

EN
ANNEX

Definitions of terms 'Information' and 'Consultation' in the EU I&C Directives

	2002/14/EC (General Framework) Article 2 (f)(g)	2009/38/EC (EWC) Article 2 par. 1 (f)(g)	2001/86/EC (SE) Article 2 (i)(j)
Information	"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"	"means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings"	"means the informing of the body representative 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 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"
Consultation	"means the exchange of views and establishment of dialogue between the employees' representatives and the employer"	"means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings"	"means the establishment of dialogue and exchange of views between the body representative 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 measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE"

- **Definitions in Directive 2002/14/EC (General Framework) should be read in conjunction with Article 4 paragraphs 2, 3 and 4 of the same Directive:**

"2. Information and consultation shall cover:

(a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;

(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;

(c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1)

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 in accordance with Article 2(f) 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;

(e) with a view to reaching an agreement on decisions within the scope of the employer's powers referred to in paragraph 2(c)".

- **Directive 98/59/EC (on collective redundancies) does not define 'information' and 'consultation' but lays down information and consultation obligations:**

"Article 2

1. *Where an employer is contemplating collective redundancies, he shall begin consultations with the workers' representatives in good time with a view to reaching an agreement.*

2. *These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant.*

Member States may provide that the workers' representatives may call on the services of experts in accordance with national legislation and/or practice.

3. *To enable workers' representatives to make constructive proposals, the employers shall in good time during the course of the consultations:*

(a) supply them with all relevant information and

(b) in any event notify them in writing of:

(i) the reasons for the projected redundancies;

(ii) the number of categories of workers to be made redundant;

(iii) the number and categories of workers normally employed;

(iv) the period over which the projected redundancies are to be effected;

(v) the criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefor upon the employer;

(vi) the method for calculating any redundancy payments other than those arising out of national legislation and/or practice.

The employer shall forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph, point (b), subpoints (i) to (v).

[...]"

- **Directive 2001/23/EC (on transfer of undertakings) does not define 'information' and 'consultation' but lays down information and consultation obligations:**

"Article 7

1. *The transferor and transferee shall be required to inform the representatives of their respective employees affected by the transfer of the following:*

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

The transferor must give such information to the representatives of his employees in good time, before the transfer is carried out.

The transferee must give such information to the representatives of his employees in good time, and in any event before his employees are directly affected by the transfer as regards their conditions of work and employment.

2. *Where the transferor or the transferee envisages measures in relation to his employees, he shall consult the representatives of the employees in good time on such measures with a view to reaching an agreement.*

3. *Member States whose laws, regulations or administrative provisions provide that representatives of the employees may have recourse to an arbitration board to obtain a decision on the measures to be taken in relation to employees may limit the obligations laid down in paragraphs 1 and 2 to cases where the transfer carried out gives rise to a change in the business likely to entail serious disadvantages for a considerable number of the employees.*

The information and consultations shall cover at least the measures envisaged in relation to the employees.

The information must be provided and consultations take place in good time before the change in the business as referred to in the first subparagraph is effected.

4. *The obligations laid down in this Article shall apply irrespective of whether the decision resulting in the transfer is taken by the employer or an undertaking controlling the employer.*

In considering alleged breaches of the information and consultation requirements laid down by this Directive, the argument that such a breach occurred because the information was not provided by an undertaking controlling the employer shall not be accepted as an excuse.

5. *Member States may limit the obligations laid down in paragraphs 1, 2 and 3 to undertakings or businesses which, in terms of the number of employees, meet the conditions for the election or nomination of a collegiate body representing the employees.*

6. Member States shall provide that, 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,*
- any measures envisaged in relation to the employees".*