

## NEWSLETTER

### NEW REGULATIONS FOR EMPLOYEES INFORMATION AND CONSULTATION LEGISLATIVE DECREE NO. 25 OF FEBRUARY 6, 2007 (THE "DECREE")

With effect from March 22, 2007 Italy has implemented Directive 2002/14/EC of March 11, 2002 (the "**Directive**"), which introduces new information and consultation requirements regarding employees and works council of undertakings or production units based in Italy of a certain size.

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#### INTRODUCTION

The aim of the Directive was *to establish a general framework setting out minimum requirements for the right to employee consultation and information in undertakings or establishments within the Community* as a result of the lack of any relevant provisions that can be used preventively with regard to complex and sensitive issues relating to an entire workforce.

The Decree, which implements the Directive, establishes the right to general protection with regard to employee consultation and information, which up to now has had no statutory system in Italy and aims to find the balance between undertakings and employees with regard to mutual rights. Similar procedures have in fact been anticipated by certain National Collective Agreements such as the National Energy and Petroleum Agreement and the Agreements of Industrial companies.

Following are the main points of the Decree:

#### 1. SCOPE

The new requirements for information and consultation shall apply to public and private companies based in Italy that are carrying out an economic activity – whether or not they are operating for gain – and that employ at least 50 employees.

Until March 23, 2008 for an interim period, the Decree shall apply only to those undertakings that employ at least 100 employees.

#### 2. METHOD FOR CALCULATING THE THRESHOLDS OF EMPLOYEES FOR THE APPLICATION OF THE DECREE

In order to verify if the Decree is to be applied, one should calculate the monthly average of individuals employed in the undertaking in the last two years, including individuals hired under a fixed-term contract if its duration exceeds 9 months.

#### 3. PRACTICAL ARRANGEMENTS FOR INFORMATION AND CONSULTATION

The requirement for consultation regards:

- information on the recent and probable development of the undertaking's or the establishment's activities and the economic situation;
- information on the situation, the structure and the probable development of employment within the undertaking or establishment, as well as any anticipatory measures envisaged, in particular where there is a threat to employment;
- information on the decisions of the undertaking or establishment which are likely to lead to substantial changes in work organisation or in contractual relations (for example: reorganisation of undertaking or establishment, conversion of undertaking or establishment).

#### 4. INFORMATION AND CONSULTATION PROCEDURE

The National Collective Bargaining Agreement shall define the locations, timing, parties involved, the procedure, and the contents of the right of the employees/works council to be informed and consulted. This is without prejudice to possible informative and consultative procedures already provided by law and/or National Collective Agreements before the Decree comes into force.

The Decree sets forth the following general framework for informing and consulting employees and works council in particular:

- information concerning the subjects in point 3 above, shall be given by the employer to the works council at such time, in such fashion and with such content as are appropriate to enable the latter to conduct an adequate study and, where necessary, prepare for consultation;
- the "consultation" – that is any form of conversation, exchange of opinion and dialogue between the employers and the works council with regard to point 3 above - should be made:
  - with the timing, method and contents thereof appropriate;
  - at the relevant level of management and representation, depending on the subject under discussion;
  - on the basis of the information supplied by the employer and of the opinion which the works council are entitled to formulate;
  - in such a way as to enable works council to meet the employer and obtain a response, and the reasons for the response, to any opinion they might formulate;
  - in order to reach an agreement on the employer's decisions.

#### 5. EXCEPTIONS

The employer is exempted from consultation or communication of information if it could *seriously harm the functioning of the undertaking* or would be *prejudicial to it*. In this case the employer has to demonstrate the effective existence of *technical, organisational and productive reasons* to justify the non-application of the Decree's requirements.

To this end, the Legislator has established that the National Collective Agreement can allow for the creation of official review procedures that will determine in specific terms the *technical, organisational, and productive requirements in order to identify the information which if disclosed would be likely to seriously harm the functioning of the undertaking concerned or would be prejudicial to it*.

#### 6. SANCTIONS



In case of breach of any of the requirements indicated in the Decree, the employer will be penalised with a fine ranging from 3,000.00 Euro to 18,000.00 Euro for each violation.

## 7. CONFIDENTIAL INFORMATION

The works council and any experts who assist them, are not authorised to disclose to employees or to third parties, any information which, in the legitimate interest of the undertaking, has expressly been provided to them in confidence, apart from exemptions already allowed under the collective agreement.

In case of breach of these requirements – leaving aside civil responsibility – employees can be penalised with disciplinary measures laid out in the appropriate National Collective Agreement and also included are the aforesaid experts who will receive a fine ranging from 1,033.00 Euro to 6,198.00 Euro.

This requirement for confidentiality lasts for a period of three years following the expiration of their mandate and is independent of the location in which the employee representative and/or expert finds himself.

It is the responsibility of the relevant Regional Department for Work to be informed about non-compliance and to apply the relevant sanctions.

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