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Greece: Staff information and consultation on business transfers

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Greece

Phase:

Anticipation

 Type: [Staff information and consultation on business transfers](#)

Last modified: 07 November, 2019

Native name:

ΝΟΜΟΣ 4052 / 2012: Έγκριση των Σχεδίων Συμβάσεων Χρηματοδοτικής Διευκόλυνσης μεταξύ του Ευρωπαϊκού Ταμείου Χρηματοπιστωτικής Σταθερότητας (Ε.Τ.Χ.Σ.), της Ελληνικής Δημοκρατίας και της Τράπεζας της Ελλάδος, του Σχεδίου του Μνημονίου Συνεννόησης μεταξύ της Ελληνικής Δημοκρατίας, της Ευρωπαϊκής Επιτροπής και της Τράπεζας της Ελλάδος και άλλες επείγουσες διατάξεις για τη μείωση του δημοσίου χρέους και τη διάσωση της εθνικής οικονομίας και άλλες διατάξεις; ΠΔ 240/2006 – Περί θεσπίσεως γενικού πλαισίου ενημερώσεως και διαβουλεύσεως των εργαζομένων, σύμφωνα με την οδηγία 2002/14/ΕΚ της 11.03.2002 του Ε.Κ και του Συμβουλίου; ΠΔ 178/2002 - Μέτρα σχετικά με την προστασία των δικαιωμάτων των εργαζομένων σε περίπτωση μεταβίβασης επιχειρήσεων, εγκαταστάσεων ή τμημάτων εγκαταστάσεων ή επιχειρήσεων, σε συμμόρφωση προς την Οδηγία 98/50/ ΕΚ του Συμβουλίου

English name:

LAW 4052/2012: Approval of the draft financing facility schemes between the European Financial Stability Facility (EFSF), the Hellenic Republic, and the Bank of Greece; of the Draft Memorandum of Understanding between the Hellenic Republic, the European Commission, and the Bank of Greece, and other urgent provisions on the reduction of public debt and the rescue of the national economy and other provisions; Presidential Decree No. 240/2006 on establishing a general framework for informing and consulting employees in the European Community, transposing Directive 2002/14/EC; Presidential Decree No. 178/2002 on measures for safeguarding employees' rights in the event of transfers of undertakings, businesses or parts of businesses, transposing Directive 98/50/EC

Article

Chapter XII employees' rights to information and consultation in community-scale undertakings and groups of undertakings in compliance with directive 2009/38/EC/6.5.2009; Article 49 - Objective (Article 1, paragraphs 1, 2, 3, 4 and 5 of the Directive); Article 50 - Scope (Article 1, paragraphs 6 and 7 of the Directive); Article 51 - Definitions (Article 2 of the Directive); Article 52 - Controlling undertaking (Article 3 of the Directive); Article 4 of Law 240/2006; 4 of PD 178/2002

Description

According to Presidential Decree No. 240/2006, both the employer transferring the business activity and the successor employer have to inform the representatives of their respective employees affected by the transfer of the following:

- 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.

The meaning of the legal term 'transfer of undertaking' is not defined in the law and it is debated in case law; however, these provisions shall apply to undertakings employing at least 50 employees and establishments employing at least 20 employees.

The transferring employer (transferor) must give that information to the representatives of the employees in good time before the transfer. Likewise, the successor employer must disclose such information to the employee representatives.

In both events, information should be provided in good time, and in any event before the employees are directly affected by the transfer as

regards their conditions of work and employment. The legislation does not establish a specific time frame; instead this is defined on a case-by-case basis.

The employer is also obliged to explain the reason for the choice of a dismissals as opposed to other measures.

The consultation process should take place with the view of reaching an agreement and preparing the relevant minutes. The provision is properly implemented whenever it is established that an agreement is sought based on bona fide principles.

Consultation and information of the employee representatives is intended to contribute to the adoption of an agreement that will be 'protective' for employees during a transfer (payment of high compensation to dismissed workers, regulation of important terms and conditions of work, and maintenance of employment by placing workers in different posts, among others).

For the consultations to be effective, however, the employee representatives should be informed in good time, so that they can present constructive proposals.

Where the transferor or the successor employer intend to change the status of their employees, they must enter into early consultations on these measures with the employee representatives in order to reach an agreement. 'Good time' and 'early consultations' for information and consultation are not defined more specifically, but are assessed by the courts depending on the specific conditions of each case. In any case, there is not yet any supreme court decision ruling on reasonable time for information and consultation.

The results of the consultations are recorded in minutes where the final positions of the interested parties are set out. There are no specific provisions requiring the employer to consider the outcome, except the general legal covenant of good faith and fair dealing, which can be implied by court.

The employee representatives with whom the information and consultation take place are generally the works council. For undertakings or establishments with fewer than 50 employees, if there are no official employee representatives, the employees are represented by a three-member committee elected by them. If, for reasons beyond their control, there are no employee representatives in an undertaking or establishment, the employer must inform all employees, in writing and in advance, of the date or proposed date of the transfer; the reasons for the transfer; the legal, economic and social consequences of the transfer for the employees; and the measures envisaged in relation to the employees. The information must take place in good time and simultaneously to all employees.

According to [Law 4052/2012](#), to enhance the employees' right to information and consultation in Community-scale undertakings and groups of undertakings and in compliance with Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 (OJ L 122/28/16.5.2009) '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', a European Works Council (EWC) or a procedure for informing and consulting employees is hereby set up for each Community-scale undertaking or group of undertakings. The powers of the EWC and the scope of the employees' information and consultation procedure, which are governed by this law, are limited to transnational issues. The powers and responsibilities of the EWCs and the scope of the procedures for the purposes of informing and consulting employees concern, as regards Community-scale undertakings, all establishments situated in the Member States, and as regards Community-scale groups of undertakings, all the member companies of the group located in the Member States. For the purposes of this law, the following terms shall have the meaning given below:

- '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 group that includes a controlling undertaking and its controlled undertakings;
- 'Community-scale group of undertakings' means a group of undertakings with the following characteristics:
 - it employs at least 1,000 employees within the Member States;
 - it has at least two group undertakings in different Member States; and
 - at least one group undertaking employs at least 150 employees in one Member State and at least one other group undertaking employs at least 150 employees in another Member State.

'Controlling undertaking' means an undertaking of a group of undertakings which can exercise a dominant influence over another undertaking (the controlled undertaking) by virtue, for example, of ownership, financial participation or other rights provided for in their statutes.

Comments

Law No. 4052/2012 on European Works Councils, transposing EU Directive 2009/38/EC of 6 May 2009, mainly regulates the establishment of employee representatives: works councils have access to all workplaces at any time they see fit, in order to carry out their duties, which include mainly consultation and entering into agreements with the employer in order to improve working conditions and to cooperate with the company's existing trade unions. Moreover, they enjoy extensive information rights, before the employer proceeds with important decisions regarding the company's organisation. Works councils also decide jointly with the employer upon various matters including internal rules, health and safety regulations, ongoing education and training.

Although Presidential Decree No. 240/2006 attempts to secure the rights of employees in cases of merger, acquisition, transfer of undertakings and collective dismissals, the institutional framework is not strong enough to protect the employees from the adverse effects of continuous transformation of businesses.

The law does not define a 'transfer of undertaking', however, the provisions shall apply to undertakings employing at least 50 employees and establishments employing at least 20 employees.

A [survey](#) conducted in 2013 on trade unionists' views of the implementation of Directive 2002/14/EC (establishing a general framework for informing and consulting employees in the European Community) derived the following conclusions:

- A lack of information is observed among trade unionists on the positive applications of information and consultation at company level. The same lack of information is observed in the case of violation of information and consultation legislation.
- The penalties provided for under the national transport legislation are not considered effective, dissuasive and proportionate, as required by Directive 2002/14/EC.
- The labour inspectorates and courts can play a more active role in the proper implementation of Directive 2002/14/EC.
- Trade unionists complain about the low quality of information provided by employers, about the fact that it is provided late and after

important decisions have already been taken, or about the lack of sufficient time to form a reasoned opinion to participate in the consultation.

In conclusion, trade unionists who took part in the survey said they consider that Directive 2002/14/EC is very important, especially in times of economic crisis when difficulties multiply.

The proposals and suggestions of the trade unionists who were interviewed, which in their view would improve the present situation, are:

- better information of trade unionists on the provisions of Directive 2002/14 by labour federations and confederations;
- organisation of training programmes, meetings to exchange experiences and databases of positive and negative case studies to which unions can refer if necessary;
- a database of court decisions on breaches of Directive 2002/14/EC;
- the penalties to be imposed on those in breach of Directive 2002/14/EC should be laid down in an amendment to the Directive in order to be more effective, dissuasive and proportionate and should not be left to national laws, as is currently the case, as they have proved ineffective.

Cost covered by

Not applicable






Involved actors other than national government

Trade union
Works council

Thresholds

Company size by number of employees:
20

Sources

-  [PD 240/06](#)
-  [PD 40/1997](#)
-  [PD 178/2002](#)
-  [Eurofound \(2010\), New law facilitates dismissals and cuts labour costs, EIROnline Articles](#)
-  [Law 4052/2012](#)

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