
STATUTORY INSTRUMENTS

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

PART 3

EMPLOYEE INVOLVEMENT

CHAPTER 3

ELECTION OR APPOINTMENT OF UK MEMBERS OF THE SPECIAL NEGOTIATING BODY

Ballot arrangements

23.—(1) Subject to regulation 24, the UK members of the special negotiating body shall be elected by balloting the UK employees.

(2) The management of the participating companies that employ UK employees (“the management”) must arrange for the holding of a ballot or ballots of those employees in accordance with the requirements of paragraph (3).

(3) The requirements referred to in paragraph (2) are—

(a) in relation to the election of ordinary members under regulation 21(2), that—

- (i) if the number of members which UK employees are entitled to elect to the special negotiating body is equal to the number of participating companies which have UK employees, there shall be separate ballots of the UK employees in each participating company;
- (ii) if the number of members which the UK employees are entitled to elect to the special negotiating body is greater than the number of participating companies which have UK employees, there shall be separate ballots of the UK employees in each participating company and the management shall ensure, as far as practicable, that at least one member representing each such participating company is elected to the special negotiating body and that the number of members representing each company is proportionate to the number of employees in that company;
- (iii) if the number of members which the UK employees are entitled to elect to the special negotiating body is smaller than the number of participating companies which have employees in the UK,—
 - (aa) the number of ballots held shall be equivalent to the number of members to be elected;
 - (bb) a separate ballot shall be held in respect of each of the participating companies with the higher or highest number of employees; and
 - (cc) it shall be ensured that any employees of a participating company in respect of which a ballot does not have to be held are entitled to vote in a ballot held in respect of one of the other participating companies; and

- (iv) if there are any UK employees employed by a concerned subsidiary or establishment of non-UK participating companies, the management shall ensure that those employees are entitled to vote in a ballot held pursuant to this regulation.
 - (b) that in relation to the ballot of additional members under regulation 21(3) the management shall hold a separate ballot in respect of each participating company entitled to elect an additional member.
 - (c) that in a ballot in respect of a particular participating company, all UK employees employed by that participating company or by its concerned subsidiaries or at its concerned establishments are entitled to vote;
 - (d) that in a ballot in respect of a particular participating company, any person who is immediately before the latest time at which a person may become a candidate—
 - (i) a UK employee employed by that participating company, by any of its concerned subsidiaries or at any of its concerned establishments; or
 - (ii) if the management of that participating company so permits, a representative of a trade union who is not an employee of that participating company or any of its concerned subsidiaries, is entitled to stand as a candidate for election as a member of the special negotiating body in that ballot.
 - (e) that the management must, in accordance with paragraph (7), appoint an independent ballot supervisor to supervise the conduct of the ballot of UK employees but may instead, where there is to be more than one ballot, appoint more than one independent ballot supervisor in accordance with that paragraph, each of whom is to supervise such of the separate ballots as the management may determine, provided that each separate ballot is supervised by a supervisor;
 - (f) that after the management has formulated proposals as to the arrangements for the ballot of UK employees and before it has published the final arrangements under sub-paragraph (g) it must, so far as reasonably practicable, consult with the UK employees' representatives on the proposed arrangements for the ballot of UK employees; and
 - (g) that the management must publish the final arrangements for the ballot of UK employees in such manner as to bring them to the attention of, so far as reasonably practicable, all UK employees and the UK employees' representatives.
- (4) Any UK employee or UK employees' representative who believes that the arrangements for the ballot of the UK employees do not comply with the requirements of paragraph (3) may, within a period of 21 days beginning on the date on which the management published the final arrangements under sub-paragraph (g), present a complaint to the CAC.
- (5) Where the CAC finds the complaint well-founded it shall make a declaration to that effect and may make an order requiring the management to modify the arrangements it has made for the ballot of UK employees or to satisfy the requirements in sub-paragraph (f) or (g) of paragraph (3).
- (6) An order under paragraph (5) shall specify the modifications to the arrangements which the management is required to make and the requirements it must satisfy.
- (7) A person is an independent ballot supervisor for the purposes of paragraph (3)(e) if the management reasonably believes that he will carry out any functions conferred on him in relation to the ballot competently and has no reasonable grounds for believing that his independence in relation to the ballot might reasonably be called into question.

Conduct of the ballot

- 24.—(1) The management must—

- (a) ensure that a ballot supervisor appointed under regulation 23(3)(e) carries out his functions under this regulation and that there is no interference with his carrying out of those functions from the management; and
 - (b) comply with all reasonable requests made by a ballot supervisor for the purposes of, or in connection with, the carrying out of those functions.
- (2) A ballot supervisor's appointment shall require that he—
- (a) supervises the conduct of the ballot, or the separate ballots he is being appointed to supervise, in accordance with the arrangements for the ballot of UK employees published by the management under regulation 23(3)(g) or, where appropriate, in accordance with the arrangements as required to be modified by an order made as a result of a complaint presented under regulation 23(4);
 - (b) does not conduct the ballot or any of the separate ballots before the UK management has satisfied the requirement specified in regulation 23(3)(g) and—
 - (i) where no complaint has been presented under regulation 23(4), before the expiry of a period of 21 days beginning on the date on which the management published its arrangements under regulation 23(3)(g); or
 - (ii) where a complaint has been presented under regulation 23(4), before the complaint has been determined and, where appropriate, the arrangements have been modified as required by an order made as a result of that complaint;
 - (c) conducts the ballot, or each separate ballot so as to secure that—
 - (i) so far as reasonably practicable, those entitled to vote are given the opportunity to vote;
 - (ii) so far as reasonably practicable, those entitled to stand as candidates are given the opportunity to stand;
 - (iii) so far as reasonably practicable, those voting are able to do so in secret, and
 - (iv) the votes given in the ballot are fairly and accurately counted.
- (3) As soon as reasonably practicable after the holding of the ballot, the ballot supervisor must publish the results of the ballot in such manner as to make them available to the management and, so far as reasonably practicable, the UK employees entitled to vote in the ballot and the persons who stood as candidates.
- (4) A ballot supervisor shall publish a report (“an ineffective ballot report”) where he considers (whether on the basis of representations made to him by another person or otherwise) that—
- (a) any of the requirements referred to in paragraph (2) was not satisfied with the result that the outcome of the ballot would have been different; or
 - (b) there was an interference with the carrying out of his functions or a failure by management to comply with all reasonable requests made by him with the result that he was unable to form a proper judgement as to whether each of the requirements referred to in paragraph (2) was satisfied in the ballot.
- (5) Where a ballot supervisor publishes an ineffective ballot report the report must be published within a period of one month commencing on the date on which the ballot supervisor publishes the results of the ballot under paragraph (3).
- (6) A ballot supervisor shall publish an ineffective ballot report in such manner as to make it available to the management and, so far as reasonably practicable, the UK employees entitled to vote in the ballot and the persons who stood as candidates in the ballot.
- (7) Where a ballot supervisor publishes an ineffective ballot report then—

- (a) if there has been a single ballot or an ineffective ballot report has been published in respect of every separate ballot, the outcome of the ballot or ballots shall have no effect and the UK management shall again be under the obligation in regulation 23(2).
 - (b) If there have been separate ballots and sub-paragraph (a) does not apply—
 - (i) the management shall arrange for the separate ballot or ballots in respect of which an ineffective ballot report was published to be re-held in accordance with regulation 23 and this regulation; and
 - (ii) no such ballot shall have effect until it has been re-held and no ineffective ballot report has been published in respect of it.
- (8) All costs relating to the holding of a ballot, including payments made to a ballot supervisor for supervising the conduct of the ballot, shall be borne by the management (whether or not an ineffective ballot report has been published).

Appointment of UK members by a consultative committee

- 25.**—(1) This regulation applies where—
- (a) regulation 23(3)(a)(i) or (ii) or (b) would require a ballot to be held; and
 - (b) there exists in the participating company in respect of which a ballot would be held under regulation 23, a consultative committee.
- (2) (a) Where this regulation applies, the election provided for in regulation 23 shall not take place but the consultative committee shall be entitled to appoint the UK member or members of the special negotiating body who would otherwise be elected pursuant to regulation 22 provided that the consultative committee’s appointment complied with sub-paragraph (b).
- (b) The consultative committee is entitled to appoint as a member of the special negotiating body:
 - (i) one of their number; or
 - (ii) if the management of the participating company in respect of which the consultative committee exists so permits, a trade union representative who is not an employee of that company.
- (3) In this regulation, “a consultative committee” means a body of persons—
- (a) whose normal functions include or comprise the carrying out of an information and consultation function;
 - (b) which is able to carry out its information and consultation function without interference from the management of the participating company;
 - (c) which, in carrying out its information and consultation function, represents all the employees of the participating company; and
 - (d) which consists wholly of persons who are employees of the participating company or its concerned subsidiaries.
- (4) In paragraph (3) “information and consultation function” means the function of—
- (a) receiving, on behalf of all the employees of the participating company, information which may significantly affect the interests of the employees of that company, but excluding information which is relevant only to a specific aspect of the interests of the employees, such as health and safety or collective redundancies; and
 - (b) being consulted by the management of the participating company on the information referred to in sub-paragraph (a) above.

(5) The consultative committee must publish the names of the persons whom it has appointed to be members of the special negotiating body in such a manner as to bring them to the attention of the management of the participating company and, so far as reasonably practicable, the employees and the employees' representatives of that company and its concerned subsidiaries.

(6) Where the management of the participating company, an employee or an employees' representative believes that—

(a) the consultative committee does not satisfy the requirements in paragraph (3) above; or

(b) any of the persons appointed by the consultative committee is not entitled to be appointed, it, or as the case may be, he may, within a period of 21 days beginning on the date on which the consultative committee published under paragraph (5) the names of the persons appointed, present a complaint to the CAC.

(7) Where the CAC finds the complaint well-founded it shall make a declaration to that effect.

(8) Where the CAC has made a declaration under paragraph (7)—

(a) no appointment made by the consultative committee shall have effect; and

(b) the members of the special negotiating body shall be elected by a ballot of the employees in accordance with regulation 23.

(9) Where the consultative committee appoints any person to be a member of the special negotiating body, that appointment shall have effect—

(a) where no complaint has been presented under paragraph (6), after the expiry of a period of 21 days beginning on the date on which the consultative committee published under paragraph (5) the names of the persons nominated; or

(b) where a complaint has been presented under paragraph (6), as from the day on which the complaint has been determined without a declaration under paragraph (7) being made.

Representation of employees

26.—(1) Subject to paragraphs (2) and (3) below, a member elected in a ballot in accordance with regulation 21(2), shall be treated as representing the employees for the time being of the participating company and of any concerned subsidiary or establishment whose employees were entitled to vote in the ballot in which he was elected.

(2) If an additional member is elected in accordance with regulation 21(3) and (4), he, and not any member elected in accordance with regulation 21(2), shall be treated as representing the employees for the time being of the participating company and of any concerned subsidiary or establishment whose employees were entitled to vote in the ballot in which he was elected.

(3) When a member of the special negotiating body is appointed by a consultative committee in accordance with regulation 25, the employees whom the consultative committee represents and the employees of any concerned subsidiary shall be treated as being represented by the member so appointed.