what Directive 2002/14 and Law 467 preview.

- Information on cases where the Directive 2002/14 has been applied, or cases that have been successful to Courts should also be diffused.

3. As far implementation of the Law is concerned:
    - Cooperation and exchange of information among the trade union organisations, at all levels including in an internationalised manner, in order to support information and consultation process.
    - In many cases, all the more in periods of economic crisis, trade unions are willing to find a common solution to resolve actual difficulties faced by companies. Competent public authorities, namely the Labor Inspectors as well as the members of the Mediation and Arbitration Body should be instructed to facilitate this.

    - Transnational exchanges of experiences are very crucial to form ideas of ways to tackle common problems.

BACKGROUND INFORMATION (ITALY)

This national report examines information and consultation (I&C) of employees and the implementation of three European Directives (2002/14/EC, 98/59/EC and 2001/23/EC) in Italy.

Italian industrial relations are based on the principle of autonomy. According to article 39 par. 1 of the Italian Constitution, trade unions have the right (and not simply the freedom) to freely organise themselves and their activity, and neither the State nor any private subject can act in breach of this right.

The Italian system of industrial relations was strengthened by Act n. 300 of 20 May 1970, better known as the Workers' Statute (*Statuto dei lavoratori* – hereafter WS) which, after more than twenty years, implemented the constitutional principles concerning trade unions' rights and freedoms, and the dignity of the employees as personalities at the workplace level. It has been argued that the constitutional rights of the workers penetrated effectively Italian enterprises only following the adoption of this Statute.

Below is described the system of employee delegate body in Italy. According to Article 19 of the WS, implemented after the referendum of 11th June 1995, only the representatives of trade unions, which have signed a collective agreement applicable to the specific establishment are allowed to establish an RSA, i.e. a trade union representative body at workplace level.

In addition to that, however, the tripartite agreement of 20 December 1993 between the trade union Confederations (CGIL, CISL and UIL), the employer's associations and the government introduced a new form of trade union representation at the workplace: namely the presence of only one representative body, the Unitary Workplace Representation body (RSU), which is linked to the national trade unions.

Two thirds of the RSU members are directly elected by workers, and one third of the RSU members are designated by the trade unions, which participated in the elections, with a list of candidates. Thus, the Italian system provides for a single channel of representation at the workplace but with some aspects of the dual-channel model as a result of two thirds of the representatives being drawn from trade union lists.

Thus trade unions form an RSU but do not establish an RSA at the workplace. That means that there is only one trade union representation within the workplace instead of several RSAs (one for each trade union organisation present in the establishment). The RSU members enjoy the same rights and protection as the RSA members (Title III of the WS) and the RSUs can sign collective agreements applicable to the establishment as well as benefit from the information and consultation rights provided by national collective bargaining and by the law.

Further rules on I&C of employees in the enterprise can be found in Law n. 223 of 23 July 1993 (amended by Legislative Decree n. 110 of 2004) transposing the EU Directive on Collective Dismissals and art. 47 of the Law n. 428 of 29 December

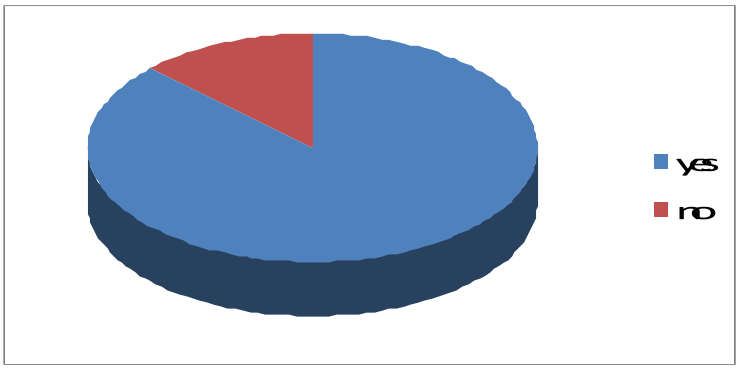
1990 on transfers of undertakings (which is regulated by article 2112 Civil Code and was amended by the Legislative Decree n. 18 of 2001 and Legislative Decree n. 276 of 2003). Other significant legislation on I&C of employees in the enterprise includes the Legislative Decree n. 74 (2 April 2002) transposing EU Directive 94/45/EC for the institution of a European Works Council (EWC) and the Legislative Decree n. 188 (19 August 2005) transposing Directive 2001/86/EC that gives the employees the right to be involved in issues and decisions affecting the life of *Societas Europaea*.

Information & consultation rights have been promoted by collective bargaining in 1970s and even more in 1980s and 1990s. Information and consultation rights are regulated by various collective agreements in the private and public sector. The participatory aspect of the Italian industrial relations system is driven by collective bargaining among the social partners – of all types and levels– and it is very rare that the State issues legislation on these matters. In fact, in Italy the degree of State intervention in industrial relations and the affairs of trade unions has always been one of the lowest encountered in industrialised countries.

FINDINGS (ITALY)

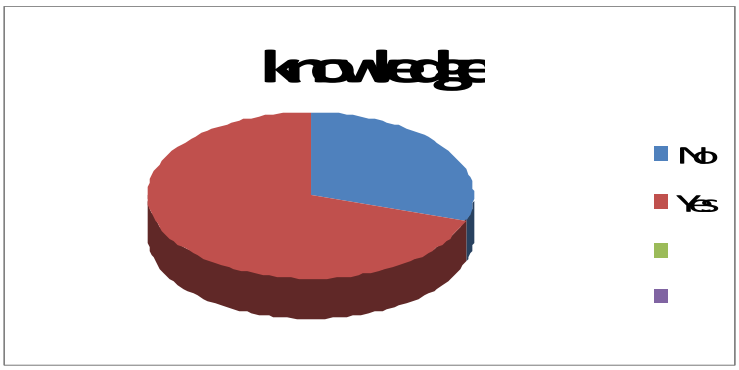
Question 1. Are you aware of the provisions of Directive 2002/14 and the respective transposition Law (Decreto legislativo N. 25) concerning information and consultation between workers and employers?

The majority of responders (90%) answered that they are aware of both the Directive and Legislative Decree 25/2007.



Question 2. Do you know other trade unionists that have applied Directive 2002/ and the respective transposition Law (Decreto legislativo N. 25) in practice?

The negative answers are less (30%) than the positive ones. It may be interpreted as a consequence of the role of the collective agreements in this matter. In fact, collective agreements contain provisions on information and consultation rights. So, information and consultation are implemented in practice by trade unionists.



Question 3. EC Directive 2002/14 and the respective transposition Law (Decreto legislativo N. 25) preview that information and consultation must cover:

- The evolution of employment in the company
- Preventive measures in case employment is at risk e.g. redundancies

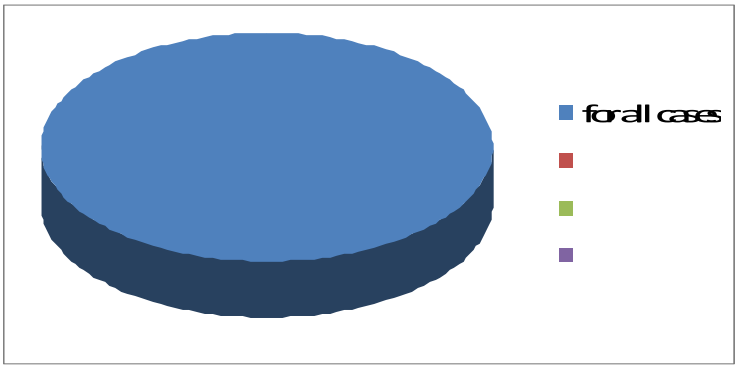
- Changes in work contracts.

Does your employer inform you in written **before** decision making concerning:

Redundancies	YES ☐	NO ☐
Measures preventing redundancies	YES ☐	NO ☐
Changes of work contracts	YES ☐	NO ☐

This question corresponds to three separate instances, for which the obligation of the employer to provide information and engage in consultation is preview by the Directive.

In the following chart, we see that all respondents have answered positively for the occurrence of information in all three instances. Some trade unionists have underlined how the involvement of the employer took place and that it is appropriate in case of redundancies. On the contrary, it seems to be less important for them when it deals with measures preventing redundancies and changes of work contracts.

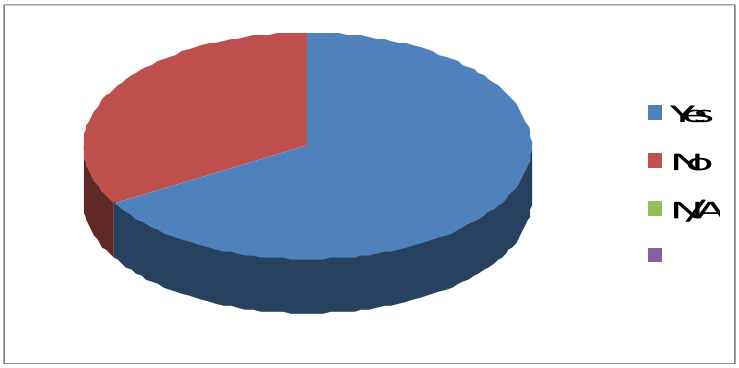


Question 4. Does your employer inform you in written using analytical and documented texts about the above-referred changes in employment?

Positive answers are inferior (only 55%) to those received in Question 3.

Comments of respondents included:

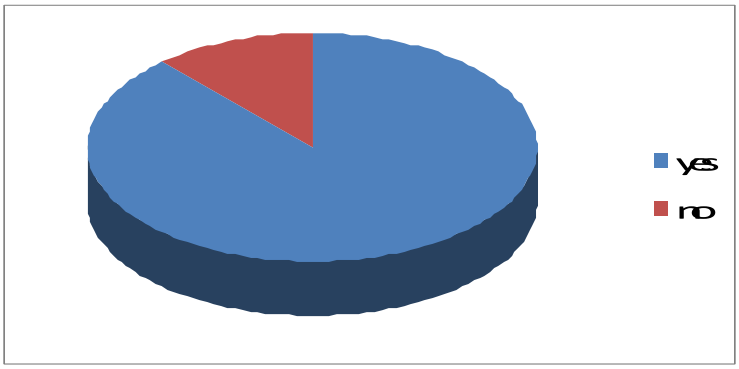
- *Information given in some cases is not analytical. In some cases the texts containing information are not comprehensible.*
- *In some cases the written and analytical information refers only to redundancies.*



Question 5. In the case your employer provides you with that information, do you have time to examine data provided in order to form and express your opinion during consultation?

Only 10% of trade unionists replying to this question have answered negatively. The majority of the respondents have answered positively.

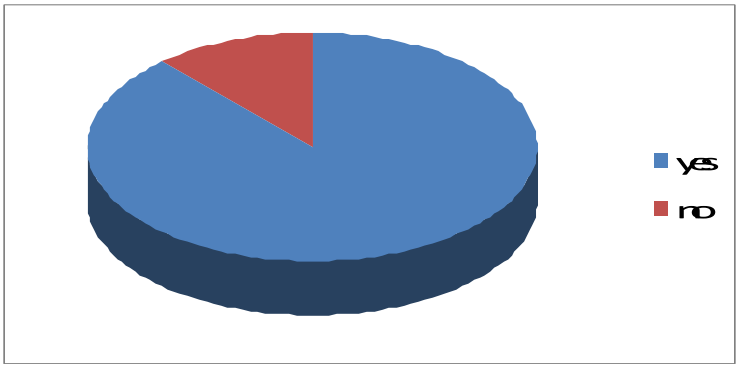
Those that have answered negatively, said that they have not sufficient time to prepare their opinion based on information received.



Question 6. Do you know that consultation, apart from exchange of views and establishment of dialogue between workers' representatives and the employer, previews that the employer has to give justified responses to the opinions that you expressed?

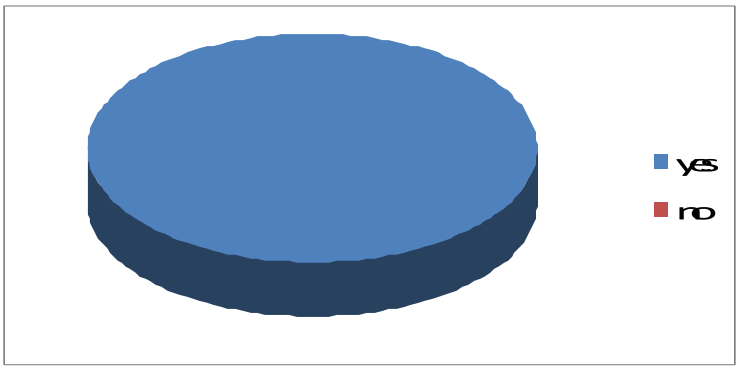
To this question a very high percentage of respondents (90%) replied yes.

- *Trade unionists underlined that the justified answers are an application of the bona fide (good faith) principle.*



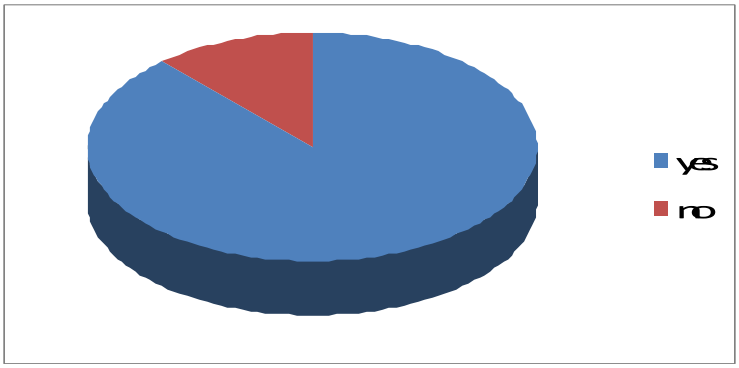
Question 7. Do you know that you may proceed to juridical measures in case the employer refuses to provide information or does not apply information and consultation processes?

All the respondents replied that they know it is their right to proceed to juridical measures in case the employer infringes their rights to information and consultation.



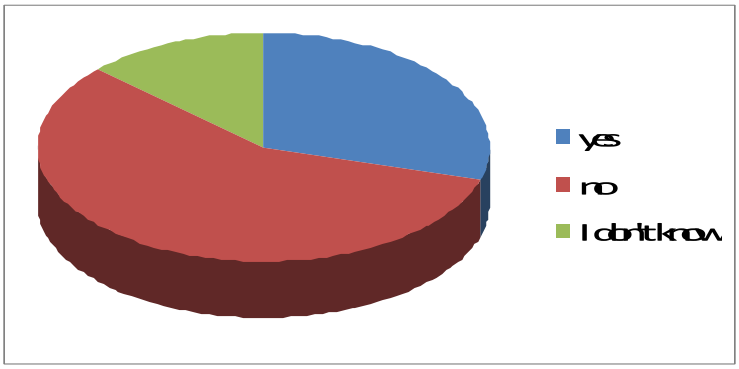
Question 8. Do you know that EC Directive 2002/14 previews that when employers do not comply with it each Member State should preview sanctions that are **effective, dissuasive and proportionate to the seriousness of the offense?**

The 90% of trade unionists answered yes.



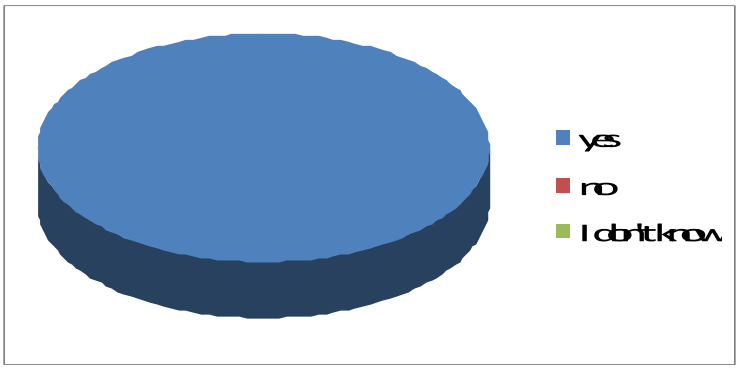
Question 9. Does the transposition Law in your country (Decreto legislativo N. 25) preview sufficient sanctions for the employers?

The majority of respondents admit their ignorance on the subject of sanctions.



Question 10. Do you know that information and consultation in multinational companies is preview at European level through the European Works Councils and how this is applied in praxis?

The level of knowledge about the Directives concerning the EWCs is elevated (100%), but no one has responded how information and consultation process applies in multinational companies.

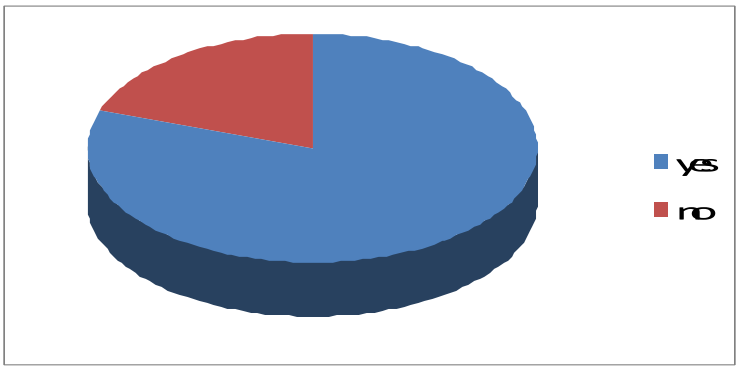


Question 11. Do you know any other labour issues, for which the European Law or your national Law preview consultation between the employer and the workers' representatives? Can you note some of these issues?

There is an equal distribution between those, who say that they know other labour issues, for which is preview consultation of employer and workers' representatives and those, who say they don't.

Specifically, issues that trade unionists made reference to are:

- *Health and safety*
- *Collective agreements*
- *Work organization*
- *Training*
- *Restructuring*
- *Transfer of enterprise*
- *Collective dismissals*



Question 12. Which are the positive and negative points of the current Law on information and consultation? In which points do you think this legislation has to be improved?

This question is an open one. Answers received vary a lot:

- *Contents of information have to be improved*
- *Contents and arrangements of information and consultation should be better specified*
- *The opinion of workers' representatives should be binding.*

- *A stronger legislation must be provided concerning the duty of employers to provide correct and full information in case of transfer of undertaking, delocalization and in any case of changing of headquarters.*
- *Sanctions for employers should be more austere*
- *Information should be improved*
- *More protection for the workers representatives*
- *Employers should provide sufficient information on issues preview by Legislative Decree 25/2007*

Question 13. In case that in your company information and consultation process is applied, in which way do you inform workers/employees about it?

Most frequent answer is that information is passed to workers/employees through General Assemblies. Other answers include:

- *Through posting announcements*
- *Through e-mails*
- *In written*
- *By phone*

Combination of various ways is also mentioned.

Some respondents underline that are not rules on the arrangements.

Question 14. In case that in your company information and consultation process is applied, do you judge positively or negatively the result of its application as far as the defense of the workers'/employees' interests is concerned?

All respondents judge positively the result of the application. But they underline the non collaboration of the employer and the easy use of the confidential clause by some employers.

CONCLUSIONS AND RECOMMENDATIONS (ITALY)

The information and consultation Directive is transferred in Italy through the Legislative Decree n. 25 of 2007 on implementation of Directive 2002/14/EC.

Information and consultation rights aim at increasing the trust and partnership between employees and management and at improving the quality of management decisions. In particular information and consultation is relevant to ensure involvement of employees, where their interests regarding employment and working conditions are affected, in particular where there are changes at work, changes in order to increase the adaptability of employees (e.g. through retraining and personal development of employees, shared jobs or shorter working hours) and changes in order to increase the employability of employees (e.g. through accompanied employee mobility).

Interviewees are trade unions representatives. They agreed on the idea that the transposed information and consultation Directive is very relevant to guarantee employees' fundamental right to information and consultation.

Furthermore, respondents sustain that legal provisions in Italian system of industrial relations on the rights of information and consultation are effective in practice. This is demonstrated by the fact that the social partners (employers' associations and trade unions) carry out information and consultation procedures.

In terms of the effectiveness of the sanctions related to violation of the obligations of employers concerning information and consultation, the Italian Law provides for sanctions that can be assessed as deterrent.

According to interviewed trade union representatives, information and consultation offers substantial benefits linked to an increased trust and partnership between management and employees, to higher level of adaptability of employees (e.g. through retraining and development) and to an improvement of employability of employees (e.g. through accompanied employee mobility). In practice, this has to be applied frequently in many instances. As mentioned above, issues that trade unionists made reference to are:

- Health and safety
- Collective agreements
- Work organisation
- Training
- Restructuring
- Transfer of enterprise
- Collective dismissals.

In the last case the agreement between employer and trade union organisation is able to avoid the negative social impact of redundancies. For example, the possibility of early retirement of older workers may be an appropriate solution to ensure the continuation of employment of younger workers, still providing income to older workers laid-off. It is to be underlined that this practice hasn't been dealt with by the Courts having regard to the EC Directive 2000/78 of 27 November 2000 establishing

a general framework for equal treatment in employment and occupation. In particular, it should be analysed as far as discrimination based on the ground of age is concerned.

Recommendations

Trade unionists interviewed specify that a widespread diffusion of knowledge about rights of information and consultation is important. There are still uncertainties in the trade unionists and there are no codified examples of shared best practices between them on cases information and consultation has been used for making general economic, employment and work structure decisions.

Furthermore, the contents of the information have to be improved. The contents and the arrangements of information and consultation should be better specified.

Some trade unionists say that there must be provided a stronger legislation on the duty of employers to provide correct and full information in case of transfer of undertaking, delocalisation and in any case of changing of headquarters.

Some of the trade unionists suggest more dissuasive sanctions than those, which are normally applied to employers infringing the Directive 2002/14. From another point of view, they suggest more protection for the workers' representatives, but without specifying in what sense the protection must be improved.

From juridical point of view, in Italy may be necessary to issue a joint text on information and consultation and in general a text on involvement of employees in the life of enterprise.

Therefore, it is necessary to underline that there is not any case law on Legislative Decree 25 of 2007. Six years since the emanation of the law, the Courts do not analyse the text. The case law on information and consultation is often based on the information and consultation rights specified by the law on collective dismissals (l. n. 223/1991) and the law on transfer of undertaking (art. 2112 c.c. and following modifications, art. 47 of l. 428/90 and leg. Decree n. 18/2001).

Finally, trade union federations must be trained on the Directive 2002/14 and its national Italian implementation. Following the answers of trade unionists, the role of training is very important.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Every country participating in the present survey (Greece, Romania and Italy) has its own system of workers' representation, historical background of industrial relations, legislative framework and culture of consultation in the workplace. Greece has a unique Workers' Confederation, instead Romania and Italy, for their own historical reasons each, have more than one Confederations. This produces a problem of which trade union(s) represent(s) workers at the work place in each specific case. In Romania the problem is resolved through the requirement for "representative trade unions" at all levels. In Italy there is a duel system of workers' representation through RSAs and RSU. In none of the participating countries works councils (with the exceptions of Health and Safety Committees and European Works Councils) seem to pay an important role.

The fact that the culture of consultation between employers and workers' representatives and that of social dialogue in the three participating country differ a lot, is reflected on the very different ways Directive 2002/14 has been transposed in Greece, Romania and Italy. In Greece it has been transposed with the initiative of the Government through a Presidential Decree, whereas social partners have not expressed any opinion (employers) or have expressed opposite opinion on the procedure (workers). In Romania it has been transposed following consultation between social partners as a part of the harmonisation of Romanian legislation with the EU one, just before the accession of the country in the EU. In Italy it is the fruit of consultation between employers' associations and trade union Confederations, imposing as a general law what already existed in many Collective Work Contracts and was valid for their signatories.

This difference in culture and procedure is reflected as well on the level of trade unionists' awareness about the Directive 2002/14 noted in the three countries. However, there are some common trends observed in the results of field research in all three countries, namely:

- There is a deficit of information of trade unionists on good cases of information and consultation at company level.
- The same deficit of information is observed as far as infringement of the information and consultation Law is concerned.
- Sanctions, preview by national transposition Laws, have proved to be not effective, dissuasive and proportionate as preview by the Directive 2002/14 and this is suspect to encourage employers to breach the law.
- Labour inspectorate and courts may play a more active role. In the case of Italy for example, there are no court decisions related to Directive 2002/14.
- Trade unionists in all three countries complain about the poor quality of information provided by the employer and about the fact that it is provided after important decisions are made or that they have not time enough to formulate a grounded opinion to present in the consultation.
- Confidentiality clause is another subject arising from all three countries. It has to be better defined by the Law (EU and national ones) because there is a

tendency of employers to over-exploit it and to override their obligations for information and consultation.

As a conclusion, trade unionists in all three countries think Directive on information and consultation is very important, all the more in cases of economic crisis, where difficulties faced are multiple. However, there are some suggestions or recommendations hat would improve the present situation and these could be:

- Better information of trade unionists on the provisions of Directive 2002/14 by trade union Federations and Confederations.
- Organisation of training courses, exchange of experience workshops and repository of positive and negative case studies, to which trade unions may recur if needed.
- A data base with Court decisions on infringement of Directive 2001/14.
- Sanctions to those that infringe the Directive 2002/14 have to be preview in an amended Directive in order to be really effective, dissuasive and proportionate and not let to national transposition Laws, as they are today, which proved to be ineffective.
- Labour inspectorate has to be instructed by the Ministry of Labour in each country to play a more active role.
- Trade unionists in all three countries complain about the poor quality of information provided by the employer and about the fact that it is provided after important decisions are made or that they have not time enough to formulate a grounded opinion for participating in the consultation. An updated definition of information and consultation as well as provisions about timing and arrangements permitting it to be substantial have to be included in an amended Directive (in the model of the Directives for the European Works Councils).
- Confidentiality clause has to be better defined by the Law (EU and national ones) not leaving a window for abusing it.

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