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STATUTORY INSTRUMENTS

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**2004 No. 2326**

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

**PART 3**

**EMPLOYEE INVOLVEMENT**

*CHAPTER 2*

*PARTICIPATING COMPANIES AND THE SPECIAL NEGOTIATING BODY*

**Circumstances in which certain provisions of Part 3 apply**

**17.**—(1) Subject to paragraphs (2) and (3), this Part shall apply where—

- (a) a participating company intends to establish an SE whose registered office is to be in Great Britain; or
- (b) an SE has its registered office in Great Britain.

(2) Where there are UK employees, Chapter 2 (election or appointment of members of special negotiating body and representation of employees) shall apply, regardless of where the registered office is to be situated, in relation to the election or appointment of UK members of the special negotiating body unless the majority of those employees is employed to work in Northern Ireland.

(3) Chapters 6 to 9 shall apply, regardless of where the registered office of the SE is, or is intended to be situated, where—

- (a) a participating company, its concerned subsidiaries or establishments;
- (b) a subsidiary of an SE;
- (c) an establishment of an SE; or
- (d) an employee or an employees' representative,

is registered or situated, as the case may be, in Great Britain.

**Duty on participating company to provide information**

**18.**—(1) When the competent organ of a participating company decides to form an SE, that organ shall, as soon as possible after—

- (a) publishing the draft terms of merger,
- (b) creating a holding company, or
- (c) agreeing a plan to form a subsidiary or to transform into an SE,

provide information to the employees' representatives of the participating company, its concerned subsidiaries and establishments or, if no such representatives exist, the employees themselves.

(2) The information referred to in paragraph (1) must include, as a minimum, information—

- (a) identifying the participating companies, concerned subsidiaries and establishments,
- (b) giving the number of employees employed by each participating company and concerned subsidiary and at each concerned establishment, and
- (c) giving the number of employees employed to work in each EEA State.

(3) When a special negotiating body has been formed in accordance with regulation 20, the competent organs of each participating company must provide that body with such information as is necessary to keep it informed of the plan and progress of establishing the SE up to the time the SE has been registered.

### **Complaint of failure to provide information**

**19.**—(1) An employees' representative or, where there is no such representative for an employee, the employee may present a complaint to the CAC that—

- (a) the competent organ of a participating company has failed to provide the information referred to in regulation 18; or
- (b) the information provided by the competent organ of a participating company for the purpose of complying with regulation 18 is false or incomplete in a material particular.

(2) Where the CAC finds the complaint well-founded it shall make an order requiring the competent organ to disclose information to the complainant which order shall specify—

- (a) the information in respect of which the CAC finds that the complaint is well-founded and which is to be disclosed to the complainant; and
- (b) a date (not being less than one week from the date of the order) by which the competent organ must disclose the information specified in the order.

### **Function of the special negotiating body**

**20.** The special negotiating body and the competent organs of the participating companies shall have the task of reaching an employee involvement agreement.

### **Composition of the special negotiating body**

**21.**—(1) The competent organs of the participating companies shall make arrangements for the establishment of a special negotiating body which shall be constituted in accordance with paragraphs (2) to (7) below.

(2) In each EEA state in which employees of a participating company or concerned subsidiary are employed to work, those employees shall be given an entitlement to elect or appoint one member of the special negotiating body for each 10% or fraction thereof which those employees represent of the total workforce. These members shall be the 'ordinary members'.

(3) If, in the case of an SE to be established by merger, following an election or appointment under paragraph (2), the members elected or appointed to the special negotiating body do not include at least one eligible member in respect of each relevant company the employees of any relevant company in respect of which there is no eligible member shall be given an entitlement, subject to paragraph (4), to elect or appoint an additional member to the special negotiating body.

(4) The number of additional members which the employees are entitled to elect or appoint under paragraph (3) shall not exceed 20% of the number of ordinary members elected or appointed under paragraph (2) and if the number of additional members under paragraph (3) would exceed that percentage the employees who are entitled to appoint or elect the additional members shall be:

- (a) if one additional member is to be appointed or elected, those employed by the company not represented under paragraph (3) having the highest number of employees; and

- (b) if more than one additional member is to be appointed or elected, those employed by the companies in each EEA state that are not represented under paragraph (3) having the highest number of employees in descending order, starting with the company with the highest number, followed by those employed by the companies in each EEA state that are not so represented having the second highest number of employees in descending order, starting with the company (among those companies) with the highest number.
- (5) The competent organs of the participating companies shall, as soon as reasonably practicable and in any event no later than one month after the establishment of the special negotiating body, inform their employees and those of their concerned subsidiaries of the identity of the members of the special negotiating body.
- (6) If, following the appointment or election of members to the special negotiating body in accordance with this regulation,
  - (a) changes to the participating companies, concerned subsidiaries or concerned establishments result in the number of ordinary or additional members which employees would be entitled to elect or appoint under this regulation either increasing or decreasing, the original appointment or election of members of the special negotiating body shall cease to have effect and those employees shall be entitled to elect or appoint the new number of members in accordance with the provisions of these Regulations; and
  - (b) a member of the special negotiating body is no longer willing or able to continue serving as such a member, the employees whom he represents shall be entitled to elect or appoint a new member in his place.
- (7) In this regulation—
  - (a) “eligible member” means a person who is—
    - (i) in the case of a relevant company registered in a EEA state whose legislation allows representatives of trade unions who are not employees to be elected to the special negotiating body, an employee of the relevant company or a trade union representative; and
    - (ii) in the case of a relevant company not registered in such a EEA state, an employee of the relevant company.
  - (b) “relevant company” means a participating company which has employees in the EEA state in which it is registered and which it is proposed will cease to exist on or following the registration of the SE; and
  - (c) “the total workforce” means the total number of employees employed by all participating companies and concerned subsidiaries throughout all EEA states.

### **Complaint about establishment of special negotiating body**

**22.**—(1) An application may be presented to the CAC for a declaration that the special negotiating body has not been established at all or has not been established properly in accordance with regulation 21.

- (2) An application may be presented under this regulation by—
  - (a) a person elected or appointed to be a member of the special negotiating body;
  - (b) an employees' representative or, where no such representative exists in respect of a participating company or concerned subsidiary, an employee of that participating company or concerned subsidiary; or
  - (c) the competent organ of a participating company or concerned subsidiary.
- (3) The CAC shall only consider an application made under paragraph (1) if it is made within a period of one month from the date or, if more than one, the last date on which the participating

companies complied or should have complied with the obligation to inform their employees under regulation 21(5).

(4) Where the CAC finds the application well-founded it shall make a declaration that the special negotiating body has not been established at all or has not been established properly and the competent organs of the participating companies continue to be under the obligation in regulation 21(1).