

The impact of the information and consultation directive on industrial relations – Malta

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The information and consultation Directive was transposed into Maltese law in January 2006. Under the implementing legislation, information and consultation rights are exercised by recognised trade unions or, where these are not present, by specially elected or appointed employee representatives. The main social partners reacted positively to the adoption and implementation of the Directive. From anecdotal evidence it seems that the Directive's implementation has so far not resulted in major changes.

Question 1: National implementation of the Directive

Has the information and consultation Directive been implemented in your country? If so, did this require:

(i) extensive reform or major new legislation? (ii) an extension or relatively minor adaptation of pre-existing provisions (e.g. on national works councils or similar bodies)?

or

(iii) no new measures?

The Directive was implemented into Maltese law by means of Legal Notice (LN) 10 of 2006 entitled the Employee (Information and Consultation) Regulations (EIC) (2006). It was brought into force on 13 January 2006. These Regulations are being implemented gradually, coming into force as follows:

- for undertakings employing 150 employees and over, on the date of publication (January 2006);
- for undertakings employing between 100 and 149 employees, on 23 March 2007; and
- for undertakings employing 50 employees and over, on 23 March 2008.

These Regulations are mandatory on all relevant undertakings and do not require employees to take specific steps to trigger the introduction of information and consultation procedures.

The Regulations require employers to make the necessary practical arrangements to allow employees have access to information and consultation. These arrangements should be set on the basis of an agreement between the two parties, applying to all employees, stating clearly what these arrangements include. The Regulations stipulate that the employer must provide:

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

The information should be given in time to allow the representatives to prepare for consultation. The employer is only required to consult with employees on matters referring to the situation, structure and development of employment and on decisions likely to lead to substantial changes.

Employers should ensure that information and consultation of employees is carried out via the representatives of the trade union or unions in establishments where there is one or more recognised union covering all employees. In cases where not all employees are represented by trade unions, information and consultation should be carried out via the union/s representatives together with an elected or appointed representative of the employees who are not represented by the union/s. In establishments with no recognised unions, information and consultation should be carried out with representatives of the employees elected by means of a secret ballot, or appointed. Employers should ensure that such ballots are fair and all employees should be allowed to vote. The employee representative's term lasts for three years from the date of election. Employees are to be informed in writing about their representatives. The employer must consult the representatives within two months from the election date, and meetings must be held every six months.

The Regulations offer protection to these employee representatives and highlights that they must not be unfairly treated by the employer due to their role in relation to the EIC Regulations (2006).

The Regulations permit any written agreement about information and consultation within workplaces in force on 23 March 2005 to remain in force if, while respecting the minimum requirements set out in the Regulations, is more favourable to employees, provided that: the agreement applies to the whole workforce; the agreement clearly sets out how the employer is to give information to the employees or their representatives and to seek their views on such information; and the agreement has been applied effectively. Besides, the Regulations permit employers and employees to negotiate agreements on the practical arrangements for informing and consulting employees as long as these respect the minimum requirements set out in the Regulations.

Question 2: Infringement proceedings

If yours is one of the countries against which the European Commission instituted infringement proceedings for non-compliance with the Directive (see above), on what grounds was this done? What accounts for the government's inaction or delay? How has the government reacted to the infringement proceedings? And has the matter now been resolved?

Malta is not one of the countries against which the European Commission

instituted infringement proceedings for non-compliance with the Directive.

Question 3: Views of the social partners

(a) How did national employers' groups and trade unions react to the Directive when it was adopted and what were their views on how it should be implemented in your country? If there was debate and controversy, on which aspects of the Directive did it focus? How and to what extent were the social partners involved in the implementation process and to what extent did they influence your government's response to the Directive?

The main two general unions, namely the General Workers' Union (GWU) and the Union of United Workers (Union Haddiema Maghqudin, UHM) reacted positively when the Directive was adopted in January 2006.

According to the General Secretary of the UHM, the Directive was a positive measure, for example because it facilitates research by union representatives since information is more available and accessible. He commended the Directive as it gives employees more rights to get information about their employment and the future of their employing organisations. When employees have access to such information and are consulted on matters regarding their employment and any substantial changes in their place of work, they feel more involved in their organisation, have a clearer view of what is going on and also feel more responsible for their jobs. According to the UHM official, the right to information and consultation equips employees with necessary and essential knowledge. The Directive's rights may also diminish rumours and other potentially misleading information from being channelled through the grapevine, as employees can access the correct information directly.

One of the Deputy Secretary Generals of the GWU stated that the union was very much in favour of what was discussed in the debate leading to the Regulations. The GWU also reacted positively when the Directive was adopted. However, according to the Deputy Secretary General, the union is concerned that even when the Regulations are fully implemented in March 2008, they will still not apply to undertakings with less than 50 employees.

In Malta, the process leading to employment-related legislation (in this case a 'legal notice') involves the Employment Relations Board (ERB). The ERB is a national consultative body set up by the government to provide recommendations on employment law. The Board is composed of an equal representation of employees and employers, together with members appointed by the government. Before legal notices are published, they are discussed within the ERB. Officials of both the GWU and the UHM reported that the unions were adequately involved in the discussions leading to the drafting of the EIC Regulations (2006). The GWU also organised other activities to discuss and inform its members about the Regulations. For example, it held a half day seminar about the topic and organised information meetings for its members. The Malta Employers' Association (MEA) also held a seminar to inform its members of the implications of the Regulations. Besides, it received several requests from its members to further discuss the existing set-up and the implementation of new structures.

The debates and discussions about the implementation of the Directive focused mostly on the issue of how it would be implemented in non-unionised

organisations, especially because works councils have never been part of the Maltese industrial relations system. The only domestic firm where there is a works council is Air Malta, a state owned company.

From interviews conducted with the officials of both general unions, it seems that where trade unions are strong at enterprise level and regular meetings are held with the organisations' management, not much importance is given to the implementation of the Directive. In such circumstances the shop stewards, who are the links between the trade unions and the management, can inform employees of the organisation's future intentions and pass on any relevant information. Consultation and information meetings with trade union officials have become standardised practice, as indicated by the administrative report (2003-2005) of the manufacturing and SMEs section of the GWU. According to both the GWU and the UHM, the enforcement of the new Regulations would be most effective in workplaces where employees are non-unionised. However, the unions might find these Regulations useful on issues of relocation and closures where their members are not always given sufficient information.

(b) What are the social partners' views on the measures finally adopted (if any) to implement the Directive in your country?

According to the UHM, the Directive's measures that were finally implemented are working fine, especially where there is trade union representation. Management is always helpful and ready to comply. The union stated that whenever it asks for information, even regarding the economic and financial situation of the organisation, such as balance and financial sheets, it does not meet any problems.

Question 4: Impact of the Directive on industrial relations practice

What impacts on industrial relations practice has the implementation of the Directive had in your country?

The EIC Regulations (2006) were enacted mainly to comply with the EU Directives, rather than because of a strong national interest. Most companies in Malta are small and medium enterprises, hence they do not reach the thresholds set by the Regulations. From anecdotal evidence, it seems that the Directive has not resulted in major changes.

According to the MEA employer organisation, the Directive has not prompted any significant institutional innovation, as most of the large companies already had a system in place to inform and consult with their employees. The few organisations that were not unionised were informed by the MEA about the necessary requirements to be in line with the Regulations. For example, Vodafone Malta was advised to have an information and consultation representative from each employee category. According to the MEA, employees in many companies, especially in the construction sector, were not interested in participating in the elections for representatives. The MEA encouraged employers to offer incentives to motivate their employees to participate. The MEA concluded that its members do not face significant problems in complying with the new law.

The Department of Labour has carried out inspections to check whether companies are complying with the new Regulations. To date, there have been no

significant legal cases or rulings arising from the Directive's national implementing measures.

Question 5: Interface with other national information and consultation provisions

Please comment on the relationship between national provisions implementing Directive 2002/14/EC (general framework) and those implementing Directives 98/59/EC (collective redundancies), 2001/23/EC (business transfers) and 94/45/EC (European Works Councils).

The national provisions implementing the four Directives all form part of the Employment and Industrial Relations Act (EIRA) (2002), the main legislation which regulates employment and industrial relations in Malta. EIRA is accompanied by a number of Regulations which bring into force specific provisions, including the EIC Regulations (2006), the Collective Redundancies (Protection of Employment) (CRPE) Regulations (2002), the Transfer of Business (Protection of Employment) (TBPE) Regulations (2002), and the European Works Council Regulations (EWC) (2004). These Regulations are complementary, carrying equal weight.

The EIC Regulations (2006) do not define the term 'employee representatives'. Thus, it is assumed that the same definition found in the EIRA (2002) applies. The latter defines 'employee representatives' as the recognized union representative, 'provided that, where there exists no recognised union, the term shall mean such representative of the union representing the employees, notwithstanding that in the case of non-unionised employees, the terms shall mean such representative duly elected from amongst the non-unionised employees, by means of a secret ballot called for such purpose by the Director [of Employment and Industrial Relations]'. In line with EIRA (2002) but more succinctly, the EWC (2004) defines 'employee representatives' as 'either the recognised union representative or, in case of non-unionised employees, the representative or representatives duly elected from amongst the employees'.

The EIRA (2002) does not elaborate on the meaning of the terms 'information and consultation'. The EIC Regulations (2006) define 'information' as the 'transmission by the employer to the employees' representatives of data in order to enable them to acquaint themselves with the subject matter and to examine it'. On the other hand, 'consultation' is defined as 'the exchange of views and establishment of dialogue between the employees' representatives and the employer'. The definitions in the EIC Regulations (2006) are taken verbatim from the EU Directive 2002/14/EC. While the EWC Regulations (2004) do not define the term 'information', they describe 'consultation' in a very similar way to the EIC Regulations (2006), namely as 'the exchange of views and establishment of dialogue between employees' representatives and central management or any more appropriate level of management'.

All the Regulations highlight the role of the Director of Industrial and Employment Relations in their implementation. Under the EWC and EIC Regulations, employees have the right to file complaints with the Director for alleged infractions relating to the election of representatives. If, after investigating the complaints, the Director deems that they are well-founded, it may direct the appropriate measures to address such situation. The Regulations specify that the Director's orders shall be final.

Unlike the other Regulations, the EIC Regulations (2006) also specify the role of the Industrial Tribunal to decide on matters relating to disputes between the employee representatives and the employer on issues relating to the disclosure of information.

The sanctions imposed for failure to comply with the EIC Regulations (2006) are very similar to those for failure to comply with the EWC Regulations (2004). In both Regulations there is a fine of between MTL 10 (EUR23) and MTL 50 (EUR 116) for the most common offences. In the EIC Regulations (2006), the foreseen offences consist of failure by the employer to set up a proper information and consultation procedure or omitting to do anything which the Regulations oblige it to do. When employers are found guilty of other unspecified offences, both Regulations provide for a fine of between MTL 500 (EUR 1,163) and MTL 5,000 (EUR 11, 63).

On the other hand, persons contravening the provisions of the CRPE and the TBPE Regulations (2002) are liable to a fine of between MTL 500 (EUR 1,163) and MTL 5,000 (EUR 11,63) for every employee that is affected. These two Regulations do not provide for lower fines as in the case of the EIC and EWC Regulations (2004).

Question 6: Commentary by the national centres

Prior to the transposition of Directive 2002/14/EC, there were no provisions in the Maltese legislation on general information and consultation at the workplace. In transposing this Directive, the Maltese legislators opted to keep within the strict limits and provisions embodied in the Directive. This reluctance to elaborate and expand tends to be in line with the spirit of 'voluntarism' characteristic of the Maltese industrial relations system, which is based on the British model centred on collective bargaining at enterprise level. The EIC Regulations (2006) leave it up to collective agreements to be negotiated between the employers and worker representatives to lay down the details of information and consultation arrangements.

Manwel Debono and Christine Farrugia, Centre for Labour Studies