

# THE CONCEPT OF INFORMATION-CONSULTATION IN TIMES OF CRISIS:

## OVERVIEW OF NORMATIVE GUIDELINES AND RECENT PRACTICES<sup>1</sup>

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I am part of the team of the Industrial and Employment Relations Department of the International Labour Organization (ILO), and my responsibilities include the development of research and policies, notably in the area of industrial relations at transnational level. In my presentation, I will try to widen our outlook by integrating an international dimension into our debates on the concept of information-consultation in Europe. It will consist of two parts. The first part concerns the concept of social dialogue, and emphasizes a certain number of instruments of the International Labour Organization related to information-consultation. The second part will present a sort of cartography of practices observed at national level, and in companies, during times of crisis. By way of a conclusion, I will evoke some questions concerning risks and opportunities caused by the crisis in terms of socio-economic governance.

### **I. The concept of social dialogue**

The concept of social dialogue includes negotiation, as well as information and consultation between governments and employer and worker representatives on issues of common interest. Social dialogue may be bipartite or tripartite and may concern all levels. Its traditional themes include working conditions, the redistribution of wealth created by the economic activity (salaries and other benefits), and more generally the regulation of relations between

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1. This presentation is largely based on Ghellab, 2009; ILO, 2010; ILO, 2009; Papadakis, 2008 and 2010; and Rychly 2009. The opinions expressed in this presentation are those of the author and not necessarily those of the Industrial and Employment Relations Department, or of the ILO.

entrepreneurs and workers. Information, consultation and negotiation are increasingly important in today's context of transformations due to globalisation and the crisis, whether this is restricted to a certain geographical area, such as the financial crisis in Asia of 1998, or globalized like the current crisis.

## ***Information and consultation during a period of transformation***

### *The context*

The evolution of technology, the emergence of new forms of organisation and production and other transformations which occur in the different sectors, at both national and international levels, push companies towards restructurings. This is a managerial decision which consists in reorganizing the legal, economic or operational structures, or other structures of the company, with the aim of becoming more profitable, better organized or simply in order to satisfy the expectations of the financial markets. The restructuring implies the acceptance of the fact that there is an evolution which obliges the company to take very difficult decisions, often with significant social costs. These mainly affect the employees and take the form of job losses. This does not just mean unemployment, but also insecurity, stress at work, unequal treatment, social conflicts.

## ***Information and consultation during a period of transformation***

### *Normative guidelines of the ILO*

All this has already been recognised as far back as 1944, in the declaration of Philadelphia, adopted at the end of the Second World War, and now annexed to the Constitution of the ILO. The declaration calls on the ILO to draw up programs to promote “[...] the cooperation of management and labour in the continuous improvement of productive efficiency ...” (III e). In order to implement this call, the ILO has based itself since the 1950s on a series of general principles. As there was no convention on information-consultation, the Organisation used soft law, i.e. the recommendations.

Recommendation Number 94 (1952) on “Cooperation at the Level of the Undertaking” indicates that it is necessary to promote the consultation/collaboration between employers and workers at company level for issues of common interest which are not covered by collective bargaining or which are not normally the subject of other procedures which establish working conditions.

Recommendation Number 113 (1960) on “Consultation (Industrial and National Levels)” recommends “ appropriate measures [for] efficient consultation and collaboration [in order to] promote a mutual understanding [...] good relations, [...] develop the economy, [...] improve working conditions [...], raise the standards of living.”

Recommendation Number 143 (1971) on the “Workers’ Representatives” affirms the need of a consultation, “[...], before the dismissal of a workers’ representative becomes final”. However, this consultation is intended to coexist with collective bargaining, not to replace it.

Recommendation Number 129 on the “Communications within the Undertaking” (1967) is even more explicit on the rights and obligations of social partners concerned by the restructuring and the rules which are supposed to guide the information-consultation process. It indicated notably the necessity of ensuring a climate of comprehension/reciprocal trust at

company level, of communicating and consulting **before** decisions on matters of major concern are taken by the management. The recommendation also lists a whole series of themes to be included in information-consultation process at company level, and notably concerning working conditions (hire, transfer, termination) but also the general situation of the company and the explanation of decisions susceptible to affect directly or indirectly the situation of the personnel.

The question of information-consultation is better clarified in one of the chapters of the Convention Number 168 (accompanied by the Recommendation No. 166) on redundancies (1982) which deals with specifically the case of economic, technological, structural or similar redundancies. In these cases, the recommendation specifies that the employer should:

- “provide the concerned workers’ representatives in **good time** with all relevant information, including the reasons behind the envisaged redundancies, the number and the categories of workers likely to be affected and the period over which these are expected to be implemented”, in order to limit the effects (with other obvious similarities with the 98/59/EC directive on collective redundancies);
- the obligation to carry out consultations with the trade unions (workers representatives) prior to the layoffs <sup>2</sup>.

Finally, there is a transnational normative guideline, i.e. the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (2000), which established, among others, principles dealing with consultation within multinational companies. According to article 57, “in multinational as well as in national enterprises, systems devised by mutual agreement between employers and workers and their representatives should provide, in accordance with national law and practice, for regular consultation on matters of mutual concern. Such consultation should not be a substitute for collective bargaining” <sup>3</sup>.

Three points common to all these instruments can be identified: (a) an implicit acceptance of the need to reorganize the company in view of the unceasing growth, transformation and integration of world markets; (b) the need for the social partners to participate in voluntary processes in order to better manage these changes (in the absence of global institutions which can weaken the social consequences associated with these developments); the instruments demonstrate that a consultative approach can improve the adaptability of companies, increase their competitiveness and assist the implementation of decisions all the while preserving social peace; and (c) a warning against using information-consultation processes as a substitute for collective bargaining, which should be the first instrument to regulate working conditions and relations between social partners.

## II. Social dialogue and crisis: Short overview of practices observed

You are undoubtedly familiar with the general context, so I will just provide a few figures to situate the debate. These are quite recent figures which were presented at the Summit of Davos by the Director-General of the ILO.

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2. At present, this procedure is institutionalized in 40 Member States of the ILO, 14 of which are member States of the European Union, according to the latest database of the ILO, EPLex. This contains a great quantity of information on national laws concerning redundancies of some 60 Member States of the ILO. It is updated regularly and can be consulted on <http://www.ilo.org/dyn/terminate/termmain.home>.

3. Recommendation No. 94 on the Consultation and the Co-operation between Employers and Workers at the Level of the Undertaking, (1952); Recommendation No. 129 on Communications within the Undertaking, (1967).

- in 2009, there were 212 millions of unemployed in the world, this figure grew by 34 million compared to 2007;
- in 2010, unemployment is expected to remain very high, notably in the developed economies and the European Union where a surplus of three million persons could swell the ranks of the unemployed according to the estimation of the International Monetary Fund (IMF) and the ILO;
- 633 million workers and their families lived on less than \$1.25 per day in 2008;
- the impact of the crisis is most severe in the developing countries.

### *Social dialogue at all levels*

Since 2008, the ILO has tried to document the activity of social dialogue during times of crisis, including the information and consultation practices during restructurings. Our studies show that at the beginning of the crisis, the social partners were little involved in crisis response decision-making processes — at State or company level — but their participation has accelerated since January 2009, when the crisis moved progressively from the financial to the economic sphere, and serious and unpopular decisions had to be made at national and company level.

At national level, certain countries launched information-consultation processes in order to establish a program of economic stimulation and job protection within companies. Most of them emphasized tax policies, the protection of vulnerable groups, the creation of jobs through public investments including green jobs, attempts to save jobs such as job-sharing, training, measures of social protection, for example, by creating social investment funds. Countries such as France, the Netherlands, Chile, South Africa, Korea or Japan were among the countries which implemented such processes, often after consultation with the social partners<sup>4</sup>. But all this was an extremely laborious process, resulting in very few agreements, even in countries where the national social dialogue had been exemplary up until the start of the crisis (for example, Ireland).

At company level, there was a marked return of concession bargaining. The workers make sacrifices in terms of salaries and/or benefits to save their companies and/or their job. The most frequently decided measures following information-consultation processes or sometimes negotiation include: pay freezes or cuts, flexibility measures such as job-sharing, voluntary (early) retirement, investment in training in order to improve worker employability, transfer of employees within the company or group, career breaks, measures to reduce managerial salaries, the reduction of pension fund and health insurance contributions, promises to avoid strike actions. In France and Germany, two countries with a well-established culture of social dialogue and strong systems of information-consultation, there was strong resistance to restructuring plans implying collective redundancies and layoffs without redundancy packages. “Job security” agreements at company level concluded in these countries (for example, in Daimler in Germany) are good examples of consultative processes which were successful from both a management and employee point of view.

Finally, we also observed a reinforcement of the role of transnational company agreements (or international framework agreements — IFAs) in the management of restructurings, notably at European level, as well as the role of formal structures of information-consultation within companies (for example, the European or World Works Councils). Up to November 2009, 39 agreements (of approximately 160 transnational agreements) signed between 23 multinational

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4. A survey carried out by the ILO in 2009 among 54 countries (including all the Member States of the G20 and the OECD) on state-controlled strategies to combat the crisis, shows that in terms of social dialogue and labour law, the “consultation on the crisis” was the most frequently used response (59.3%), followed by national agreements (35.2%), and changes of labour legislation (22.2%).

companies and trade unions federations or workers' representatives established or reinforced the structures of information, consultation and negotiation in order to manage or anticipate restructurings in times of crisis. The results were often judged very satisfactory by the signatories (for example, the agreement between ArcelorMittal and the European Metalworkers Federation (EMF), signed in November 2009).

### *Expectations and unanswered questions*

The information-consultation processes between social partners traditionally serve to identify solutions acceptable to all through a better understanding of different positions. Such solutions may include the adaptation of (often unpopular) management decisions or the acceptance of sacrifices in order to save jobs or the reduction of risk of social conflicts. These processes are being tested in the present context of crisis and already led to a series of results presented briefly below. Certain moral or practical questions remain to be answered following the observation of these results:

- The responsibility of the crisis and the “sharing” of its economic and social costs: While the present crisis was generated by a system of international finance which maintains that it is self-regulated, there is the risk that the cost of this system will be born in a disproportionate way by the workers of the real economy. In this context, most of the restructuring measures — which often follow consultations at company level — help to reduce social costs but do not eliminate them, especially by maintaining permanent jobs to the detriment of precarious jobs, often held by women or migrant workers.
- The durability of measures adopted by the companies and the role of States: Certain measures to face up to the crisis at company level — such as training and time-sharing at work — should have public financial support in order to avoid a downward spiral of salaries with a consequent negative impact on working conditions and the restarting of the global economy. That said, such support is difficult to envisage in the developing countries in view of their limited financial means. The same applies, progressively, to the industrialized or emerging countries where the pressure of financial markets which are starting to penalize the public deficits is now being felt.

### **By way of conclusion**

This presentation consisted of a brief account of the normative background of the concept of information-consultation from the point of view of the ILO, as well as its recent use in the context of the current crisis. As the transformations at company level and at the level of the global socio-economic system caused by the crisis are without precedent, their consequences are difficult to predict precisely. The same applies to the exact contribution of the information-consultation structures established to manage the negative consequences of the restructuring of the company on the employees. A pessimistic scenario would perceive the impact of the crisis in terms of irreversible social costs, despite the existence of information and consultation structures, because such crises can reoccur again and again if the rules of international finance which generated the crisis are not radically reformed. On the other hand, a more optimistic analysis would perceive in this situation a unique opportunity to initiate a reform of socio-economic governance at all levels. Such a reform could take into account a certain number of points advocated, more or less explicitly, by the global pact for employment adopted in June 2009 by the International Labour Conference, which constitutes today a social agenda to emerge from the crisis:

- a the promotion of the freedom to join a trade union and collective bargaining and the reinforcement of the role of social dialogue and of collective bargaining in crisis management;
- b the reinforcement of the cooperation and the cross-border solidarity between social partners in order to improve their coordination and negotiation power;
- c the creation of new institutions, the updating of work legislation, and the adaptation of systems of industrial relations to the needs of new realities and agendas (green jobs, transnational company agreements, transnational sectoral collective bargaining); and
- d the re-centring on the question of employment in the macro-economic policies.

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