

Amendment of Act XXI of 2003 on the establishment of the European Works Council and on the establishment of the procedure for informing and consulting employees

- Article 55** (1) Article 1(1) of Act XXI of 2003 on the establishment of the European Works Council and on the establishment of the procedure for informing and consulting employees (hereinafter referred to as: "Euüt.") shall be replaced by the following provision:
“(1) A European Works Council or a procedure for informing and consulting employees shall be established by all Community-scale undertakings and Community-scale groups of undertakings, in accordance with the request laid down in Article 3(1), in order to strengthen the right to information and consultation of employees of Community-scale undertakings and Community-scale groups of undertakings. Whether or not there is an agreement in this respect, the provisions of present Act shall be applied to the establishment of a European Works Council and to the procedure for informing and consulting employees. The arrangements for informing and consulting employees shall be defined and implemented in such a way as to ensure effectiveness and to enable the undertaking or group of undertakings to take decisions effectively.”
- (2) Article 1 of the Euüt. shall be supplemented by the following paragraph (3a):
“(3a) The management of any undertaking belonging to the Community-scale group of undertakings and the central management or deemed central management of the Community-scale undertaking and group of undertakings shall be responsible for obtaining and transmitting to the parties concerned (employees and their representatives) the information required for commencing the negotiations of the special negotiating body and in particular the information concerning the structure of the undertaking or the group and its workforce. This obligation shall relate in particular to the information on the number of employees referred to in Article 2(1)(a) and (c).”
- Article 56** (1) Article 2(1)(e) of the Euüt. shall be replaced by the following provision:
[Definitions:]
“(e) consultation: the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings;”
- (2) Article 2(1) of the Euüt. shall be supplemented by the following point (i):
[Definitions]
“(i) information: transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impacts and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings.”
- (3) Article 2(4) of the Euüt. shall be replaced by the following provision:
“(4) If two or more undertakings from one group of undertakings are suitable to the conditions in paragraph (2), until the proof to the contrary, the order described in paragraph (3) shall be taken into account when determining the controlling undertaking. For the purposes of paragraph (2), a controlling undertaking's rights as regards voting and appointment shall include the rights of any other controlled undertaking and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other controlled undertaking.”
- (4) Article 2 of the Euüt. shall be supplemented by the following paragraphs (7) to (9):
“(7) The law applicable in order to determine whether an undertaking is a controlling undertaking shall be the law of the Member State which governs that undertaking. Where the law governing that undertaking is not that of a Member State, the law applicable shall be the law of the Member State within whose territory the representative of the

undertaking or, in the absence of such representative, the central management of the group undertaking which employs the greatest number of employees is situated.

(8) Notwithstanding paragraphs (2) and (3), an undertaking shall not be deemed to be a controlling undertaking with respect to another undertaking in which it has holdings where the former undertaking is a company referred to in Article 3(5)(a) or (c) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

(9) The thresholds prescribed in Article (1)(a) and (c) shall be based on the average statistical number of employees, including part-time employees, employed during the previous two years.”

Article 57

Article 4(2) and (3) of the Euüt. shall be replaced by the following provisions:

“(2) The members of the special negotiating body shall be appointed from among the employees employed by the Community-scale undertaking or Community-scale group of undertakings. The members of the special negotiating body shall be designated in proportion to the number of employees employed in each Member State by the Community-scale undertaking or Community-scale group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10% of the number of employees employed in all the Member States taken together. At the same time as appointing a member of the special negotiating body an alternate member shall be appointed as well.

(3) Member States may delegate further employee representatives over and above the number that may be specified on the basis of paragraph (2) to the special negotiating body, in accordance with the following:

- (a) if at least 25%, but less than 50% of the employees of the Community-scale undertaking or group are employed in one Member State, one more,
- (b) if at least 50%, but less than 75% of said employees, two more,
- (c) if at least 75% of said employees, three more representatives.”

Article 58 (1) Article 6(1) of the Euüt. shall be replaced by the following provision:

“(1) The central management shall immediately inform the leaders of all undertakings or branches of the Community-scale undertaking or group, the representative organisations of employees, and the competent European organisations of employees and employers upon the establishment of the special negotiating body about the names and addresses of the members of the special negotiating body and about the commencement of negotiations. The minister responsible for employment policy shall publish those e-mail addresses on the official informational website of the Government, to which the information must be provided.”

(2) Article 6(4) and (5) of the Euüt. shall be replaced by the following provisions:

“(4) The special negotiating body may have a separate meeting before its negotiation with the central management, where they may have recourse to an expert. Representatives of recognised and competent Community-level employee organisations may be appointed as experts as well. These experts and the representatives of employee organisations shall attend the negotiations in an advisory capacity upon the request of the special negotiating body.

(5) The special negotiating body may decide, by at least two-thirds of the votes, not to open negotiations in accordance with paragraph (2), or to terminate the negotiations already opened. Such a decision shall stop the procedure to conclude the agreement referred to in Articles 7 and 8. The document containing the decision shall immediately be transmitted to the central management with the signatures of the president and one member of the special negotiating body.”

(3) Article 6 of the Euüt. shall be supplemented by the following paragraph (8):

“(8) Before and after any meeting with the central management, the special negotiating body shall be entitled to meet without representatives of the central management being present. Any necessary means for communication shall be provided in these meetings to the special negotiating body.”

Article 59

The Euüt. shall be supplemented by the following Article 6/A:

“Article 6/A (1) Where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, in particular due to a merger, acquisition of dominant influence or division, provided that:

(a) the agreements in force do not contain provisions relating thereto, or
(b) the provisions of two or more applicable agreements are incompatible,
the central management shall initiate negotiations for the establishment of a European Works Council or a procedure for the information and consultation of employees on its own initiative or at the written request of at least 100 employees or their representative bodies in at least two undertakings or establishments in at least two different Member States. Provisions laid down in Articles 3 to 6 shall apply with the derogations set forth in this Article to the negotiations.

(2) In the case specified in paragraph (1) the members of the special negotiating body shall be the following:

(a) the members appointed based on Article 4(2) and (3), and

(b) at least three members of the existing European Works Council(s).

(3) During the negotiations, the existing European Works Council(s) shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council(s) and the central management. The provisions laid down in Articles 7 to 8/A shall apply to such agreements.

(4) In case no agreement is concluded in the course of the negotiations due to any reason – including cases specified in Article 9 – the provisions laid down in Articles 10 to 23 shall govern the establishment and operation of the European Works Council.”

Article 60 (1) Article 7(3)(b) to (c) of the Euüt. shall be replaced by the following provisions:

[If the central management and the special negotiating body agree upon the establishment of a European Works Council, the agreement shall be done in a written form. It shall include particularly the following:]

“(b) the composition and the number of members, the number of alternate members, the distribution of functions – taking into account, where possible, the need for balanced representation of employees with regard to their activities, position and gender – and the length of the mandate of the European Works Council;

(c) the powers and the procedure for information and consultation of the European Works Council and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies, in accordance with the principles set out in Article 16(3) to (4);”

(2) Article 7(3)(f) of the Euüt. shall be replaced by the following provision:

[If the central management and the special negotiating body agree upon the establishment of a European Works Council, the agreement shall be done in a written form. It shall include particularly the following:]

“(f) the entry into force and period of application of the agreement, the arrangements for the amendment and termination of the agreement and the cases in which the agreement shall be renegotiated and the procedure to be followed during renegotiation of the agreement, including temporary provisions, and the provisions on the follow-ups regarding changes in the structure of the Community-scale undertaking or Community-scale group;”

(3) Article 7(3) of the Euüt. shall be supplemented by the following point (g):

[If the central management and the special negotiating body agree upon the establishment of a European Works Council, the agreement shall be done in a written form. It shall include particularly the following:]

“(g) where necessary, the composition, the appointment procedure, the functions and the procedural rules of the managing committee set up within the European Works Council.”

(4) Article 7 of the Euüt. shall be supplemented by the following paragraph (4):

“(4) The arrangements for the links between the information and consultation of the European Works Council and employee representation bodies shall be established by the agreement regulated by this Article and Article 8. That agreement shall be without prejudice to the provisions laid down in Act XXII of 1992 on Labour Code on the information and consultation of employees.”

Article 61 The Euüt. shall be supplemented by the following Article 8/A:

“Article 8/A For the purposes of concluding the agreements regulated by Articles 7 and 8, the special negotiating body shall act by a majority of its members.”

Article 62

Article 10(2) and (3) of the Euüt. shall be replaced by the following provisions:

“(2) The members of the European Works Council shall be designated in proportion to the number of employees employed in the given Member State by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10% of the number of employees employed in all the Member States taken together. At the same time as appointing a member of the European Works Council an alternate member shall be appointed as well.

(3) Member States may delegate further employee representatives over and above the number that may be specified on the basis of paragraph (2) to the special negotiating body, in accordance with the following:

- (a) if at least 25%, but less than 50% of the employees of the Community-scale undertaking or group are employed in one Member State, one more,
- (b) if at least 50%, but less than 75% of said employees, two more,
- (c) if at least 75% of said employees, three more representatives.”

Article 63

Article 15(2) of the Euüt. shall be replaced by the following provision:

“(2) To ensure that it can coordinate its activities and deal effectively with exceptional circumstances, the European Works Council shall elect a managing committee from among its members, comprising at least three and at most five members, one of which shall be the president of the European Works Council. The managing committee must benefit from conditions enabling it to exercise its activities on a regular basis.”

Article 64

- (1) Article 16(3) to (4) of the Euüt. shall be replaced by the following provisions:

“(3) Information and consultation of employees must occur at the relevant level of management and representation, according to the subject under discussion. The competence and responsibility of the European Works Council and the scope of the information and consultation procedure for employees governed by this Act shall be limited to transnational issues.

(4) Matters shall be considered to be transnational where they concern:

- (a) the Community-scale undertaking or Community-scale group of undertakings as a whole, or
- (b) at least two undertakings or establishments of the undertaking or group situated in two different Member States.

These include matters which, regardless of the number of Member States involved, are of importance for the Community workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States. The transnational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves.”

- (2) Article 16(5)(d) of the Euüt. shall be replaced by the following provision:

[The following shall be in particular the subject of information and consultation regarding the Community-scale undertaking's or group's economic state and the expected changes in it:]

“(d) investments and the situation and the expected development of investment programmes;”

- (3) Article 16(5)(i) of the Euüt. shall be replaced by the following provision:

[The following shall be in particular the subject of information and consultation regarding the Community-scale undertaking's or group's economic state and the expected changes in it:]

“(i) reduction, decommissioning, closing down or termination of activities of undertakings, branches, or functionally relevant parts of factories or shops;”

Article 65

- (1) Article 17(3) of the Euüt. shall be replaced by the following provision:

“(3) The meeting referred to in paragraph (2) shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of the Community-scale undertaking or group of undertakings. The

- European Works Council and the managing committee shall be entitled to give opinion about the issues raised at the end of the meeting or within a reasonable time thereafter.”
- (2) Article 17 of the Euüt. shall be supplemented by the following paragraphs (5) and (6):
- “(5) Before any meeting with the central management, the European Works Council and the managing committee – including the managing committee enlarged in accordance with Article 17(2) – shall be entitled to meet without representatives of the management being present.
- (6) The information and consultation under this Article shall be without prejudice to the principles of Article 1(1) and the provisions of Article 19.”

Article 66 The Euüt. shall be supplemented by the following Article 18/A:
“Article 18/A Four years after the European Works Council is established it shall examine whether to open negotiations for the conclusion of the agreement regulated by Articles 7 and 8 or to continue to apply the provisions of Articles 10 to 23.”

Article 67 Article 20 of the Euüt. shall be replaced by the following provision:
“Article 20 (1) With respect to the labour law protection of the European Works Council's and special negotiating body's members and alternate members employed domestically, the rules on the protection of works council members shall be applied as appropriate.
(2) Without prejudice to the competence of other employee representation and participation organisations in this respect, the members of the European Works Council shall represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings and shall have the means required to exercise the rights provided to the European Works Council, including the commencement of legal disputes relating to the violation of the rights to information and consultation of employees.
(3) The members of the European Works Council shall, without prejudice to Article 19, inform the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out.
(4) Members of the European Works Council shall report to the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole following the expiration of their mandate.”

Article 68 The Euüt. shall be supplemented by the following Articles 21/A to 21/C:
“Article 21/A The consultation shall be conducted in such a way that the employees' representatives can meet with the central management and obtain a written response, and the reasons for that response, to any opinion or observation they might express.
Article 21/B (1) In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be entitled to receive training. The minimum time allotted for the training may be set by the parties in an agreement.
(2) Training that aims at providing knowledge required for the fulfilment of needs relating to practical requirements of the activity of the European Works Council, including communication skills and foreign language skills, and for the understanding of the legal and labour background, international structure and strategy of the Community-scale undertaking or Community-scale group of undertakings shall in particular be considered training necessary for the exercise of representative duties in an international environment.
(3) Applications for training shall contain information on training needs, the content and other relevant data of training and the reasons which support the fact that it is necessary for the exercise of representative duties in an international environment.
(4) An application for training shall not be rejected if the training is reasonably necessary for the exercise of representative duties in an international environment by the members of the special negotiating body and of the European Works Council.
(5) Members of the special negotiating body and of the European Works Council shall be entitled to an absence fee for the time of the training.

Article 21/C (1) Information and consultation of the European Works Council shall be linked to those of the national employee representation bodies, with due regard to the competences and areas of action of each and to the principles set out in Articles 1(1) and 16(3). In case the national employee representation bodies must be informed about issues falling under the competence of the European Works Council based on Act XXII of 1992 on the Labour Code, they shall be provided with information simultaneously.

(2) Where no relevant arrangements have been defined by the agreement set out by Articles 7 and 8, the processes of informing and consulting shall be conducted in the European Works Council as well as in the national employee representation bodies in cases where decisions likely to have a substantial impact on work organisation or contractual relations are envisaged.”

Article 69

Article 23(1) of the Euüt. shall be replaced by the following provision:

“(1) The court shall decide within fifteen days in an extra-judicial procedure with regard to any disputes in connection with the agreement on the establishment of the European Works Council or the procedure of informing and consulting employees, and, furthermore, in connection with the legal regulations on the European Works Council and on the rights and obligations regulated by this Act of the special negotiating body, the European Works Council and members thereof incurred between those referred to in Article 1(3) and the European Works Council, the members thereof, employees, the works council or the trade union.”

Article 70

Euüt. shall be supplemented by the following Articles 23/A to 23/B:

“Article 23/A (1) With the exception of Article 6/A and obligations deriving from Article 6/A this Act shall not apply to those Community-scale undertakings or Community-scale groups of undertakings in the case of which, either

(a) an agreement or agreements covering the entire workforce, providing for the transnational information and consultation of employees have been concluded pursuant to Article 13(1) of Directive 94/45/EC or Article 3(1) of Directive 97/74/EC, or

(b) an agreement or agreements covering the entire workforce, providing for the transnational information and consultation of employees have been concluded pursuant to Article 13(1) of Directive 94/45/EC or Article 3(1) of Directive 97/74/EC and this agreement or these agreements has or have been adjusted because of changes in the structure of the undertakings or groups of undertakings, irrespective of the date of adjustment.

(2) In case of Community-scale undertakings or Community-scale groups of undertakings where an agreement concluded pursuant to Article 6 of Directive 94/45/EC

(a) was signed between 5 June 2009 and 5 June 2011; or

(b) was amended between 5 June 2009 and 5 June 2011,

unless otherwise specified, the provisions – in force at the time of signing or amendment – of this Act shall apply. Otherwise, Article 6/A and obligations deriving from Article 6/A of this Act shall also apply to such Community-scale undertakings or Community-scale group of undertakings.

(3) Upon expiry of the agreements referred to in paragraphs (1) and (2), the parties to those agreements may decide jointly to renew or amend them. Where this is not the case, the provisions of this Act shall apply.

(4) In the agreements referred to in paragraphs (1) and (2), the arrangements for informing and consulting employees shall be interpreted in such a way as to ensure their effectiveness and to enable the undertaking or group of undertakings to take decisions effectively.

Article 23/B (1) This Act shall also apply to those Community-scale undertakings or Community-scale groups of undertakings in which

(a) an agreement concluded pursuant to Article 6 of Directive 94/45/EC was signed between 22 September 1996 and 5 June 2009, and was not amended between 5 June 2009 and 5 June 2011; and

(b) in which an agreement providing for the transnational information and consultation of employees was signed on 6 June 2011 or following that date.”

Article 71

Article 24 of the Euüt. shall be replaced by the following provision:

“Article 24 This Act shall serve compliance with Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.”