
STATUTORY INSTRUMENTS

2004 No. 2326

**The European Public Limited-
Liability Company Regulations 2004**

PART 3

EMPLOYEE INVOLVEMENT

CHAPTER 4

NEGOTIATION OF THE EMPLOYEE INVOLVEMENT AGREEMENT

Negotiations to reach an employee involvement agreement

27.—(1) In this regulation and in regulation 28 the competent organs of the participating companies and the special negotiating body are referred to as “the parties”.

(2) The parties are under a duty to negotiate in a spirit of cooperation with a view to reaching an employee involvement agreement.

(3) The duty referred to in paragraph (2) commences one month after the date or, if more than one, the last date on which the members of the special negotiating body were elected or appointed and applies—

- (a) for the period of six months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within that period, until the completion of the negotiations;
- (b) where the parties agree before the end of that six month period that it is to be extended, for the period of twelve months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within the twelve month period, until the completion of the negotiations.

The employee involvement agreement

28.—(1) The employee involvement agreement must be in writing.

(2) Without prejudice to the autonomy of the parties and subject to paragraph (4), the employee involvement agreement shall specify:

- (a) the scope of the agreement;
- (b) the composition, number of members and allocation of seats on the representative body;
- (c) the functions and the procedure for the information and consultation of the representative body;
- (d) the frequency of meetings of the representative body;
- (e) the financial and material resources to be allocated to the representative body;

- (f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;
- (g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights; and
- (h) the date of entry into force of the agreement and its duration, the circumstances, if any in which the agreement is required to be re-negotiated and the procedure for its re-negotiation.

(3) The employee involvement agreement shall not be subject to the standard rules on employee involvement, unless it contains a provision to the contrary.

(4) In relation to an SE to be established by way of transformation, the employee involvement agreement shall provide for the elements of employee involvement at all levels to be at least as favourable as those which exist in the company to be transformed into an SE.

(5) If the parties decide, in accordance with paragraph (2)(f), to establish one or more information and consultation procedures instead of a representative body and if those procedures include a provision for representatives to be elected or appointed to act in relation to information and consultation, those representatives shall be "information and consultation representatives".

Decisions of the special negotiating body

29.—(1) Each member of the special negotiating body shall have one vote.

(2) Subject to paragraph (3) and regulation 30, the special negotiating body shall take decisions by an absolute majority vote.

(3) In the following circumstances any decision which would result in a reduction of participation rights must be taken by a two thirds majority vote:

- (a) where an SE is to be established by merger and at least 25% of the employees employed to work in the EEA states by the participating companies which are due to merge have participation rights; and
- (b) where an SE is to be established by formation of a holding company or of a subsidiary company and at least 50% of the total number of employees employed to work in the EEA states by the participating companies have participation rights, and

in this paragraph, reduction of participation rights means that the body representative of the employees has participation rights in relation to a smaller proportion of members of the supervisory or administrative organs of the SE than the employees' representatives had in the participating company which gave participation rights in relation to the highest proportion of such members in that company.

(4) The special negotiating body must publish the details of any decision taken under this regulation or under regulation 30 in such a manner as to bring the decision, so far as reasonably practicable, to the attention of the employees whom they represent and such publication shall take place as soon as reasonably practicable and, in any event no later than 14 days after the decision has been taken.

(5) For the purpose of negotiations, the special negotiating body may be assisted by experts of its choice.

(6) The participating company or companies shall pay for any reasonable expenses of the functioning of the special negotiating body and any reasonable expenses relating to the negotiations that are necessary to enable the special negotiating body to carry out its functions in an appropriate

manner; but where the special negotiating body is assisted by more than one expert the participating company is not required to pay such expenses in respect of more than one of them.

Decision not to open or to terminate negotiations

30.—(1) Subject to paragraph (2), the special negotiating body may decide, by a two thirds majority vote, not to open negotiations with the competent organs of the participating companies or to terminate any such negotiations.

(2) The special negotiating body cannot take the decision referred to in paragraph (1) in relation to an SE to be established by transformation if any employees of the company to be transformed have participation rights.

(3) Any decision made under paragraph (1) shall have the following effects—

- (a) the duty in regulation 27(2) to negotiate with a view to reaching an employee involvement agreement shall cease as from the date of the decision;
- (b) any rules relating to the information and consultation of employees in a EEA state in which employees of the SE are employed shall apply to the employees of the SE in that EEA state; and
- (c) the special negotiating body shall be reconvened only if a valid request in accordance with paragraph (4) is made by employees or employees' representatives.

(4) To amount to a valid request, the request referred to in paragraph (3)(c) must—

- (a) be in writing;
- (b) be made by at least 10% of the employees of, or by employees' representatives representing at least 10% of the total number of employees employed by—
 - (i) the participating companies and its concerned subsidiaries, or
 - (ii) where the SE has been registered, the SE and its subsidiaries; and
- (c) be made no earlier than two years after the decision made under paragraph (1) was or should have been published in accordance with regulation 29(4) unless the special negotiating body and the competent organs of every participating company or, where the SE has been registered, the SE agree to the special negotiating body being reconvened earlier.

Complaint about decisions of special negotiating body

31.—(1) If a member of the special negotiating body, an employees' representative, or where there is no such representative in respect of an employee, that employee believes that the special negotiating body has taken a decision referred to in regulation 29 or 30 and—

- (a) that the decision was not taken by the majority required by regulation 29 or 30, as the case may be; or
- (b) the special negotiating body failed to publish the decision in accordance with regulation 29(4),

he may present a complaint to the CAC within 21 days of the date the special negotiating body did or should have published their decision in accordance with regulation 29(4).

(2) Where the CAC finds the complaint well-founded it shall make a declaration that the decision was not taken properly and that it shall have no effect.