
STATUTORY INSTRUMENTS

2004 No. 2326

The European Public Limited-
Liability Company Regulations 2004

PART 3

EMPLOYEE INVOLVEMENT

CHAPTER 7

CONFIDENTIAL INFORMATION

Breach of statutory duty

37.—(1) Where an SE, a subsidiary of an SE, a participating company or any concerned subsidiary entrusts a person, pursuant to the provisions of this Part of these Regulations, with any information or document on terms requiring it to be held in confidence, the person shall not disclose that information or document except in accordance with the terms on which it was disclosed to him.

(2) In this regulation a person referred to in paragraph (1) to whom information or a document is entrusted is referred to as a “recipient”.

(3) The obligation to comply with paragraph (1) is a duty owed to the company that disclosed the information to the person and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

(4) Paragraph (3) does not affect any legal liability which any person may incur by disclosing the information, or any right which any person may have in relation to such disclosure otherwise than under this Regulation.

(5) No action shall lie under paragraph (3) where the recipient reasonably believed the disclosure to be a “protected disclosure” within the meaning given to that expression by section 43A of the 1996 Act⁽¹⁾.

(6) A recipient to whom a company has entrusted any information or document on terms requiring it to be held in confidence may apply to the CAC for a declaration as to whether it was reasonable for the company to require the recipient to hold the information or document in confidence.

(7) If the CAC considers that the disclosure of the information or the document by the recipient would not, or would not be likely to, harm the legitimate interests of the undertaking, it shall make a declaration that it was not reasonable for the competent organ to require the recipient to hold the information or document in confidence.

(8) If a declaration is made under paragraph (7), the information or document shall not at any time thereafter be regarded as having been entrusted to the recipient who made the application under paragraph (6), or to any other recipient, on terms requiring it to be held in confidence.

(1) Section 43A of the 1996 Act was inserted by the Public Interest Disclosure Act 1998 (c. 23), section 1.

Withholding of information by the competent organ

38.—(1) Neither an SE registered in Great Britain nor a participating company registered in Great Britain is required to disclose any information or document to a person for the purposes of this Part of these Regulations where the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to the SE or any subsidiary or establishment of the SE or, as the case may be, to the participating company or any subsidiary or establishment of the participating company.

- (2) Where there is a dispute between the SE or participating company and—
- (a) where a representative body has been appointed or elected, a member of that body; or
 - (b) where no representative body has been elected or appointed, an information and consultation representative or an employee,

as to whether the nature of the information or document which the SE or the participating company has failed to provide is such as is described in paragraph (1), the SE or participating company or a person referred to in sub-paragraph (a) or (b) may apply to the CAC for a declaration as to whether the information or document is of such a nature.

(3) If the CAC makes a declaration that the disclosure of the information or document in question would not, according to objective criteria, be seriously harmful or prejudicial as mentioned in paragraph (1), the CAC shall order the competent organ to disclose the information or document.

- (4) An order under paragraph (3) shall specify—
- (a) the information or document to be disclosed;
 - (b) the person or persons to whom the information or document is to be disclosed;
 - (c) any terms on which the information or document is to be disclosed; and
 - (d) the date before which the information or document is to be disclosed.