LEGAL REGULATION OF DISCLOSURE OF INFORMATION TO EMPLOYEES OR PROSPECTIVE EMPLOYEES IN THE EUROPEAN UNION AND IN ITALY*

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I. INFORMATION AND CONSULTATION OF WORKERS IN THE EUROPEAN UNION

> Workers and their representatives must, at the appropriate levels, be guaranteed information and consultation in good time and under the conditions provided for by Community legislation and national laws and practices.[1]

The above statement consolidates in a solemn political declaration the legal rights of workers enumerated in several Community texts, especially Art. 137 of the EC Treaty, which have put the principles of information and consultation into practice. In particular, the European Union has developed general legislation on information and consultation of workers at transnational levels and specific legislation on the same content in cases of imminent collective redundancies, transfers of undertakings, and health and safety at work.

* An excellent academic, a professor devoted to his students and to his family, and a man who died because he firmly believed in his ideas: This was Italian Labor Law Professor Marco Biagi. He also believed in the European Union and in the necessity to change the Italian labor market in order to better adapt it to European labor standards. This article has been written immediately after his brutal assassination by some political terrorists. Anger and sadness have accompanied the author in the writing of this article, which provides the opportunity to show the important impact of European Union legislation on the Italian scenario. This is especially true in the field of Information and Consultation of Workers where Professor Biagi played a fundamental role, both at national and European levels.

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1. Article 15 of the Charter of Fundamental Rights of the European Union, 2000 O.J. (C-364) 1.

A. Directives Already Adopted

1. Council Directive 98/59/EC of July 20, 1998, on Collective Redundancies

a. Consultation with a View to Reaching an Agreement

Pursuant to Council Directive 98/59/EC of July 20, 1998,[2] any employer contemplating collective redundancies must hold consultations with the workers' representatives, with a view to reaching an agreement. These consultations must at least cover ways and means of avoiding redundancies or reducing the number of workers affected and mitigating the consequences, in particular, by recourse to accompanying social measures aimed at redeploying or retraining those workers made redundant (Art.2).

b. Content of Information

The employer is to provide workers' representatives with all relevant information and, in any event, is to provide the following information in writing:

- reasons that lead to redundancies;
- period during which redundancies are to be effected;
- number and category of workers normally employed;
- number to be made redundant;
- criteria used to select those workers to be made redundant; and,
- method used to calculate compensation (where applicable) (Art. 2).

The purpose of the information is to enable the workers' representatives to make constructive proposals.

c. Workers' Representatives

Workers' representatives are those provided for by laws or the practices of the Member States. Since the judgment of the Court of Justice of June 8, 1994,[3] it is no longer possible that there are no workers' representatives in the case where a Member State would not

2. Council Directive No. 98/59/EC, 1998 O.J. 225, 16. This Directive is a codified version of Directives 75/129/EEC and 92/56/EEC, which have been repealed.

3. Case C-382/92, Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland, 1994 E.C.R. I-2435.

have an overall system of worker's representation. In fact, according to the Court of Justice, employers face a statutory obligation to inform and consult with employees when they are planning collective redundancies, or if they transfer employees from one business to another. This means that even non-unionized companies—this was the case of the United Kingdom—will have to establish machinery for consultation, even if it does not already exist. In other words, the Court was not concerned by the fact that the Directive did not contain specific provisions requiring Member States to designate workers' representatives if there were none. In fact, the obligation to inform did not require there to be specific provisions on the designation of employees' representatives.[4]

d. Notification of Information

The employer notifies the competent public authority in writing of any projected collective redundancies. This notification must contain all the relevant information concerning the projected redundancies and consultations held except for the method used to calculate compensation. However, where the cessation of activity is the result of a court judgment, notification is only necessary at the express request of the authority. The employer forwards a copy of the notification to the workers' representatives, who may send comments to the competent public authority. Collective redundancies take effect, at the earliest, 30 days after the notification; the competent public authority uses this period to seek solutions. Member States may grant the public authority the power to reduce this period or to extend it to 60 days following notification in cases where the problems cannot be resolved. This is not compulsory for collective redundancies following a cessation of activity resulting from a court judgment. Wider powers of extension may be granted. The employer must be informed of any extension and the grounds for it before expiry of the initial period (Art. 3).

2. Council Directive 2001/23, on Transfer of Undertakings

Information and consultation are important issues also in the event of transfer of undertakings. Council Directive 2001/23/EC of

4. ROGER BLANPAIN, EUROPEAN LABOR LAW 400 (7th ed. 2001).

March 12, 2001,[5] provides that the transferor and transferee shall be required to inform the representatives of their respective employees, in good time, about:

- the date or proposed date of the transfer;
- reasons for the transfer;
- legal, economic, and social implications; and,
- measures envisaged in relation to the employees.

This information must be given for the employees transferred before their transfer is carried out and, in any event, for all employees before they are directly affected as regards their terms and conditions of employment (Art. 7, § 1). When the transferor and transferee envisage measures in relation to their employees, they must consult the representatives of their respective employees, in good time, with a view to seeking agreement (Art. 7, § 2).

Member States whose laws, regulations, or administrative acts provide for recourse to an arbitration board may limit the obligations concerning information and consultation to cases where the transfer gives rise to serious disadvantages for a considerable number of the employees. The information must be provided and consultations must take place, in good time, before any change in the business (Art. 7, § 3).

Where there is no employees' representative, the employees concerned must be informed in advance of the implications of the transfer. These obligations apply irrespective of whether the decision resulting in the transfer is taken by the employer or an undertaking controlling the employer. The argument that the undertaking in question did not provide the required information is not acceptable as an excuse for breaches of the information and consultation requirements (Art. 7, § 5). Where there are no representatives of the employees in an undertaking or business through no fault of their own, the employees concerned must be informed in advance of the date or proposed date of the transfer; the reason for the transfer; the legal, economic, and social implications of the transfer for the employees; and, any measures envisaged in relation to the employees.

5. Council Directive No. 2001/23/EC, 2001 O.J. (L82) 16-20, on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses, or parts of undertakings or businesses.

3. Council Directive 94/45/EC of September 22, 1994, on the Establishment of a European Works Council

Council Directive 94/45/EC of September 22, 1994, has regard to the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.[6]

a. Main Provisions and Definitions

For the purposes of the Directive, "Community-scale undertaking" means any undertaking with at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States; "group of undertakings" means a controlling undertaking and its controlled undertakings; and, "community-scale group of undertakings" means a group of undertakings with the following characteristics:

- at least 1,000 employees within the Member States;
- at least two group undertakings in different Member States; and,
- at least one group undertaking with at least 150 employees in one Member State and another group undertaking with at least 150 employees in another Member State.

"Controlling undertaking" means an undertaking that can exercise a dominant influence over another undertaking by virtue, for example, of ownership, financial participation, or the rules that govern it; "consultation" means the exchange of views and establishment of dialogue between employees' representatives and central management or any more appropriate level of management.

b. The Central Management Duties

The central management will be responsible for creating the conditions and means necessary for the setting up of a European Works Council or an information and consultation procedure, and will initiate negotiations on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings in at least two Member States.

6. Council Directive No. 94/45/EC, 1994 O.J. 254, 64, on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

c. The Special Negotiating Bodies

The special negotiating body, composed of a minimum of three and a maximum of 18 members, will have the task of determining, with the central management by written agreement, the scope, composition, competence, and term of office of the European Works Council(s) or the arrangements for implementing a procedure for the information and consultation of employees; and, may decide, by at least two-thirds of the votes, not to open negotiations or to terminate the negotiations already opened. Such a decision would stop the procedure to conclude the agreement.

Members of the special negotiating body and of the European Works Council, and any experts who assist them, will not be authorized to reveal any information that has expressly been provided to them in confidence. Community-scale undertakings and Community-scale groups of undertakings in which there is already an agreement covering the entire workforce, providing for the transnational information and consultation of employees, will not be subject to the obligations arising from the Directive. When these agreements expire, the parties involved may decide jointly to renew them. Where this is not the case, the provisions of the Directive will apply.

d. Subsidiary Requirements

Subsidiary requirements laid down by the legislation of the Member State in which the central management is situated will apply where:

- the central management and the special negotiating body so decide;
- the central management refuses to commence negotiations within six months of the initial request to convene the special negotiating body; or,
- after three years from the date of this request, they are unable to conclude an agreement to establish a European Works Council or an information and consultation procedure, and the special negotiating body has not taken the decision not to open negotiations or to terminate the negotiations.[7]

7. R. BLANPAIN & P. WINDEY, EUROPEAN WORKS COUNCIL: INFORMATION & CONSULTATION OF EMPLOYEES IN MULTINATIONAL ENTERPRISES IN EUROPE 23-27 (2nd ed. 1996).

These subsidiary requirements must satisfy the provisions set out in the Annex of the Directive, whereby:

- the competence of the European Works Council will be limited to information and consultation on matters that concern the Community-scale undertaking as a whole or at least two establishments or group undertakings situated in different Member States;
- the European Works Council is to have a minimum of three and a maximum of 30 members and, where its size so warrants, is to elect a select committee from among its members, comprising at most three members;
- four years after the European Works Council is established, it is to consider whether to open negotiations for the conclusion of the agreement on the arrangements for implementing the information and consultation of employees, or to continue to apply the subsidiary requirements adopted in accordance with the Annex;
- the European Works Council will have the right to meet with the central management once a year in order to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale groups of undertakings and its prospects;
- there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocation, closure, or collective redundancy, the select committee or, where no such committee exists, the European Works Council will have the right to be informed; and,
- the members of the European Works Council are to inform the employees' representatives of the content and outcome of the information and consultation procedure; the operating expenses of the European Works Council are to be borne by the central management; in compliance with this principle, the Member States may lay down budgetary rules regarding the operation of the European Works Council.

e. Review of European Works Councils Directive

Since the purpose of the Directive is essentially to improve workers rights to information and consultation with the aim of allowing workers' representatives the opportunity to contribute towards shaping a decision, this opportunity has been limited in a number of cases as EWCs are often still not consulted about decisions

and have, in some cases, been used to legitimize decisions already been taken. To correct this situation, the Directive should explicitly provide that workers shall be informed and consulted, in good time, during planning before a decision is taken.

It will be opportune to rework on the definitions of information and consultation to encompass a broader commitment. Information should be given at a time, and in a manner, which permits employee representatives to undertake an assessment in order to prepare a detailed response. Similarly, with regard to defining consultation, the necessity of consultation taking place, in good time, before decision-making takes place should be specified.

Another important issue relates to the workforce-size thresholds used to assess whether the Directive covers undertakings or groups. In the debate before the original adoption of the Directive, ETUC had proposed an EU-wide threshold of 500 employees, since smaller transnational companies have become more and more important in the European Single Market. Finally, it will be opportune that a number of key rights for worker representatives need to be specified under Article 10, including the right to training in languages, the right to be able to meet and communicate with one another, and the means and opportunity to meet local worker representatives to keep them up to date with the information and consultation of the EWC.

4. Council Directive 2001/86/EC of October 8, 2001, Supplementing the Statute for a European Company with Regard to the Involvement of Employees

a. The Legal Framework and Purposes

After three decades of negotiations, the European Union adopted the European Company Statute ("*Societas Europaea*" or abbreviated "SE") on October 8, 2001. The legislation will enter into force with a delay of 3 years in late 2004.

The foundations for a final agreement on the SE were laid by the *Davignon Report*,[8] which suggested a solution to the worker participation issue.[9] This was followed by agreement on most of the

8. Davignon Report, *available at* http://europa.eu.int/comm/employment_social/soc-dial/social/index_en.htm.

9. The report suggested that the social partners concerned should first try to agree on the system of worker involvement for each European Company, but if they do not manage to reach an agreement, a set of reference rules should apply. Given the variety of national systems, the different combinations of national systems that might exist in a particular SE and the range of specific characteristics that any SE might have, the best systems of workers involvement, was in the group view, the one that is negotiated in an *ad hoc* basis for that SE. Negotiation between

other outstanding issues by the end of 1998. Finally, following two more years of negotiation, the Heads of Government managed at the December 2000 Nice Summit to reach a compromise on the worker participation issue, which satisfied Spain (the only remaining objector).[10]

The Statute consists of Regulation No. 2157/2001, governing the company law aspects of the SE[11] and Directive 2001/86, on workers involvement.[12] While the former will be directly applicable at national level, the latter will have to be transposed into national law by the Member States of the EU. The Statute will give companies operating in more than one Member State the option of being established as a single company under EU law. These will thus be able to operate across the European Union with one set of rules and a unified management and reporting system.

The legislation, nevertheless, does not provide for a comprehensive supranational legal framework. Areas of law, such as taxation and insolvency, remain regulated by the laws of the country in which a SE has its seat. Similarly, social and labor law provisions are governed by the applicable national provisions. In this last respect, the only exception is provisions in the Statute (i.e. the Directive), whose purpose is to ensure that employees have a right of involvement on issues and decisions affecting the life of their SE.

b. Company Law Aspects

Unlike the original proposal for a European company, which would have regulated virtually all aspects of law related to SEs, the Regulation only harmonizes limited aspects of law. A SE is regulated first by the Regulation and then by its constituent documents. However, if and to the extent a matter is not covered by the Regulation, it is regulated by (i) the provisions of laws adopted by

management and representatives of the workers is therefore to be preferred. Negotiation should be compulsory, but to make sure that it happened in practice and that both sides negotiate seriously, there would be a time limit to the negotiation and on the expiry of the time limit, references rules would apply. The rules that would apply if no agreement is reached would be the same for all SEs. The groups considered the idea of different sets of rules depending on whether one or more of the companies founding the SE had worker participation in its decision-making structure: then and only then would the SE rules prescribe participation. Finally, the group opted for one set of rules not compulsory.

10. The Nice Presidency conclusions are *available at* http://europa.eu.int/comm/archives/igc2000/index_fr.htm.

11. Council Regulation No. 2157/2001/EC, O.J. (L294) 21, on the Statute for a European company (SE).

12. Council Directive No. 2001/86/EC, 2001 O.J. (L294) 22-32, supplementing the Statute for a European company with regard to the involvement of employees.

Member States that specifically implement EU measures relating to SEs, (ii) national laws of the Member State in which the SE is registered applying to public limited liability companies in that Member State, and (iii) the SEs constituent documents.

Pursuant to Art. 2, para. 1 of the Statute the European Company, an SE can be created in five different ways, which are summarized below:

1. *merger*: the merging of two or more existing public limited companies from at least two different Member States;
2. *holding company*: the creation of a holding company through the exchange of more than half of the participating companies; shares for shares of the SE, provided that such participating companies are public or private limited companies from at least two different Member States;
3. *joint venture*: the creation by companies from at least two different Member States of a new SE subsidiary through subscription for its shares;
4. *transformation*: the transformation into an SE of a public limited company that, for at least two years, has had a subsidiary in another Member State; and,
5. *subsidiary*: the creation by an SE of a subsidiary in the form of an SE; single company with single reporting system across Europe.

Such rationalization should reduce administrative costs and formalities, although the importance of this benefit to business is not yet clear, given that the administrative costs of maintaining a network of European subsidiaries are not usually that significant relative to operational costs.[13]

c. Information, Consultation, and Participation Rights

The most important feature of the SE Statute is its provisions on employees' involvement, more specifically on information, consultation, and participation. Information and consultation is understood as having a meaningful involvement in the SE's decision-making process—allowing for comprehensive analysis and, in the latter case also, to express an opinion that is to be taken into account. Participation means that employees' representatives have a say in

13. White & Case, *The European Company Statute*, *available at* www.whitecase.com/european_company_statute.pdf.

appointing a certain number of the members of the supervisory organ or administrative organ (Board of Directors).

A SE cannot be set up unless a system for worker involvement has been devised. This is, in principle, a matter of negotiation between the management of the companies involved in establishing the SE and a special negotiation body (SNB) representing their workforces. Broadly speaking, the mechanism corresponds to that in EWC negotiations. The main differences are that management is obliged to initiate negotiations once the plan to establish a SE is made known, and experts on the employees' side may participate and include representatives of European trade union organizations.

d. Outcome

There are three possible outcomes of the negotiations leading to the foundation of a SE:

1. Application to the SE and its subsidiaries of normal national information and consultation rights if the SNB decides not to initiate negotiations or to terminate them (2/3 majority).
2. An agreement on the worker involvement arrangements applying to the SE (absolute majority).
3. Failure to reach an agreement within the deadline, in which case standard rules apply that are defined in the Directive. Where an agreement for worker involvement negotiated by the special negotiating body entails a weakening of existing participation rights, special qualified majority rules apply.

Moreover in the last two cases, the provisions of the EWC Directive become inapplicable. Therefore, EWC Agreements in companies forming the SE have to be integrated into the new SE agreement. National legislation on employee involvement remains applicable as far as it does not concern the role of the bodies of the SE.

e. Standard Rules

If the negotiations fail to produce a result or the two sides so decide, standard rules laid down in law of the country apply in which the SE will have its seat. They cannot go below the standard set in the Directive.

On information and consultation, provisions in the standard rules broadly reflect the subsidiary requirements of the EWC Directive.

On participation, employees are entitled to the highest proportion of representation in the supervisory or administrative body that existed in any of the founding companies. A special case is SEs created by the transformation of an existing company: All participation rules in force before the conversion remain applicable in the SE. It is noteworthy that if there was no participation, there is no requirement to introduce such provisions.

There is an opt-out that allows member countries not to provide for participation provisions in their standard rules, insofar as SEs are formed by mergers. In this case, however, SEs may only be registered in such a country if an agreement on workers involvement was concluded or if no employees were covered by participation rules previously. Effectively, however, the opt-out is meaningless since the same already follows from other provisions in the Directive.

5. Directive 2002/14/EC of March 11, 2002, Establishing a General Framework for Informing and Consulting Employees in the European Community

a. Genesis

On March 11, 2002, the European Parliament and the Council finally adopted Directive 2002/14/EC,[14] establishing a general framework for informing and consulting employees in the European Community. The possibility of the introduction of an EU-level framework for employee information and consultation was first raised in the European Commission's 1995 medium-term Social Action Program. [15] In June 1997, the Commission initiated a first round of consultations of the European level social partners on the advisability of legislation in this area, under the procedure laid down in the social policy agreement, annexed to the Maastricht Treaty on European Union. While the European Trade Union Confederation (ETUC) and the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) welcomed this move, the UNICE argued that EU-level action in this area was unwarranted, as an extensive framework of provision for worker information and consultation already existed at national and transnational levels.

14. Directive No. 2002/14/EC, 2002 O.J. (L80) 29-34, establishing a general framework for informing and consulting employees in the European Community—Joint declaration of the European Parliament, the Council, and the Commission on employee representation.

15. European Commission, No. COM/98/612 final—SYN 98/0315, 1999 O.J. C2, a general framework for informing and consulting employees in the European Community.

In November 1997, the Commission opened a second round of consultations on the content of possible EU legislation on this issue. The social partners had an opportunity at this stage—within a six-week deadline—to decide to attempt to negotiate a framework agreement, thus forestalling a Directive.

At the second stage of consultations, the Commission expressed a clear preference for a social partner initiative to reach a European agreement on this topic. However, while ETUC and CEEP indicated their willingness to negotiate on this basis, UNICE remained opposed and, in March 1998, rejected joining such talks.

This was argued by many observers to be the result of strong opposition from its member organizations in Germany, Greece, Portugal, and the United Kingdom, which saw EU action on national worker information and consultation rights as being in breach of the principle of subsidiary. In addition, it was argued that where European-level intervention is justified, there is already provision in the form of the European Works Council (EWC) Directive. ETUC maintained its position that the objective of a framework agreement in this area would not be to replace well-functioning systems for information and consultation at national level, but to set minimum standards for this basic right. National provisions that are more advantageous should take precedence over those laid down in a European agreement. UNICE's stance in relation to this matter was argued by Commissioner Flynn, "to undermine the whole concept of partnership." Finally, on March 11, 2002, the European Parliament and the Council adopted Directive 2002/14/EC,[16] establishing a general framework for informing and consulting employees in the European Community.

b. Why a General Framework for Information and Consultation of Workers

In some Member States, the manner in which information and consultation of employees is carried out on policy or economic decisions is not always commensurate with the social impact of those decisions, often because the employee representatives are involved too late in the decision-making process, where they can only try to repair the effects of an irreversible situation. On the subject of informing and consulting workers, existing Community law is fragmented and does not contain adequate provisions for sanctioning

16. Directive No. 2002/14/EC, *supra* note 14.

decisions, which are taken in contravention of workers' rights to information and consultation. The entitlement to information and consultation does not, therefore, at Community level, enjoy the degree of protection that ought to apply to all social legislation.

The above analysis demonstrates the need and justification for a Community framework on information and consultation of employees. On the one hand, this framework aims to supplement the existing Community Directives and, on the other hand, to fill the gaps in national laws and practices. In fact, the new Directive includes a number of provisions that serve to strengthen existing legislation in this area and go further than provisions set down in the Directives relating to collective redundancies, transfers of undertakings, and EWCs.

While the principle of information and consultation must be consolidated through a Community Directive, at the same time it is the Commission's intention to refer to national systems for its implementation. Within these systems, the importance of negotiations between social partners, at all levels, is emphasized. This is coherent with the long-established policy of the Commission, believing that successful implementation depends in large part on the involvement of the social partners.

c. Object and Principles of the Directive

The purpose of the Directive 2002/14/EC, as defined by Art. 1, is "to establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the Community." The practical arrangements for information and consultation shall be defined and implemented in accordance with national law and industrial relations practices in individual Member States in such a way as to ensure their effectiveness. The Directive is based on a spirit of cooperation between the parties, consideration of reciprocal rights and obligations, and the need to take account of the interests of both undertaking and employees.

d. Definitions and Scope

Articles 2 and 3 constitute the central provisions of the Directive. Its importance is increased by the fact that the directive gives the Member States a large measure of flexibility in implementing these concepts in practice. Pursuant to Art. 2:

> (a) "undertaking" means a public or private undertaking carrying out an economic activity, whether or not operating for gain, which is located within the territory of the Member States; and,
>
> (b) "establishment" means a unit of business defined in accordance with national law and practice, and located within the territory of a Member State where an economic activity is carried out on an ongoing basis with human and material resources.

These definitions are based on the text adopted by the Council (Social Affairs), concerning the EU legislation on transfer of undertakings and on the case law of the Court of Justice. This concept contributes indirectly to the definition of a threshold, in terms of workers employed, for application of the Directive. The threshold of 50 employees in case of undertakings, and 20 employees in case of establishment, ensures that appropriate consideration is given to the specific features of very small undertakings and establishment, and also provides further evidence that the initiative is consistent with the principle of proportionality.

The definition of "employer" as the natural or legal person party to employment contracts or employment relationship with employees (Art. 2, para. b) is well established in all national laws. The concept of "employees' representatives" in paragraph (e) has become a classic aspect of Community law, in the sense that it refers to national law and/or practice as regards determination of forms of representation. This formulation allows Member States, for the purposes of application of the Directive, to use not only collegiate forms of employee representation, but also individual representatives (workforce delegates, trade union delegates, and others).

The text goes to some lengths to provide definitions of information and consultation, namely:

> - "Information" (paragraph e) means "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"; and,
> - "Consultation" means the exchange of views and establishment of dialogue between the employees' representatives and the employer.

e. Content of Information and Consultation

Not dissimilar to the EWC Directive, the Directive 2002/14 stipulates minimum requirements for information and consultation

should such negotiations between the social partners (i.e. labor and management) not lead to an agreement. Without prejudice to any national provisions or practices that may be more favorable to employees, Art. 4 of the Directive allows the Member States to determine the practical arrangements for exercising the right to information and consultation of employees, the only constraint (albeit a major one) being that the useful effect of the procedures in question must be ensured.

The same article states that information and consultation shall cover:

> (a) information on the recent and probable development (the proposal mentioned "reasonably foreseeable") of the undertaking's or the establishment's activities and economic situation;
>
> (It is interesting to observe that no reference is made to the financial situation as it was in the original proposal of the Directive, and that since economic matters are generally outside the control of the employer, these matters are only subject to information.)
>
> (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment, and on any anticipatory measures envisaged, in particular, where there is a threat to employment; and,
>
> (c) information and consultation on decisions likely to lead to substantial changes in work organization or in contractual relations.
>
> 3. 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.
>
> 4. Consultation shall take place:
>
> (a) while ensuring that the timing, method, and content thereof are appropriate;
>
> (b) at the relevant level of management and representation, depending on the subject under discussion;
>
> (c) on the basis of information supplied by the employer and of the opinion which the employees' representatives are entitled to formulate;
>
> (d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate; and,

> (e) with a view to reaching an agreement on decisions within the scope of the employer's powers.[17]

The concept of "consultation" clearly includes elements usually found in national law. This is true particularly with regard to the need to ensure a useful effect, the reference to the instrumental nature of information, and the right of employees' representatives to express an opinion, meet the employer, and obtain a reasoned reply to that opinion, as well as the obligation to seek agreement, limited of course to instances of decisions covered by the employer's management prerogatives.

The Directive offers a substantial degree of flexibility in relation to the exact shape and scope of information and consultation arrangements to be instituted. It states in Art. 5 that:

> Member States may authorize management and labor at the appropriate level, including at undertaking level, to define freely and at any time through negotiated agreement, the procedures for implementing the employee information and consultation requirements referred to in the Directive.

Such agreements may lay down arrangements that differ from the Directive's provisions defining information and consultation and on the procedures for, and content of, information and consultation, but must respect the Directive's general objectives.[18]

f. Confidentiality of Information

Article 6 deals with the confidentiality of the information provided and the right to withhold certain information. Just like that established by Directive 94/45/EC, on the establishment of EWC, the employees' representatives, and any experts who assist them, are not authorized to reveal to employees or to third parties any information, which in the legitimate interest of the undertaking or establishment, has expressly been provided to them in confidence. This obligation shall continue to apply, wherever the said representatives or experts are, even after expiry of their terms of office. However, a Member State may authorize the employees' representatives and anyone assisting them to pass on confidential information to employees and to third parties bound by an obligation of confidentiality. Member States shall provide, in specific cases and within the conditions and limits laid down by national legislation, that the employer is not obliged to communicate information or undertake consultation when

17. Directive No. 2002/14/EC, *supra* note 14, at art. 4.
18. *Id.* at art. 5.

the nature of that information or consultation is such that, according to objective criteria, would seriously harm the functioning of the undertaking or establishment, or would be prejudicial to it. The concept of objective criteria remains open to interpretation because it can allow employers not to disclose information deemed potentially harmful to the functioning of the undertaking.

Finally, Member States shall also provide for administrative or judicial review procedures for the case where the employer requires confidentiality or does not provide the information. They may also provide for procedures intended to safeguard the confidentiality of the information in question.[19]

These provisions are indispensable to the extent that the Directive creates information and/or consultation obligations on economic matters and on management decisions that may address sensitive issues. In extreme cases, these obligations could prove to be in conflict if they were to lead to premature public disclosure with other obligations deriving, for example, from the regulations on the stock exchange.

g. Protection of Employees' Representatives

Article 7 establishes the principle of protection of employees' representatives. The general wording proposed by the Commission (employees' representatives shall, when carrying out their functions, enjoy adequate protection and guarantees to enable them to perform properly the duties which have been assigned to them) is justified by the fact that all Member States already have an adequate body of rules on this subject.

h. Protection of Rights

Articles 7(1) and (2) impose a number of obligations on Member States regarding protection of the rights created by the Directive. The wording of these two provisions is broadly based on current Community law and the case law of the Court of Justice of the European Communities in this field.

Paragraph 1 relates to adequate administrative or judicial procedures to enable the obligations deriving from the Directive to be enforced. Paragraph 2 deals with the remedies themselves, by referring to "adequate sanctions to be applicable in the event of

19. *Id.* at art. 6.

infringement of the Directive by the employer or the employees' representatives. These sanctions must be effective, proportionate and dissuasive."

The final text of the Directive has not retained paragraph 3 of the Commission proposal containing a provision that did not have a precedent in the Community Directives on employee information and consultation. It stated that "decisions taken in serious violation of obligations under the Directive do not give rise to legal effects in respect of the contracts or employment relationships of the employees concerned." This provision related to those decisions, leading to direct and immediate consequences in terms of substantial change or termination of the employment contracts or employment relationships. The aim of such a provision was not to render the decision null and void in itself, but rather to prevent it from having legal effects on the employment contracts of the employees concerned until the moment when the employer has fulfilled his obligations or, if this is no longer possible, adequate redress has been established.

i. Links With Other Directives

Article 9 sets out the links between the proposed Directive and Directives 98/59/EC, 2001/23/EEC, and 94/45/EC, as well as other national provisions in force in this field. As the Directive applies to the subjects referred to by the first two directives mentioned, the more stringent and/or specific provisions of which will remain applicable. This means that national arrangements relating to collective redundancies and transfers of undertakings will have to be consistent both with this framework Directive and the two individual Directives. Of course, the proposed Directive is without prejudice to other information and consultation rights, including those pursuant to Directive 94/45/EC (European Works Councils).

B. The Ongoing Proposals Related to Information and Consultation of Workers

1. The European Association, the European Cooperative, and the European Mutual Society

If several Directives have put into practice the rights of information and consultation, other proposals on the table for almost three decades have not yet been finalized. These are the cases of the

proposals concerning the creation of the "European Association" (EA),[20] the "European Cooperative" (EC),[21] and the "European Mutual Society" (EMS).[22] In all these proposals, it is stated that no EA, nor EC, nor EMS may be registered until a model of participation or information and consultation system has been chosen.

a. Goal

The objective of these proposals is to facilitate European associations, cooperatives, and mutual societies wishing to engage in cross-border business, by making legislative provision that takes account of their specific features and to provide for the involvement of employees in the European cooperative society so that employees can play their proper part in the organization.

b. Reference to Domestic Rules

All the proposals refer back to domestic rules governing the participation of employees in the supervisory or administrative boards of domestic companies and societies in general. If the Member State in which the companies have their registered office has no rules on the participation of employees, or does not wish to apply such rules to them, it must nevertheless comply with the minimum requirements of the succeeding articles as regards the informing and consulting of employees.

c. Content

With regard to information and consultation arrangements in an EA, an EC, and an EMS, with at least 50 employees, the arrangements chosen must be submitted to the general meeting called to approve the formation of the companies, while the executive committee must inform and consult the employees in good time. The proposals supply a minimum list of areas in which information and consultation are required, including any proposals that might significantly affect the interests of the employees and any question concerning conditions of employment.

20. European Commission, Proposals COM/91/273/I & II final, 1992 O.J. C99; Amended Proposals COM/93/252 final, COD930386 & COD930387, 1993 O.J. C236.

21. European Commission, Proposals COM/91/273/III & IV final, 1992 O.J. C99; Amended Proposals COM/93/252 final, COD930388 & COD930389, 1993 O.J. C236.

22. European Commission, Proposals COM/91/273/III & IV final, 1992 O.J. C99; Amended Proposals COM/93/252 final, COD930388 & COD930389, 1993 O.J. C236.

Finally, basic principles concerning election procedures and the performance of their functions by elected representatives are laid down. The representatives of the employees are to be elected, and not appointed, and are to represent the employees of all the companies' establishments, plants and facilities, even if they are employed part-time.

2. Employee Information on Take-Over Bids

Another legislative proposal with employee participation implications is a draft of the 13th Directive, on company law concerning take-over bids. Its basic aim is to give shareholders of companies subject to take-over bids a minimum level of protection that is equivalent throughout the EU and to ensure greater transparency in (attempted) take-overs. However, the draft Directive also provides that companies that are the subject of a take-over bid would have to inform the representatives of the employees or, where there were no such representatives, the employees themselves, as soon as the bid had been made public and communicate to them the bidder's offer document. This offer document would have to state "the offeror's intentions with regard to the future business and undertakings of the target company, its employees, and its management, including any material change in the conditions of employment." The target company would also have to draw up and make public a document setting out its opinion on the bid and its views on the effects of the company's interests, including employment.

The Commission first proposed the Directive in 1990, but it failed to make progress and a new draft was submitted in February 1996. The EP approved the draft, with numerous amendments, in June 1997, and the Commission presented a revised proposal in November 1997, including many of the EP's amendments. Lengthy deliberations on the draft Directive within the Internal Market Council of Ministers finally resulted in political agreement on a common position in June 1999. At the Internal Market Council on October 28, 1999, ministers took note of current positions regarding the proposal and agreed to return to the issue in December 1999.

C. Information and Consultation on Health and Safety Issues

A number of EU Directives have been established to protect the health and safety of workers at work. As shown in the following paragraphs, all these Directives make reference to information and consultation of workers in such a delicate field.

1. The Framework Directive

Council Directive 89/391 of June 12, 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work,[23] aims to ensure a higher degree of protection of workers at work through the implementation of preventive measures to guard against accidents at work and occupational diseases. It contains general principles concerning the prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors, the informing, consultation, balanced participation in accordance with national laws and/or practices and training of workers and their representatives, as well as general guidelines for the implementation of the said principles.

The Directive applies to all sectors of activity, both public and private, with the exception of certain specific activities in the public and civil protection services. According to its provisions, employers are obliged:

- to ensure the health and safety of workers in every aspect related to the work, primarily on the basis of the specified general principles of prevention, without involving the workers in any financial cost;
- to evaluate the occupational risks, *inter alia*, in the choice of work equipment and the fitting-out of workplaces, and to make provision for adequate protective and preventive services;
- to keep a list of, and draw up reports on, occupational accidents;
- to take the necessary measures for first-aid, firefighting, evacuation of workers, and action required in the event of serious and imminent danger;
- to inform and consult workers and allow them to take part in discussions on all questions relating to safety and health at work; and,
- to ensure that each worker receives adequate health and safety training throughout the period of employment.

In particular, the employer shall take appropriate measures so that workers and/or their representatives in the undertaking and/or establishment shall receive all the necessary information concerning the safety and health risks and protective and preventive measures and activities in respect of both the undertaking and/or establishment

23. Council Directive No. 89/391, 1989 O.J. (L183) 1, on the introduction of measures to encourage improvements in the safety and health of workers at work.

in general and each type of workstation and/or job.[24] Workers or workers' representatives with specific responsibility for the safety and health of workers shall take part in a balanced way, or shall be consulted in advance and, in good time, by the employer with regard to any measure that may substantially affect safety and health. This framework Directive serves as a basis for individual Directives covering, *inter alia,* some specific areas to which the provisions of this Directive will apply in full, without prejudice to more stringent and/or specific provisions contained in the individual Directives, which are listed hereafter.

2. Workplaces

Council Directive 89/654/EEC[25] aims to introduce minimum measures designed to improve the working environment, in order to guarantee a better standard of safety and health protection. With regard to the information of workers, it recalls the rules contained in the framework Directive 89/391.

3. Use of Work Equipment

In this context, Council Directive 89/655/EEC[26] obliges the employer to provide workers with information and written instructions on work equipment, containing at least adequate safety and health information, namely on:

- the conditions of use of work equipment;
- foreseeable abnormal situations; and,
- the conclusions to be drawn from experience, where appropriate, in using work equipment.

The information and the written instructions must be comprehensible to the workers concerned,[27] in order to ensure that they are aware of the potential dangers to which they are exposed in their immediate working environment.

24. *Id*. at art. 5.

25. Council Directive No. 89/654/EEC, 1989 O.J. (L393) 1, concerning the minimum safety and health requirements for the workplace (first individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

26. Council Directive No. 89/655/EEC, 1989 O.J. (L393) 13, concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

27. *Id.* at art. 6.

4. Use of Personal Protective Equipment

With regard to minimum health and safety requirements for the use by workers of personal protective equipment at the workplace, according to Council Directive 89/656/EEC,[28] workers must be informed of all measures to be taken, especially with regard to personal protective equipment, which must:

(a) be appropriate for the risks involved, without itself leading to any increased risk;

(b) correspond to existing conditions at the workplace;

(c) take account of ergonomic requirements and the worker's state of health; and,

(d) fit the wearer correctly after any necessary adjustment.[29]

The employer shall also inform the worker of the risks against which the wearing of the personal protective equipment protects him.

5. Manual Handling

Council Directive 90/269/EEC,[30] on the minimum health and safety requirements for the manual handling of loads where there is a risk, particularly of back injury, to workers provides that workers must receive adequate information on the weight of a load and the center of gravity or the heaviest side when a package is eccentrically loaded, and to ensure proper training and precise information on how to handle loads correctly and the risks involved in incorrect handling.

6. Work with Display Screen Equipment

In the same optic, Council Directive 90/270/EEC,[31] on the minimum safety and health requirements for work with display screen equipment, workers shall receive information on all aspects of safety and health relating to their workstation.

28. Council Directive No. 89/656/EEC, 1989 O.J. (L393) 18, on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (third individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

29. *Id*. at art. 4.

30. Council Directive No. 90/269/EEC, 1990 O.J. (L156) 9, on the minimum health and safety requirements for the manual handling of loads where there is a risk, particularly of back injury, to workers (fourth individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

31. Council Directive No. 90/270/EEC, 1990 O.J. (L156) 14, on the minimum safety and health requirements for work with display screen equipment (fifth individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

7. Carcirogens and Biological Agents

Council Directive 90/394/EEC[32] and Directive 2000/54/EC[33] lay down minimum requirements for protecting workers against risks arising specifically from exposure to carcinogens and mutagens; to lessen exposure with a view to reducing health risks, to establish exposure limit values, and to take preventive measures. For that purpose, the employer must take appropriate measures to ensure that workers and/or workers' representatives in the undertaking or establishment receive sufficient and appropriate training, on the basis of all available information, in particular, in the form of information and instructions, concerning:

(a) potential risks to health, including the additional risks due to tobacco consumption;

(b) precautions to be taken to prevent exposure;

(c) hygiene requirements;

(d) wearing and use of protective equipment and clothing; and,

(e) steps to be taken by workers, including rescue workers, in the case of incidents and to prevent incidents.[34]

Employers shall also inform on installations and related containers containing carcinogens; ensure that all containers, packages and installations containing carcinogens are labeled clearly and legibly; and, display clearly visible warning and hazard signs. At the same time, appropriate measures shall also be taken to ensure that:

(a) workers and/or any workers' representatives in the undertaking or establishment can check that this Directive is applied or can be involved in its application, in particular, with regard to the consequences for workers' safety and health of the selection, wearing, and use of protective clothing and equipment, without prejudice to the employer's responsibility for determining the effectiveness of protective clothing and equipment;

(b) workers and/or any workers' representatives in the undertaking or establishment are informed as quickly as possible of abnormal exposures of the causes thereof and

32. Council Directive No. 90/394/EEC, 1990 O.J. (L196) 1, on the protection of workers from the risks related to exposure to carcinogens at work (sixth individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

33. Directive No. 2000/54/EC, 2000 O.J. (L262) 21-45, on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

34. *Id*. at art. 11.

of the measures taken or to be taken to rectify the situation;

(c) the employer keeps an up-to-date list of the workers engaged in the activities in respect of which the results of the assessment reveal a risk to workers' health or safety, indicating, if the information is available, the exposure to which they have been subjected;

(d) the doctor and/or the competent authority, as well as all other persons who have responsibility for health and safety at work, have access to the list referred to in subparagraph (c);

(e) each worker has access to the information on the list that relates to him personally; and,

(f) workers and/or any workers' representatives in the undertaking or establishment have access to anonymous collective information.[35]

In particular, under Directive 2000/54/EC, employers shall provide written instructions at the workplace and, if appropriate, display notices that shall, as a minimum, include the procedure to be followed in the case of a serious accident or incident involving the handling of a biological agent. They shall inform forthwith the workers and/or any workers' representatives of any accident or incident that may have resulted in the release of a biological agent and could cause severe human infection and/or illness. In addition, employers shall inform the workers and/or any workers' representatives in the undertaking or establishment, as quickly as possible, when a serious accident or incident occurs of the causes thereof and of the measures taken or to be taken to rectify the situation. Each worker shall have access to the information on the list that relates to him personally. Workers and/or any workers' representatives in the undertaking or establishment shall have access to anonymous collective information.[36]

It is important to stress that information and advice must be given to workers regarding any health surveillance, which they may undergo following the end of exposure. In accordance with national laws and/or practice:

(a) workers shall have access to the results of the health surveillance that concern them, and,

35. *Id*. at art. 12.
36. *Id*. at art. 10.

(b) the workers concerned or the employer may request a review of the results of the health surveillance.[37]

8. Safety Signs

Council Directive 92/57/EEC,[38] on the implementation of minimum safety and health requirements at temporary or mobile construction sites, and Council Directive 92/58/EEC,[39] on the minimum requirements for the provision of safety and/or health signs at work, provide that workers must be informed of the measures to be taken and must be given appropriate training (precise instructions). They must also be consulted and allowed to participate on the matters covered by the Directives.[40]

9. Pregnant Workers

Council Directive 92/85/EEC[41] aims to take minimum measures to protect the health and safety of pregnant workers, women workers who have recently given birth, and women who are breastfeeding, considering them to be a specific risk group.[42] For all activities liable to involve a specific risk of exposure to the agents, processes, or working conditions, the employer shall assess the nature, degree, and duration of exposure, in the undertaking and/or establishment concerned, of workers in order to assess any risks to the safety or health and any possible effect on the pregnancies or breastfeeding of workers, and decide what measures should be taken. Finally, he shall inform them of the results of the assessment and of all measures to be taken concerning health and safety at work.

37. *Id*. at art. 14.

38. Council Directive No. 92/57/EEC, 1992 O.J. (L245) 6, on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

39. Council Directive No. 92/58/EEC, 1992 O.J. (L145) 23, on the minimum requirements for the provision of safety and/or health signs at work (ninth individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

40. *Id.* at arts. 7 & 8.

41. Council Directive No. 92/85/EEC, 1992 O.J. (L348) 1, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

42. Act of November 25, 1996, n.645, implementing 92/85/CEE, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, O.J. 17 (Dec. 21, 1996), n.299.

10. Specific Workplaces

With regard to some specific workplaces, such as mineral extracting industries, Council Directive 92/91/EEC,[43] Council Directive 92/104/EEC,[44] Council Directive 93/103/EC,[45] workers and/or their representatives shall be informed of all measures to be taken concerning safety and health at workplaces. The information must be comprehensible to the workers concerned.[46]

11. Chemical Agents

Under Council Directive 98/24/EC,[47] the employer should assess any risk to the safety and health of workers arising from the presence of hazardous chemical agents at the workplace, in order to take the necessary preventive and protective measures set out in the Directive. He should inform workers about the risks that chemical agents can pose for their safety and health and about the measures necessary to reduce or eliminate those risks, and for them to be in a position to check that the necessary protective measures are taken.

In order to protect the safety and health of workers from an accident, incident, or emergency related to the presence of hazardous chemical agents at the workplace, the employer shall establish procedures (action plans), which can be put into effect when any such event occurs so that appropriate action is taken. In the case of the occurrence of one of the above mentioned events, the employer shall immediately take steps to mitigate the effects of the event and to inform the workers concerned thereof.

The employer shall ensure that information on emergency arrangements involving hazardous chemical agents is available. The relevant internal and external accident and emergency services shall have access to this information. It shall include the following:

43. Council Directive No. 92/91/EEC, 1992 O.J. (L348) 9, concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (eleventh individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

44. Council Directive No. 92/104/EEC, 1992 O.J. (L404) 10, on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (twelfth individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

45. Council Directive No. 93/103/EC, 1993 O.J. (L307) 1, concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

46. *Id*. at art. 7.

47. Council Directive No. 98/24/EC, 1998 O.J. (L131) 11-23, on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Directive 89/391/EEC, art. 16(1)).

- advance notice of relevant work hazards, hazard identification arrangements, precautions, and procedures, so that the emergency services can prepare their own response procedures and precautionary measures; and,
- any available information concerning specific hazards arising, or likely to rise, at the time of an accident or emergency.

Finally, the employer shall ensure that workers and/or their representatives are provided with:

- any data containing assessment of risk of hazardous chemical agents, and further informed whenever a major alteration at the workplace leads to a change in these data;
- information on the hazardous chemical agents occurring in the workplace, such as the identity of those agents, the risks to safety and health, relevant occupational exposure limit values, and other legislative provisions;
- training and information on appropriate precautions and actions to be taken in order to safeguard themselves and other workers at the workplace;
- access to any safety data sheet provided by the supplier; and,
- information that is provided in a manner appropriate to the outcome of the risk. This may vary from oral communication to individual instruction and training, supported by information in writing, depending on the nature and degree of the risk revealed by the assessment made by the employer, and updated to take account of changing circumstances.

12. Temporary Workers

Council Directive 91/383/EEC[48] aims to improve protection of the safety and health of temporary workers who are more exposed to the risk of accidents at work and occupational diseases than other workers. According to the Directive, a temporary worker must be informed beforehand of any risks he faces in any activity he takes up. He must be informed of any special occupational qualifications or skills or special medical surveillance required, and whether the job falls within the category of major risks as defined in national legislation. A temporary worker must receive sufficient training

48. Council Directive No. 91/383/EEC, 1991 O.J. (L206) 19, supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.

appropriate for the specific aspects of the job. Temporary workers must not be used for work requiring special medical surveillance over a long period. Where exceptions are made, medical surveillance must continue beyond the term of the temporary employment contract.

13. Young People

Under Council Directive 94/33/EC,[49] the employer shall inform young people of possible risks and of all measures adopted concerning their safety and health. Furthermore, he shall inform the legal representatives of children of possible risks and of all measures adopted concerning children's safety and health.[50]

14. Pending Proposals

Finally, some proposals[51] are still pending in the field of health and safety. They contain provisions aiming to ensure adequate information for those workers exposed to physical agents, and for those involved in transport activities and workplaces on means of transport.

D. The Employer's Obligation to Inform Employees of the Conditions Applicable to the Contract or Employment Relationship

New forms of work have led to an increase in the number of types of employment relationship. Faced with this development, certain EU Member States have considered it necessary to subject employment relationships to formal requirements; these provisions are designed to provide employees with improved protection against possible infringements of their rights and to create greater transparency on the labor market.

On the basis of these considerations, the European Council has adopted Directive 91/533,[52] which applies to every paid employee having a contract or employment relationship defined by the law in

49. Council Directive No. 94/33/EC, 1994 O.J. (L216) 12, on the protection of young people at work.

50. *Id.* at art. 6.

51. Proposal for a Council Directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents, COM/92/560 final—SYN 93/449, 1993 O.J. (C77 12); amended proposal for a Council Decision concerning the minimum safety and health requirements for transport activities and workplaces on means of transport—Individual Directive within the meaning of art. 16 of Directive 89/391/EEC, COM/93/421 final—SYN 420, 1993 O.J. (C294) 4.

52. Council Directive No. 91/533/EEC, on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

force in a Member State and/or governed by the national law. Member States may provide that this Directive shall not apply to employees having a contract or employment relationship with a total duration not exceeding one month, and/or with a working week not exceeding eight hours; or, of a casual and/or specific nature provided, in these cases, that its non-application is justified by objective considerations.[53] In Italy, Directive 91/533 has been fully implemented by D. Lgs. of May 26, 1997, No. 152.[54]

1. Obligation to Provide Information

According to Directive 91/533/EEC, an employer shall be obliged to notify an employee to whom the Directive applies of the essential aspects of the contract or employment relationship.

a. Content

Under Art. 2, the information shall cover at least the following:

(a) the identities of the parties;

(b) the place of work; where there is no fixed or main place of work, the principle that the employee is employed at various places and the registered place of business or, where appropriate, the domicile of the employer;

(c) the title, grade, nature, or category of the work for which the employee is employed; or, a brief specification or description of the work;

(d) the date of commencement of the contract or employment relationship;

(e) the case of a temporary contract or employment relationship, the expected duration thereof;

(f) the amount of paid leave to which the employee is entitled or, where this cannot be indicated when the information is given, the procedures for allocating, and determining such leave;

(g) the length of the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or, where this cannot be indicated when the information is given, the method for determining such periods of notice;

53. *Id.*
54. D. Lgs. No. 152 of May 26, 1997, O.J. 5 (June 12, 1997), 135.

(h) the initial basic amount, the other component elements, and the frequency of payment of the remuneration to which the employee is entitled;

(i) the length of the employee's normal working day or week; and,

(j) where appropriate, the collective agreements governing the employee's conditions of work or, in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of the competent body or joint institution within which the agreements were concluded.

The information referred to in paragraphs 2(f), (g), (h) and (i) may, where appropriate, be given in the form of a reference to the laws, regulations, and administrative or statutory provisions, or collective agreements governing those particular points.

b. Means of Information

Pursuant to Art. 3 of the Directive, the information may be given to the employee, not later than two months after the commencement of employment, in the form of:

- a written contract of employment;
- a letter of engagement; and/or,
- one or more other written documents, where one of these documents contains at least all the information referred to in Arts. 2(2)(a), (b), (c), (d), (h) and (i).

Where none of the documents are handed over to the employee within the prescribed period, the employer shall be obliged to give the employee, not later than two months after the commencement of employment, a written declaration signed by the employer and containing at least the information referred to in Art. 2(2). Where the document(s) contain only part of the information required, the written declaration provided for in the first subparagraph of this paragraph shall cover the remaining information.[55]

c. Expatriate Employees

Under Art. 4, where an employee is required to work in a country or countries other than the Member State whose law and/or practice

55. Where the contract or employment relationship comes to an end before expiry of a period of two months as from the date of the start of work, the information provided for in art. 2, and in this article, must be made available to the employee by the end of this period at the latest.

governs the contract or employment relationship, the relevant work documents must be in his/her possession before his/her departure and must include at least the following additional information:

(a) the duration of the employment abroad;

(b) the currency to be used for the payment of remuneration;

(c) where appropriate, the benefits in cash or kind attendant on the employment abroad; and,

(d) where appropriate, the conditions governing the employee's repatriation.

The information may, where appropriate, be given in the form of a reference to the laws, regulations, and administrative or statutory provisions, or collective agreements governing those particular points. These provisions shall not apply if the duration of the employment outside the country whose law and/or practice governs the contract or employment relationship is one month or less.

d. Modification of Aspects of the Contract or Employment Relationship

Pursuant to Art. 5, any change in the details must be the subject of a written document to be given by the employer to the employee at the earliest opportunity and not later than one month after the date of entry into effect of the change in question. The written document shall not be compulsory in the event of a change in the laws, regulations, and administrative or statutory provisions, or collective agreements cited in the documents given to the employee.

e. Form and Proof

The Directive is without prejudice to national law and practice concerning the form of the contract or employment relationship, the proof as regards the existence and content of a contract or employment relationship, and, finally, the relevant procedural rules.[56]

f. More Favorable Provisions

Under Art. 7, the Directive shall not affect Member States' prerogative to apply or to introduce laws, regulations, or administrative provisions that are more favorable to employees, or to

56. *See supra* note 52, at art. 6.

encourage or permit the application of agreements that are more favorable to employees.

g. Defense of Rights

Pursuant to Art. 8, Member States shall introduce into their national legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process after possible recourse to other competent authorities. Member States may provide that access to the means of redress referred to in paragraph 1 are subject to the notification of the employer by the employee and the failure by the employer to reply within 15 days of notification. However, the formality of prior notification may in no case be required in the cases referred of expatriate employees, neither for workers with a temporary contract or employment relationship, nor for employees not covered by a collective agreement or by collective agreements relating to the employment relationship.

II. INFORMATION AND CONSULTATION OF WORKERS IN ITALY

Italy, just like the vast majority of the European Union Member States, has a statutory or negotiated legal framework establishing information and consultation procedures at various management levels (establishment, undertaking, group of undertakings). Information and consultation under the Italian legislation are recognized both as rights and obligations, especially under some collective agreements. The main legal basis of these rights is given in Art. 46 of the Italian Constitution, which states:

> With a view to the employee's economic and social development and in line with the production requirements, the State recognizes the rights of employees to participate in undertaking management in the manner and within the limits laid down by the law.[57]

Information and consultation of workers are considered to be the first step of employees' participation in the undertaking.[58] The related procedures are regulated according to sectoral collective agreements. They are compulsory in the event of collective dismissals and transfers.

57. L. Galantino, *Diritto Sindacale*, 229 Giappichelli, Torino (1996).
58. *Id.*

A. Information Procedure in Case of Collective Dismissals

In the field of collective dismissals, the major source of provision for the industrial sector has been for a long time—till the entry into force of Act 223/1991—the interconfederal agreement of May 5, 1965. This agreement does not provide for any external control over the employer's power to terminate the labor relationship. Nevertheless, a compulsory procedure allows a bilateral examination of the motives of the dismissals and, if possible, a conciliation agreement between the territorial organization of the workers and the committee. To facilitate the examination and conciliation, the employer has to communicate to the union the reasons for the dimensions and expected timing of the dismissals. The violation of the procedure, which must be completed within 25 days, is cause for annulment of the dismissals, but once it is terminated, the employer is free to carry out his decisions, whether or not a conciliation agreement is reached. A complete regulation of the field has been introduced by Act 223/1991,[59] which implements EU legislation in this field. In particular, it provides some procedural guarantees, such as the obligation for the employer to inform in writing to, prior to the discharge, the plant union representatives and the territorial most representative unions about the:

- reasons for collective motives of the decision;
- number, positions, professional profiles of the redundant employees;
- timing of the implementation of the decisions; and,
- measures adopted to remedy the social consequences of it.

The trade unions may ask within 7 days for a concertation procedure, which must be completed within 45 days. Lacking the agreement, a further conciliation procedure is provided in front of the provincial labor office.[60] The whole procedure must be concluded within 75 days. At the end of the procedure, the employer remains free in his final decision, but the law encourages a consensual solution by reducing the costs of discharge in case of agreement (and by providing alternatives, such as solidarity contracts, early retirement plans, etc.).

59. Act No. 223/91, *IEL*, *in* ITALIAN LABOR LEGISLATION (M. Colucci & T. Treu eds., 2000).

60. B. Granati, *I Licenziamenti Collettivi*, *in* QUADERNI DI DIRITTO DEL LAVORO E DELLE RELAZIONI INDUSTRIALI 174 (F. Carinci, et al. eds., 1997).

B. Information in the Event of Transfer of Undertakings

In the event of transfer of undertakings, Art. 47 of Act No. 428 of December 29, 1990,[61] states that when the transfer concerns an undertaking where more than fifteen workers are employed, the transferor and the transferee have to give written communication, at least twenty-five days before it, to the undertaking delegations of the trade unions constituted—under Art. 19 of the Act of May 20, 1970, No. 300 (*Statuto dei Lavoratori*)[62]—in the interested productive units, and to the associations of category the delegations refer to.

In case of lack of such undertaking delegations, the communication has to be made to the association of category adhering to the confederations nationally more representative. The communication to the associations of category may be made through the trade union association they adhere to or they confer mandate. Information must be provided on :

(a) the reasons of the planned transfer of undertaking;

(b) its consequence for the employees under the legal, economic, and social point of view; and,

(c) the measures, if provided for, to be applied to the employees.

If there is a written request made by the undertaking delegation of the trade unions or by the trade unions of category, and it is communicated within seven days from the delivery of the communication, the transferor and the transferee have to begin—within seven days from the delivery of the just mentioned request—a joined examination with the trade union actors making the request. The consultation is deemed to be concluded if, after ten days from its start, no agreement is reached. The transferor or the transferees that do not comply with these provisions are supposedly breaking trade union agreements under Art. 28 of Act No. 300 of May 20, 1970.

It is important to stress that in the context of the information and consultation procedures, the contacts between the parties are prior to negotiations. This is necessary in order to allow the parties to define the objectives of the undertaking negotiations themselves.[63]

Procedures for information and consultation related to economic and employment matters depend on branch and undertaking agreements. Consultation procedures at level of establishment are

61. Act No. 428 of Dec. 29, 1990, *IEL*, *in* ITALIAN LABOR LEGISLATION (M. Colucci & T. Treu eds., 2000).

62. Act of May 20, 1970, No. 300 (*Statuto dei Lavoratori*), *id.*

63. A. Buonajuto, *Il Trasferimento dell'azienda e del Lavoratore*, CEDAM, Padova (1999).

foreseen in case of changes affecting work organization and new technologies. Finally, specific collective agreements establish the procedure of information and consultation on matters related to production transfer, mergers, closures, and relocation.

C. Information and Consultation in the European Works Councils

1. The Legislative Decree of March 14, 2002

In Italy, the EU Directive on European Works Council has been first implemented by a collective agreement signed on November 27, 1996, by Confindustria (by far the most important association of employers) and Assicredito (the organization active in the banking sector), on one side, and CGIL, CISL, and UIL (the three most representative Italian trade union organizations), on the other.[64] Such agreement was only the first step towards the full transposition of the European Directive 94/45. In fact, collective agreements do not have *erga omnes* effect in Italy;[65] therefore, it has been necessary to get this agreement confirmed by legislation. Finally, the Governmental Decree of March 14, 2002, has finalized the transposition process by incorporating the agreement signed on the EWC issue.[66]

2. Definitions

On the labor side, the Italian Legislative Decree confirms that "the size of the workforce shall be based on the average monthly number of employees employed during the previous two years." But it does not specify which kind of categories it is addressed to.

On the management side, the Legislative Decree (Art. 3) provides for a definition of "controlling undertaking" that is shorter than that of the Directive (Art. 3.1). In order to define the notion of "dominant influence," the Legislative Decree mentions both "ownership" and "financial participation," but drops the formula "or the rules which govern it."

64. The National Multi-Industry Agreement of 1996, on the transposal of Directive 94/45/EC, on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community scale groups of undertakings for the purposes of informing and consulting employees, *IEL*, *in* ITALIAN LABOR LEGISLATION (M. Colucci & T. Treu eds., 2000).

65. P. Greco, *La Rappresentitività dell'azienda e del lavoratore*, Giappichelli, Torino (1997).

66. Because of the special nature of this transposition procedure, Prof. Biagi spoke about "bargained legislation," 32 BULL. COMP. LAB. REL. 103 (1998), *in* LABOR LAW AND INDUSTRIAL RELATIONS IN THE EUROPEAN UNION.

Much more meaningful is another innovation introduced by the Legislative Decree: the reversal of the order in listing criteria, which make the presumption of dominant influence possible. Regarding the Italian social partners, first of all, dominant influence is presumed when an undertaking:

- can appoint more than half of the members of the latter undertakings administrative management or supervisory board;
- controls a majority of the votes attached to the latter undertakings issued share capital; or,
- holds a majority of the latter undertakings' subscribed capital.

Under Art. 3.2, second indent of the Legislative Decree, "when two or more group undertakings comply with one or more of the preceding requirements, the controlling undertaking means that which complies with criteria a) or, failing which, that which complies with criteria b) or, lastly, that which complies with criteria c)." Article 3.4 continues to provide for further regulations, either related to banking, insurance and financial business, or affecting a controlling interest of a holding company.

3. The EWC on the Model of the Italian RSU

The Legislative Decree emphasizes the role of the trade unions. In Art. 5.2, the Directive states ". . . the central management shall initiate negotiations . . . on its own initiative or at the written request of at least 100 employees of their representatives in at least two undertakings or establishments in at least two different Member States." Article 5(1) adds: ". . . or at the request of the trade union organizations which stipulated the national collective agreement applied in the undertaking or in the group of undertakings referred to."

In that regard, Art. 6.2 of the Italian Legislative Decree specifies that "the members of the special negotiating body shall be designated by the trade union organizations, jointly with the unitary union representations of the undertaking or group of undertaking." In other words, an Italian EWC has to be organized according to the model of the RSU (*rappresentanze sindacali unitarie*). These are a works council-style form of employee collective representation that are presently regulated by inter-industry-wide collective agreements. Members of each RSU are two-thirds elected by rank-and-file employees (whether they are unionized or not) on a proportional

system, and one-third jointly designated by those trade union organizations that negotiated and signed the collective agreement (national or enterprise level), which is applied in the undertaking or establishment concerned. The influence of trade unions in such a structure is therefore dominant.

Pursuant to Art. 6.3 of the Legislative Decree, where in an establishment or undertaking any previous form of trade union representation is lacking, the trade union organization shall agree with management to the manner of participation of the employees of that establishment or undertaking with regard to the designation of the employees' representatives in the negotiating body. This provision applies to all elections and/or designations taking place in Italy.

4. The Special Negotiation Body

Article 6 of the Italian Legislative Decree implements Art. 5 of EU Directive 94/45 and it makes possible the establishment of the SNB as a crucial step for the setting up of an EWC. One supplementary member for each Member State may be appointed, where at least 25% of the total workforce of the undertaking or group of undertakings in the Member States are employed (two and three supplementary members where, respectively, at least 50% or 75% of the total workforce are employed). When the establishment of the SNB is finalized, the trade union organizations must inform central management.

5. Costs

The Legislative Decree has confirmed the principle under which "any expenses relating to the negotiations . . . shall be borne by the central management so as to enable the special negotiating body to carry out its task in an appropriate manner" (Art. 5.6, first indent, of the Directive). The Italian social partners have linked this provision with Section 7 of "subsidiary requirements" extending to the SNB provisions related to the EWC activity. In particular, it was agreed that "central management shall bear the expenses incurred in connection with the experts," stating that, "unless and until the parties agree otherwise the central management shall cover the expenses for one expert only" (Art. 8.8 of the Legislative Decree, taking advantage of the flexible formula laid down in Art. 5.6, second indent of the Directive: "Member States . . . may in particular limit the funding to cover one expert only"). Furthermore, Art. 17 of the Statute of

Workers Rights[67] states that the employer cannot support, financially or otherwise, trade unions.

6. Content of Information and Consultation

The agreement between central management and the SNB is also supposed to regulate, according to the Legislative Decree (Art. 9.2(g)), "the content of the information and consultation," an item not expressly recalled by Art. 6.2 of the Directive. This additional mandatory topic of transnational bargaining is very important. Seemingly, the Italian social partners considered it highly advisable that this negotiating activity, creating the basis for the future EWC role, had to specify what "information and consultation" meant. This provision again reflects Italian collective agreements, which from the late 1970s have been rather detailed in identifying topic/matters for information and consultation. That legislation will entirely confirm these provisions as foreseeable. Italian law excludes from information rights and obligations the information likely to disturb the market.

Besides, respect for the confidentiality of information is expressly provided by the undertaking in confidence and likely to seriously harm the functioning or activities of the undertaking. The same is true for industrial secrets or financial transactions.

7. The Set-Up of a Conciliatory Committee

Article 8.2 of the Directive has been transposed, introducing a relevant innovation once again into the Italian legal order. The Legislative Decree (Art. 11.3) stipulates that, "in the event of objections to the confidential nature of the information supplied and classified as such, as well as for the practical determination of objective criteria for identifying information of such a nature that it would seriously harm or be prejudicial to the business activities of the undertakings concerned or unsettle the markets," the social partners "shall set up a conciliatory technical committee, which shall decide whether or not the undertakings behaviour is justified, on a case by case basis." The composition of this conciliatory committee is as follows:

- one member appointed by the EWC (or the SNB, or employees representatives when an information and consultation procedure was established);

67. *See supra* note 62.

- another by central management; and,
- the third, neutral, is jointly appointed by the parties.

The envisaged procedure is very fast. Article 11.4, second indent, of the Legislative Decree provides that "no later than 15 days after the date of the petition filed by the EWC, the committee shall issue its decisions which cannot be appealed." This provision is particularly important since Italian labor law does not include any experience of a conciliatory committee that is supposed to adjudicate collective labor disputes through a decision that cannot be appealed. Conciliatory mechanisms do exist, but they relate only to individual disputes. Besides, it is taken for granted that decisions may be appealed. Italian social partners wanted at any cost to avoid the intervention of the judiciary in adjudicating disputes arising at a transnational level. And this idea may be shared.

The Tribunale (previous *Pretore del Lavoro)* has jurisdiction over labor matters and enforcement of information and consultation rights normally takes place through the intervention of this office on the basis of Art. 28 of the 1970 Statute of Workers Rights. The refusal of an employer to provide the employees' representatives with information as required by collective agreements amounts to a *comportamento antisindacale* (i.e. an anti-union activity), to the extent that judges find such employers acting in violation of their duties.

8. Protection of Employee Representatives

Members of either the SNB or the EWC, as well as employees' representatives in the framework of an information and consultation procedure, "if they are employees of the Italian establishment, shall enjoy paid time off for the exercise of their functions for not less than eight hours every three months, which may be consensually added to, in the case of agreements laying down better conditions, compared to the regulations currently in force; the provisions under Articles 22 and 24 of Act 300/1970 shall also apply." Furthermore, it is provided that "in consideration of the foreseeable duration of the meetings, of the object and the place of the meetings, the agreement between central management and the SNB may provide for a further 8 hours every year."

In other words, the Italian Act establishes a minimum floor of protection, consisting not only of paid time off (eight hours every three months), but also based on the Italian regulation in the area of unpaid time off to perform union duties. Article 24 of the Statute of Workers Rights says that, in addition to paid time off, union

representatives have the right to be released from their work duties for at least eight days a year, provided that they inform the employer with three days notice. More importantly, Art. 22 of the same Act prohibits the employer from transferring union representatives from the work unit where they are employed to another one within the same company, unless approval is given by the trade union organization to which the representatives belong.

This legal regime, presently regulating Italian members of the RSU is to be extended to the Italian members of an EWC. Further, the strong protection granted against transfers also covers candidates who unsuccessfully run for a seat in the EWC (but the protection lasts only for three months after the election day), and for Euro-counselors who step down, for one year after their mandate is over.

Another interesting consequence is that the Italian legislation, originally aimed at protecting union activities (or, at least, union sponsored activities), is now extended transnationally to strengthen the role of an elected committee, i.e. the EWC. This is another indirect way of increasing the process of unionization of Italian-based EWCs. More clearly, since the transfer of a union representative (and, in the future, of a EWC member) is subordinate to the consensus of a trade union organization, it is not difficult to predict that Italian Euro-counselors will become unionized sooner or later. Italian EWCs will increasingly resemble the RSU model.

Article 13 of the Legislative Decree adds another topic to the list of mandatory matters for negotiation between central management and the SNB. In fact, the parties may negotiate for a further eight hours a year of paid time off. It is entirely up to them to start (or not) negotiations on this non-mandatory issue, although the Italian Legislative Decree clearly would welcome a deal taking into account the special nature of the Euro-meetings, which, including long distance travel, last significantly longer than the domestic ones.

9. The Subsidiary Requirements of the Legislative Decree

The Legislative Decree lays down further provisions in order to facilitate the transposition of the "subsidiary requirements," included in the Annex to the Directive. A few examples (innovative clauses are in italics):

> (1) where the EWC is composed of at least nine members, it shall elect a select committee from among its members, comprising at most three members;

(2) central management shall be informed of the composition of the EWC by the trade union organizations*;*

(3) where there are exceptional circumstances, the information and consultation meeting shall give the EWC the opportunity to deliver an opinion, at the end of the meeting or within seven days*;* and,

(4) as to the budgetary rules regarding the operation of the EWC, funding shall cover *one expert only,* unless otherwise agreed.

10. Sanctions

Legislative Decree (Art. 17) ends with provisions establishing administrative and criminal sanctions, in the case the right to information and consultation is not guaranteed.

D. Information and Consultation of Workers on Health and Safety Matters

With regard to health and safety matters, the Italian legislature has introduced specific "rights of information" or "rights of negotiation" for the workers. The influence of EU Directives has been very important in that regard.

Article 2087 of the Italian Civil Code obliges the employers to take any measure in order to ensure the health and safety of workers in every aspect related to the work. Article 9 of Act No. 300/1970 recognizes to the workers' representatives not only the right to control the correct application of the relevant legislation, but also the right for the workers and for their representatives to make proposals on health and safety issues at work. D. Lgs. No. 626/1994, as modified by D. Lgs. No. 242/1996 and other legislative Acts that have implemented the EU Directive,[68] aims to ensure a higher degree of protection of workers at work through the implementation of preventive measures to guard against accidents at work and occupational diseases.

68. D.P.R. 459 (1996), implementing EU Directives 89/392/EEC, 91/368/EEC, 93/44/CEE, and 93/68/EEC, on the approximation of the laws of the Member States relating to machinery, S.O. 146 of 1996, O.J. 209; D. Lgs. of Aug. 14, 1996, No. 493, implementing Directive 92/58/EEC, on the minimum requirements for the provision of safety and/or health signs at work, S.O. 156 of 1996, O.J. (No. 223) 3; D. Lgs. of Aug. 14, 1996, No. 494, implementing Directive 92/57/EEC, on the implementation of minimum safety and health requirements at temporary or mobile construction sites, S.O. 156 of 1996, O.J. (No. 223) 24; D. Lgs. of Nov. 25, 1996, No. 624, implementing Directive 92/91/EEC, concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling, S.O. 219 of 1996, O.J. (No. 293) 5.

In particular, employers must provide employees with all the relevant information on the general and specific risks related to their jobs, as well as to the measures adopted to avoid such risks (Art. 21 of D. Lgs. No. 626/1994). In each establishment, a workers representative with specific responsibility for the safety and health of workers (*rappresentante per la sicurezza*) must be informed by the employer with regard to any measure, which may substantially affect safety and health.

Employees have the right to be informed about the occupational risks, *inter alia*, in the choice of work equipment and the fitting-out of workplaces, and the risks related to exposure to chemical, physical, and biological agents at work.[69] They also have the right to make provision for adequate protective and preventive services. On the contrary, the employer is obliged to keep a list of, and draw up reports on, occupational accidents. According to D. Lgs. No. 242/1996, such an obligation does not exist for those undertakings with less than 10 employees.

With regard to pregnant workers, women workers who have recently given birth, and women who are breastfeeding, they are considered to be a specific risk group.[70] For all activities liable to involve a specific risk of exposure to the agents, processes, or working conditions, the employer shall assess the nature, degree, and duration of exposure, in the undertaking and/or establishment concerned, of workers in order to assess any risks to the safety or health and any possible effect on the pregnancies or breastfeeding of workers, and decide what measures should be taken.

Finally, specific provisions contained in Art. 22 of D. Lgs. No. 626/94 ensure that each worker receives adequate health and safety training when he or she is hired and throughout the whole period of employment. The employer who does not comply with the Legislation on Health and Safety at work is subjected to both civil and criminal liability.[71]

69. D. Lgs. of Aug. 15, 1991, No. 277, implementing EU Directives on 80/1107/EEC, 82/605/EEC, 83/477/EEC, 86/188/EEC, and 88/642/EEC, on the protection of workers from the risks related to exposure to chemical, physical, and biological agents at work, S.O. 53 of 1991, O.J. (No. 200).

70. Act of November 25, 1996, No. 645, implementing 92/85/CEE, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, 1996 O.J. (299) 17.

71. Article 612 and following of Italian Civil Procedure Code; arts. 437 and 451 of the Italian Criminal Code.

III. CONCLUSIONS

The legal regulation of disclosure of information to employees or prospective employees has always been part of the European social agenda. Some EU Directives have granted the right to information and consultation of employees, in case of transfer of undertakings, collective dismissals, and having regard to Community-scale undertakings and groups of undertakings. A detailed legislation has also been adopted aiming to inform and consult workers and allow them to take part in discussions on all questions relating to safety and health at work.

Nevertheless, all the European Directives left to the Member States the task to define and to implement the practical arrangements for information and consultation of workers in accordance with national law and industrial relations practices in such a way to ensure their effectiveness. In this way, the impact of the EU legislation on the world of work has been very important in Italy where information and consultation of workers have always been recognized both as rights and obligations.