
STATUTORY INSTRUMENTS

2009 No. 2402

The European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009

PART 4

NEGOTIATION OF THE EMPLOYEE INVOLVEMENT AGREEMENT

Negotiations to reach an employee involvement agreement

14.—(1) In this regulation and in regulation 15 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

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

(2) The employee involvement agreement must specify each of the following—

- (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;

- (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.

This paragraph is without prejudice to the autonomy of the parties and is subject to paragraph (4).

(3) The employee involvement agreement is not 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 must 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—

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

those representatives are “information and consultation representatives”.

Decisions of the special negotiating body

16.—(1) Each member of the special negotiating body has one vote.

(2) The special negotiating body must take decisions by an absolute majority vote, except in those cases where paragraph (3) or regulation 17 provides otherwise.

(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;
- (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.

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) Where the special negotiating body takes a decision under this regulation or under regulation 17—

- (a) it must publish the details of the decision in such a manner as to bring the decision, so far as reasonably practicable, to the attention of the employees whom it represents, and
- (b) such publication must 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 must pay for—

- (a) any reasonable expenses of the functioning of the special negotiating body, and

(b) 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

17.—(1) The special negotiating body may decide, by a two thirds majority vote,—

- (a) not to open negotiations with the competent organs of the participating companies, or
- (b) 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) has the following effects—

- (a) the duty in regulation 14(2) to negotiate with a view to reaching an employee involvement agreement ceases as from the date of the decision;
- (b) any rules relating to the information and consultation of employees in an EEA state in which employees of the SE are employed apply to the employees of the SE in that EEA state;
- (c) the special negotiating body is to be reconvened only if a request that meets the conditions in paragraph (4) is made by employees or employees’ representatives.

(4) The conditions are that the request is made—

- (a) in writing;
- (b) by at least 10% of the employees of—
 - (i) the participating companies and their concerned subsidiaries, or
 - (ii) where the SE has been registered, the SE and its subsidiaries,or by employees’ representatives representing at least that percentage of those employees;
- (c) no earlier than two years after the decision made under paragraph (1) was or should have been published in accordance with regulation 16(4) unless—
 - (i) the special negotiating body, and
 - (ii) 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

18.—(1) If a person who is a member of the special negotiating body, or who is an employees’ representative or an employee for whom there is no such representative, believes that the special negotiating body has taken a decision referred to in regulation 16 or 17 and—

- (a) that the decision was not taken by the majority required by regulation 16 or 17, as the case may be, or
- (b) that the special negotiating body failed to publish the decision in accordance with regulation 16(4),

the person may present a complaint to the Industrial Court within 21 days after the date on which the special negotiating body published their decision in accordance with regulation 16(4) or, if they have not done so, the date by which they should have so published their decision.

(2) Where the Industrial Court finds the complaint well-founded, it must make a declaration that the decision was not taken properly and that it is of no effect.