

Center for Legal and Political Research, Faculty of Law,  
Goce Delcev University in Shtip, Republic of Macedonia



FIRST INTERNATIONAL SCIENTIFIC CONFERENCE

**ОПШТЕСТВЕНИТЕ ПРОМЕНИ ВО ГЛОБАЛНИОТ СВЕТ**  
**SOCIAL CHANGE IN THE GLOBAL WORLD**  
**СОЦИАЛЬНЫЕ ИЗМЕНЕНИЯ В ГЛОБАЛЬНОМ МИРЕ**



**ЗБОРНИК НА ТРУДОВИ**  
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**SOME ASPECTS OF INFORMING AND CONSULTING THE  
EMPLOYEES IN ACCORDANCE WITH THE LAW ON LABOR  
RELATIONS AND LAW ON SAFETY AND HEALTH AT WORK**

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**Abstract**

The matter of information and consultation with the employees is directly related to the issue of involvement of the employees in the enterprise management.

Bearing in mind the thematic orientation of this paper, according to the Law on Labour Relations, informing the workers means transfer of data by the employer to the workers' representatives, so that the employees can understand and examine the data. Counseling means exchange of views and establishing a dialogue between the workers' representatives and the employers.

From the aspect of the Law on Safety and Health at Work, the fact that it regulates the issues of information and consultation of the workers' representatives and their involvement in planning

and taking measures for safety and health at work is very significant.

Therefore, the tendency of this paper is to analyze the most important responsibilities of the employers arising from the two abovementioned laws, while correlating the rights and the obligations nominated by the Law on Labour Relations and the Law on Safety and Health at Work. It will be necessary to analyze the Directive 2001/86 / EC supplementing the Statute for a European Company with regard to the involvement of employees, while the focus will be placed on the information and consultation of the employees regarding the health and safety at work. Undoubtedly, the analyses will be done with the relevant domestic legislature.

Concurrently, certain inconsistencies between the two laws will be noted. Subsequently, the paper will present specific suggestions for improving the regulation which will be the main goal of the paper.

***Key words:*** *information, consultation, Law on Labor Relations, safety and health at work, participation, employees*

## **Introduction**

The issue of information and consultation of the employees is directly related to the totality of the relations of the issue of participation of the employees in the decision-making and management of the enterprise. These issues are very current. They are achieved through different forms and at different levels.

Different systems and countries have different solutions. In some, the participation is governed by law, in other, by collective agreement and the like.

The main and ultimate goal of the information and consultation of the employees as part of the participation in a broader sense is the integration of the employees as important stakeholders in the enterprise while achieving the business venture of the enterprise and certainly in achieving the economic and social rights and interests of the employees.

The relations between the labor (employees) and the capital (investors, shareholders, share owners) are always divergent and are a cause of

possible conflicts. The modern societies are trying to find legal solutions that will provide the holders of a business enterprise an industrial or social peace, or situations to avoid possible conflict and unwanted consequences. With all this in mind, the mechanisms of information and consultation are very important forms of the employees' participation in the decision-making processes and the enterprise management. These forms enable the employees to become a part of the overall strength of the relationships in making important decisions for the enterprise.

### **1. The terms information and consultation in accordance with Council Directive<sup>1</sup> 2001/87 / EC supplementing the Statute for a European Company with regard to the involvement of the employees**

The Directive about the position of the employees is an accompanying document to the Council Regulation<sup>2</sup> (European Council) no.2157 / 2001 of 8 October 2001 of the European Companies (CE / SE) and it has social objectives<sup>3</sup>, specifically related to defining and securing the position of the employees, or of their right to be involved in the management in the case of creating a CE/ SE, that will lead to changes in the relevant law to be applied in some or all companies. The provisions of the Directive are exclusively related to the provisions for CE / SE and do not apply to other forms of employees 'management in the national companies'<sup>4</sup>. According to the Directive, there is an obligation to provide a procedure for informing and consulting the employees in the event of establishment (creation) of CE / SE.<sup>5</sup>

#### **1.1 Information**

According to the directive, information means informing the representative body of the employees and/or employees' representatives by the competent organ of the SE on questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which

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<sup>1</sup> Council Directive 2001/87/EC October 2001 supplementing the Statute of the European Society with regard to the involvement of the employees

<sup>2</sup> Council Regulation (European Council) no.2157/2001 October 8 2001, on the Act of European Companies (SE)

<sup>3</sup> More on social objectives of the EU, Council Directive EU social goal 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, introduction item (3)

<sup>4</sup> Ibid, Introduction, item (15)

<sup>5</sup> Ibid, Introduction, Item (5)

exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE.<sup>6</sup>

## **1.2 Consultation**

Consultation means establishing a dialogue and exchange of views between the representative body of the employees and/or the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on the measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE.<sup>7</sup>

Consultation is a mechanism in which the employer is obliged, before making any decisions regarding certain issues, to ask for the opinion of the employees' representative body which should give an opinion – advice. The opinion/advice is not an independent decision, but a condition for making a decision by the employee regarding a certain issue. The employee is required to submit to the representative body of the employees all relevant data for making a decision and for understanding its impact to the position of the employees.

## **2. Law on Labor Relations and the issues on information and consultation**

A constitutional foundation for regulating the participation of the employees in the management and decision-making in the enterprise is Article 58, Paragraph 1 of the Constitution of the Republic of Macedonia<sup>8</sup>, which determines that not only the ownership but the labor also is a foundation for participation in the management and the decision-making. This norm in the Constitution is an opportunity for modern tendencies participation and involvement of employees to be replicated in the country as part of the foundations of a new socio-economic system based on private ownership, entrepreneurship and market.

The Law on Labour Relations defines the meaning of the term employees' representative in its institutional meaning. According to the Law,

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<sup>6</sup> Article 2, (I)

<sup>7</sup> Article 2, (j)

<sup>8</sup> Constitution of Republic of Macedonia, 1991

“employees’ representative” is the representative of the employees provided for by law and by the laws of the Member States of the European Union.<sup>9</sup>

The categories information and consultation in terms of participation of the employees in the management and decision-making in the enterprise, are introduced in the labor legislation of the Republic of Macedonia with the Law on changes and amendments of the Law on Labour Relations ("Official Gazette" no.124 / 2010).<sup>10</sup>

Thus, information of the workers according to the Law on Labour Relations, means transfer of data by the employer to the representatives of the employees, so that the employees can understand and inspect the data.<sup>11</sup> Consultation means exchange of views and establishment of dialogue between the representatives of the employees and the employer.<sup>12</sup> The obligation for information and consultation of the employees applies to each company, public company or other legal entity that employs more than 50 workers. The obligation for information and consultation applies to institutions that employ more than 20 workers.<sup>13</sup>

The information involves the activities of the company, the public company or other legal entity or institution regarding their economic situation, situation, and the structure of employment in the company, the public company or other legal entity or institution, provided for each anticipated measure, especially when there is threat to employment, as well as decisions that can lead to substantial changes in the organization of the work, the contractual obligations and the like.<sup>14</sup> The information is given in appropriate time, manner and content so the representatives of workers are able to conduct a proper analysis and, if necessary, prepare for consultation.<sup>15</sup>

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<sup>9</sup> Law on changes and amendments of the Law on Labor Relations (Official Gazette of RM, no. 124/2010), Article 2

<sup>10</sup> See more, Law on changes and amendments of the Law on Labor Relations (Official Gazette of Republic of Macedonia, no. 124/2010), Article 21, where the new Article 94-a is added.

<sup>11</sup> Law on Labor relations (Official Gazette of RM, no. 62/05, 106/08, 161/08, 114/09, 130/09, 149/09, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13, 25/13, 170/13 and 187/13), Article 94 – a Paragraph 1

<sup>12</sup> Ibid, Article 94 – a Paragraph 2

<sup>13</sup> Ibid, Article 94 – a Paragraph 3

<sup>14</sup> Ibid, Article 94 – a Paragraph 4

<sup>15</sup> Ibid, Article 94 – a Paragraph 5

The law provides the consultation to be conducted at the time, method and content appropriate to the level of representation and depending on the issues the consultation is required for.<sup>16</sup>

The issues on informing the employees are regulated by the Law in other provisions. Thus, the employer is obliged to inform the employee, with the conclusion of an employment agreement, if the work can cause considerable risk to her health and the health of the child, and such risks are provided in accordance with the regulations regarding the health and safety at work related to pregnant employees, workers who have recently given birth or are breastfeeding.<sup>17</sup> The employer is obliged to inform the fixed-term employees about the vacancies through announcement placed in a visible location, to ensure that they have the same opportunity for an indefinite period employment as the other employees.<sup>18</sup> The employer has a duty to provide safe working conditions and has an obligation to inform the employees about potential risks, to explain what will be done to ensure that new pregnant employees will not be exposed to risks that could cause damage to their health and security.<sup>19</sup>

## **2.1 Information and consultation of the employees in case of transfer of the company or part of a commercial company**

The mechanism for protection of the employees through information and consultation in case of transfer of the company or parts of the trading company was also introduced with the changes and amendments to the Law on Labour Relations enacted in 2010.<sup>20</sup> Before the transfer of the rights and obligations arising from the employment, the carrier and the acquirer are obliged to inform the syndicate organizations of this fact, and to consult with them in order to reach an agreement about the established or proposed date of transfer, the reasons for the transfer, the legal, economic and social consequences for the employees and the envisaged measures in relation to the employees. The information and consultation provided include the measures relating to the transfer of employees that must be implemented before the change occurs in the business, irrespective of whether the decision to transfer

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<sup>16</sup> Ibid, Article 94 – a Paragraph 6

<sup>17</sup> Ibid, Article 25 Paragraph 4

<sup>18</sup> Ibid, Article 24 Paragraph 10

<sup>19</sup> Ibid, Article 42 Paragraph 4 and 5

<sup>20</sup> See more, Law on changes and amendments to the Law on Labor Relations (Official Gazette of RM, no. 124/2010), Article 16, amending the Law on Labor Relations with a few articles, among them Article 68-b regulating the issue on information and consultation

is made by the employer or by the person controlling the employer. The obligation for information also applies to the employees that have no syndicate organization.<sup>21</sup>

## **2.2 Information and consultation in case of collective dismissals by the employer because of business reasons**

A collective dismissal because of business reasons is the employer intent to make a decision on termination of the employment of many workers, that is, at least 20 workers within a period of 90 days at each termination of employment regardless of the total number of employees. The employer is obliged to begin the process of consultation with the employees' representatives about the intention to carry out collective dismissals at least one month before the collective dismissal, as well as to provide all relevant and important information before starting the consultation in order to reach an agreement. The obligations for information and consultation are applied regardless of the fact if the decision for collective dismissals is made by the employer or the person who controls the employer. In accordance with law, after the consultation with the employees' representatives, the employer shall notify the office in charge of employment assistance and mediation services. This notice contains all the important information on the planned collective dismissals, the consultations with the employees' representatives, the reasons for the dismissals, the number of employees who are laid off, the total number of employees and the time period when the layoffs will occur. The employer shall submit a copy of the notice sent the office in charge of employment assistance and mediation services to the employees' representatives, so they can submit their proposals to the employment assistance service. The employer is obliged to submit the notification of planned collective dismissals to the employment assistance service no later than 30 days before making the decision to terminate the employment of the employees. The provisions of the Law on Labor Relations a propos the collective dismissals do not apply to the activities of the institutions due to a court decision, fixed-term employment contracts, and the bodies of the public administration.<sup>22</sup>

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<sup>21</sup> Law on Labor Relations (Official Gazette of RM, no. 62/05, 106/08, 161/08, 114/09, 130/09, 149/09, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13,25/13, 170/13 and 187/13), Article 68 - b

<sup>22</sup> Ibid, Article 95



### **2.3 Consultations with the syndicate**

The Law on Labor Relations prescribes an obligation for the employer for consultation with the syndicate representative, before introducing night shift for the employees. The consultation with the syndicate should be performed at least once a year. If there is no organized representative syndicate, the employer is obliged to carry out the consultation with the representative of the employees concerning the circumstances determining the time that would be considered a night shift, as well as the protection measures to be taken during the night shift.<sup>23</sup>

### **2.4 Possible solutions for upgrading the issues on information and consultation, i.e. the participation of the employees in the Law on Labour Relations**

We believe that there is a need for further regulation of the current provisions in the Law, in terms of the Law on Labour Relations and the issues regarding the information and consultation, i.e. on the issue of participation of the employees in the decision making and management of the company. In this direction it is necessary to regulate an institutionalized employee participation in the enterprise management, through a representative body – employee’s council that would be comprised of representatives of the employees, the manner and procedure of election, rights and duties, the manner and procedure of decision-making in the given competence regarding the protection of the rights and the interests of the employees. The current solutions that address the issues of information and consultation should be more clearly systematized and distinction should be made regarding the circumstances or issues for which the information or consultation is performed for. Moreover, there is a need for regulation of the issue of co-decision. The law should stipulate the legal consequences for disobeying the mechanisms of information and consultation, as well as the other jurisdiction that should be prescribed by law or a collective agreement. A distinction of the responsibility for these matters between the employee representatives and the syndicate representatives should also be noted in the Law. This will represent a contribution for the Law on Labor Relations of the Republic of Macedonia to regulate these issues, as it has already been regulated in a number of European countries.

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<sup>23</sup> Ibid, Article 130

### **3. Law on Safety and Health at Work**

The Law on Safety and Health at Work<sup>24</sup> regulates the issues on the measures for safety and health at work, the obligations of the employer, the rights and the obligations of the employees in the area of safety and health at work, the preventive measures against occupational risks, the elimination of risk accident factors, information, consultation, training of the employees and their representatives and their participation in the planning and taking measures for safety and health at work.<sup>25</sup>

#### **3.1 Informing the employees to safely perform the work**

The employer is obliged by the law to inform the employees about safely performing the work through written notices and instructions. In exceptional cases, when the employees are exposed to imminent danger to their health or life, the notifications and instructions should be transmitted verbally and by including all measures taken with regard to safety at work.<sup>26</sup>

In case of immediate, serious and imminent danger, the employer must give appropriate instructions to the employees to stop working, quickly leave the workplace and evacuate to a safe area. If the danger is ongoing, the employer must not request from the employees to perform their duties.<sup>27</sup>

In a situation of a serious or imminent danger to the safety of the employees or the safety of others, in cases when an expert can not be contacted, the employees can take appropriate measures within their means and technical knowledge at their disposal in order to avoid the consequences of danger. In such cases, the employees can not be held accountable, except those employees who have acted recklessly and in bad faith.<sup>28</sup>

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<sup>24</sup> Law on Safety and Health at Work (Official Gazette of RM, no.32/2007, 136/2011, 23/2013, 25/2013, 137/13 and 164/13)

<sup>25</sup> Ibid, Article 1

<sup>26</sup> Ibid, Article 25 Paragraph 1

<sup>27</sup> Исро, Article 25 Paragraph 2, 3 and 4

<sup>28</sup> Исро, Article 25 Paragraph 2, 3 and 4

### **3.2 Informing the employees about the existence of a risk at the workplace**

The employer is obliged to inform the employees and their representatives about any type of risk for all the jobs positions, about the safety measures necessary to control and eliminate the risk of adverse effects, as well as to inform the employees with specific duties responsible for the first aid assistance and to provide the necessary information for fire safety and evacuation. The employer has a duty to inform all the categories of employees of any status and age about the existence of a risk at the workplace. In accordance with the special regulations, the employer must display the special warnings and danger signs, as well as the guidelines for safety and health at work at the workplace and on the work equipment.<sup>29</sup>

#### **3.2 Consultation**

The Law on Safety and Health at Work regulates the issue of consultation with the syndicate organization of the employees or the employee assembly. According to the law<sup>30</sup>, the employer is obliged to consult with the syndicate organization of the employees or the employee assembly on the following:

- All measures that can affect the safety and health at work;
- The appointment of an expert to perform the professional tasks related to safety at work or the authorized natural person/legal entity for security;
- The appointment of authorized health institution performing occupational health services in accordance with the regulations relating to health, engaged by the employer to implement health protection at work;
- The safety statement, i.e. the document describing the characteristics of the work process with identification of the hazards and the risk assessment for safety and health at work that prescribes appropriate protection measures;
- Planning and organization of training, and
- Informing the employees

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<sup>29</sup> Ibid, Article 26

<sup>30</sup> Ibid, Article 27 Paragraph 3

### **3.3 Employee safety and health representative**

An employee safety and health representative is a person elected by the employees in order to represent their interests in terms of safety and health at work before the employer.<sup>31</sup>

The employee safety and health representative is elected by the employees during a syndicate assembly of the majority syndicate or during the assembly of the employees.

The representative of the employees, according to the law and the collective agreement, is entitled to special protection of the right to employment as well as the syndicate representative.<sup>32</sup>

#### **3.4.1 Number of safety and health representatives and their rights**

The law regulates the issue of the number of elected safety and health representatives. If the employer employs more than ten employees, one representative will be elected. Two representatives are elected if the employer employs between 101 to 500 employees and three representatives are elected if the employer employs more than 501 employees.

The number of the representatives, how they will be trained as well as the form of the functioning is regulated by an act of the employer in accordance with the Law on Safety and Health at Work and the collective agreement. If more than one representative is elected, the representatives will elect a coordinator from among them.<sup>33</sup>

The law prescribes a safety and health representative to be elected for every working area where there is danger to the safety and the health of the employees, regardless of the number of employees.<sup>34</sup>

The safety and health representative has a broad authority to protect the rights and the interests of the employees with a goal of reducing or eliminating the sources of danger, has the right to communicate and require from the employer information and other data relevant to their work, opportunity to require mediation by the labor inspection and to perform other duties prescribed by the law.<sup>35</sup>

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<sup>31</sup> Ibid, Article 3 Paragraph 1 Indent 3,

<sup>32</sup> Ibid, Article 28

<sup>33</sup> Ibid, Article 29 Paragraph 1, 2 and 3

<sup>34</sup> Ibid, Article 29 Paragraph 4

<sup>35</sup> Ibid, Article 27 Paragraph 1

### **3.4 Penal liability for violation of the rights and obligations relating to the obligations for information, consultation and the safety and health representative**

The Law prescribes misdemeanor provision for breaching the obligations relating to the exercise of the rights by the safety and health representative. The Law prescribes a fine in the amount of EUR 1,000 in denar equivalent for a misdemeanor by a legal entity – employer and in the amount of EUR 300 for the responsible person in the legal entity, for violating the obligations prescribed by law.<sup>36</sup>

### **3.5 Perception of possible solutions for upgrading the issues regarding information and consultation in the Law on Safety and Health at Work and their relation to the provisions of the Law on Labour Relations**

From the analysis of the Law on Safety and Health at Work it is clear that the issues subject to information and consultation are regulated appropriately in terms of the material provisions. The issues regarding the safety and health representative and their competence are also appropriately regulated. This law defines the penal liability for breaching the obligations for health and safety at work. This law requires editing the co-decision, clearer separation of the authorizations of the syndicate and the employee representatives, as well as amending the law with provisions and decisions of process legal nature. The fact that the Law on Labour Relations is in need of an upgrade of the decisions, when implementing the changes, a parallel attention to the decisions in the Law on Safety and Health at Work should be run and for their simultaneous alignment and connection to the decisions that should be done in the Law on Labour Relations. Of course this all depends on the adopted concepts to addressing these issues.

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<sup>36</sup> Ibid, Article 56

### **Concluding observations**

The participation of the employees that includes the questions of information and consultation is part of a broader concept of social democracy where the company's employees have a right to participate in making decisions that are relevant to their position in the company and can affect their rights and interests.

Republic of Macedonia is a country that has built its social political and economic relations in accordance with the recognized civilization and democratic values. Consequently, the question for the involvement of the employees in the enterprise management is being asked.

The analysis of both laws indicated a need to supplement them by material provisions, and above all provisions of procedural and institutional organizational character.

The Law on Labor relations allows editing (further regulation) of the issue on protecting the rights and interests of the employees by information, consultation and arranging the issue of co-decision. In addition, there is a need of editing and institutionalizing the representative body of the employees – workers' council, tasked to protect and promote the interests of workers with a particular employer by information, consultation and co-decision. Regulating the issue on the legal consequences for nonobservance of the information obligations, consultation and co-decision and the delineation of the role of the syndicate and the syndicate representatives from the role of the representative body are also questions to be further regulated in the law. By amending the law with procedural and institutional provisions, a systematic connection with the provisions of a material nature will be achieved, which in turn will contribute to a more comprehensive actualization of the issues relating to the information and consultation of the employees.

The Law on Safety and Health at Work should also complement the co-decision mechanism, provide clearer delineation of the role of the syndicate and the employee representatives as well as edit (further regulate) the question of the legal consequences for nonobservance of the obligations deriving from the information and consultation. The alignment of the Law on Safety and Health at Work should be carried out simultaneously with the alignment of the decisions to be made in the Law on Labour Relations.

We hope that with this paper we were able to highlight the key aspects related to the issue of information and consultation in both laws. We also highlighted the material, procedural and institutional organizational issues that need to be further regulated with a main objective for the employees to get the place they deserve in the relation between the labor and the capital. We expect that this work will provoke additional incentive for further insights concerning this issue by the expert and the scientific community.

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