

Information and consultation of employees - a vague task in Romania

by Christian Weident, Attorney at Law

Employees have the right to be informed about facts and developments relevant to their employment. In addition, the employer even has a duty to involve them in company processes and decisions that affect the workforce.

The technical term is “information and consultation”. So, what exactly are companies required to do?

Background

The obligation to inform and consult employees is based on EU law, specifically Directive 2002/14.

This directive was partly a reaction to the closure of a Renault assembly plant in Vilvoorde, Belgium, which took place in 1997 without involving the employees (the employee representatives were informed of the decision at the same time as the press). Over 3,000 direct jobs were lost and the incident led to an international uproar. This is why the directive is also known as the Vilvoorde Directive.

Its objective includes greater employee involvement in the organization of work, ensuring appropriate information and consultation procedures before major decisions are taken, and strengthening social dialogue.

What does the directive say?

According to the directive, Member States had to oblige undertakings with at least 50 employees or establishments with at least 20 employees within their territory to inform and consult employees on the following aspects:

- recent and probable development of the activity and the economic situation of the undertaking/ establishment;
- situation, structure and probable development of employment within the undertaking or establishment;
- envisaged anticipatory measures, especially when employment is at risk;
- decisions that may result in substantial changes to work organization or employment contracts.

“Information” means the transmission of data by the employer to the employee representatives in order to enable them to acquaint themselves with, and examine the issue.

It takes place “at such time, in such fashion and with such content as are appropriate to enable, in particular, employee representatives to conduct an adequate study and, where necessary, prepare for consultation”.

“Consultation” is “the exchange of views and dialogue between employee representatives and the employer”. It takes place based on the information provided:

- at a time, in a manner and with content appropriate to the purpose;
- at the relevant management and representative level;
- on the basis of a statement that the employee representatives may submit and to which the employer must respond with justifications;
- with the ultimate aim of reaching an agreement on decisions that could significantly affect work organization or employment contracts.

What does Romanian law say?

An EU directive represents a binding and generally abstract mandate to each member state to implement its content through national legislation - with added specificity.

Romania implemented the directive on December 18, 2006, just a few days before its accession to the EU, through Law 467/2006.

However, Romanian lawmakers essentially only translated the directive into Romanian. The law closely mirrors the directive's wording, and the obligations remain just as abstract. As such, the law appears to be more of a formal obligation than genuine implementation - although this is understandable given the massive effort involved in introducing the *acquis communautaire* ahead of the EU accession.

Romanian employers with at least 20 employees should therefore best define the concrete implementation in the company by agreement with the employee representatives.

The sanction for failure to inform or consult is an administrative offense in Romania, which is punishable by a fine of between (only) 1,000 and 25,000 RON.

Are there special regulations?

Special cases of information/consultation/involvement of employees are regulated at EU level, which remain unaffected by the above-mentioned general legal framework. This concerns:

- mass dismissals;
- transfer of operations;
- the European Works Council;
- international cases such as the involvement of employees in the SE, etc..

Conclusion

The involvement of employees in company processes is only abstractly regulated in Romania and should therefore be defined concretely at company level.

While the Romanian regulation might be seen as a “paper tiger”, it should not be forgotten that involving employees in shaping the company’s future fosters healthy social dialog and can boost competitiveness.

Contact and further information:



STALFORT Legal. Tax. Audit.

Bucharest – Bistrița – Sibiu

Office Bucharest:

T.: +40 – 21 – 301 03 53

F: +40 – 21 – 315 78 36

M: bukarest@stalfort.ro

www.stalfort.ro