



STATUTORY INSTRUMENTS.

S.I. No. 623 of 2006



EUROPEAN COMMUNITIES (EUROPEAN PUBLIC
LIMITED-LIABILITY COMPANY) (EMPLOYEE
INVOLVEMENT) REGULATIONS 2006

(Prn. A6/2135)

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I, Micheál Martin, Minister for Enterprise Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Council Directive No. 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees¹, hereby make the following regulations:

PART 1

PRELIMINARY AND GENERAL

Citation

1. These Regulations may be cited as the European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006.

Interpretation

2. (1) In these Regulations—

“appointed” means in the absence of an election, appointed by the employees and the basis on which that appointment is made may, if the employees so determine, be such as is agreed by them with the participating companies, their subsidiaries or establishments, or the SE as the case may be;

“concerned subsidiary or establishment” means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the SE upon its formation;

“Commission” means the Labour Relations Commission;

“Community” means—

(a) the European Community, and

¹O.J. L294 of 10.11.2001, p.22

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 19th December, 2006.

(b) Norway, Iceland and Liechtenstein;

“consultation” means the establishment of dialogue and exchange of views between the representative body or the employees’ representatives (or both) and the competent organ of the SE at a time, in a manner and with a content which allows the employees’ representatives, on the basis of the information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision making process within the SE;

“Court” means the Labour Court;

“Directive” means the Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees¹;

“EC Regulation” means Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European company (SE)²;

“employee” means a person who has entered into or works under a contract of employment and references, in relation to a participating company, its concerned subsidiary or establishment, or of an SE or its subsidiaries, to an employee shall be read as references to an employee employed by any of them;

“employees’ representative” means a representative elected or appointed for the purposes of these Regulations;

“establishment” means in relation to a company, a division (however described) of the undertaking physically separated from other parts of the company;

“excepted body” has the meaning assigned to it by section 6 (3) of the Trade Union Act 1941 (No.22 of 1941), as amended;

“expert” means an individual, and may be the holder from time to time of a named office or position in a body corporate or other body or organisation;

“information” means the informing of the representative body or the employees’ representatives (or both), by the competent organ of the SE on questions which concern the

¹O.J. L294 of 10.11.2001, p.1

SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE;

“involvement of employees” means any mechanism including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company;

“Member State” means a Member State of the Community;

“Minister” means the Minister for Enterprise, Trade and Employment;

“participation” means the influence of the representative body or the employees' representatives (or both) in the affairs of a company by the way of—

- (a) the right to elect or appoint some of the members of the company's supervisory or administrative organ, or
- (b) the right to recommend or oppose (or both) the appointment of some or all of the members of the company's supervisory or administrative organ;

“participating companies” means the companies directly participating in the establishing of an SE;

“representative body” means the body representative of the employees referred to in Regulation 13(1)(b) or Schedule 1, as the case may be, set up for the purpose of informing and consulting the employees of an SE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SE;

“SE” means any company established in accordance with regulations made under section 3 of the European Communities Act 1972 (No.27 of 1972) for the purpose of giving full effect to the EC Regulation;

“special negotiating body” means the body established in accordance with Regulation 5 to negotiate with the competent body of the participating companies regarding the establishment of arrangements for the involvement of employees within the SE;

“Standard Rules” means the rules set out in Schedule 1;

“subsidiary”, in relation to a company, means an undertaking over which that company can exercise a dominant influence and section 5 of the Transnational Information and Consultation of Employees Act 1996 (No. 20 of 1996) shall apply for the purposes of determining whether that company can exercise such influence;

“trade union” means a trade union which holds a negotiation licence under Part II of the Trade Union Act 1941 (No.22 of 1941), as amended;

“wages” has the meaning assigned to it by the Payment of Wages Act 1991 (No. 25 of 1991);

(2) A word or expression used in these Regulations that is also used in the Directive has the same meaning in these Regulations as it has in the Directive.

PART 2

NEGOTIATING PROCEDURE

Application and general objective

3. Arrangements for the involvement of employees in every SE that is registered in the State shall be established in accordance with these Regulations (including, as respects cases falling within Regulation 15, the provisions of Schedule 1).

Requirement to begin negotiations with employees

4. (1) Where the competent organs of the participating companies draw up a plan for the establishment of an SE they shall take the necessary steps to start negotiations with the representatives of the companies’ employees on arrangements for the involvement of employees in the SE.

(2) Those steps to start negotiations shall begin as soon as possible—

- (a) in the case of an SE to be created by merger in accordance with Article 2 (1) of the EC Regulation — after the publication of the draft terms of the merger;
- (b) in the case of an SE to be created by the creation of a holding company in accordance with Article 2 (2) of the EC Regulation — after the publication of the draft terms for the creation of the holding company;
- (c) in the case of an SE to be created by the formation of a subsidiary in accordance with Article 2 (3) of the EC Regulation — after the agreement of a plan to form a subsidiary; and
- (d) in the case of an SE to be created by transformation in accordance with Article 2 (4) of the EC Regulation — after the agreement of a plan to transform.

(3) Those steps to start negotiations shall include the provision of information about the identity of the participating companies, concerned subsidiaries and establishments, the number of employees in each identified according to the country in which they are located, and the number of such employees covered by a participation system.

(4) The information referred to in paragraph (3) shall be supplied to the employees' representatives in the participating companies, concerned subsidiaries and establishments, or where there are no such representatives, to the employees themselves.

Creation of special negotiating body

5. (1) For the purposes of Regulation 4, a special negotiating body representative of the employees of the participating companies and concerned subsidiaries and establishments shall be established in accordance with the provisions of this Regulation.

(2) The competent organs of the participating companies, concerned subsidiaries and establishments shall make arrangements for the establishment of the special negotiating body in accordance with this Regulation.

(3) The membership of the special negotiating body shall be determined in accordance with this Regulation and the members shall be elected or appointed in accordance with—

- (a) in the case of members to be elected or appointed to represent employees in the State, the procedure specified in Regulations 6 and 7, and
- (b) in the case of members to be elected or appointed to represent employees in any other Member State, the procedures specified in laws or measures adopted by that state.

(4) Subject to paragraphs (5) to (7), seats on the special negotiating body shall be distributed in proportion to the number of workers employed by the participating companies and the concerned subsidiaries and establishments in each Member State by allocating in respect of a relevant Member State one seat per portion of employees employed in that Member State which equals 10%, or a fraction thereof, of the number of employees employed by the participating companies and the concerned subsidiaries or establishments in all relevant Member States taken together.

(5) In the case of an SE established by way of merger, there shall be such further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating company which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SE.

(6) The election or appointment of additional members under paragraph (5) shall not entail double representation of the employees concerned.

(7) The number of additional members referred to in paragraph (5) shall not exceed 20% of the number of members elected or appointed in accordance with paragraph (4).

(8) Pursuant to paragraph (5), if the number of such companies is higher than the number of additional seats available, these additional seats shall be allocated to companies in different Member States by decreasing order of the number of employees they employ.

Conduct of election and constitution of special negotiating body

6. (1) Where elections to a special negotiating body fall to be conducted, being elections by employees of participating companies and concerned subsidiaries or establishments in the State, they shall be conducted in accordance with the provisions of this Regulation and Regulation 7.

(2) The competent organs of the participating companies, concerned subsidiaries and establishments shall arrange for the conducting of those elections.

(3) Where the number of seats on the special negotiating body allocated to the State is equal to the number of participating companies which have employees in the State, there shall be at least one seat for each of the participating companies, and each member elected or appointed to fill such a seat shall be considered as representing the employees of the participating company that elected or appointed them.

(4) Where the number of seats on the special negotiating body allocated to the State is greater than the number of participating companies which have employees in the State, there shall be one seat for each of the participating companies, and additional seats shall be allocated to participating companies by decreasing order of the number of employees they employ and each member elected or appointed to fill a seat in accordance with this paragraph shall be taken to represent those employees of the companies that elected them.

(5) Where the number of seats on the special negotiating body allocated to the State is less than the number of participating companies, the number of members equal to the number of available seats shall be elected or appointed according to the greatest number of votes won, and the representatives so elected or appointed shall between them represent the employees of the participating companies in the State.

(6) In paragraphs (3), (4) and (5) “participating company” shall be construed as including the concerned subsidiaries or establishments of such a company and where the presence of a participating company in the State is only by virtue of the presence of its concerned subsidiaries or establishments then those entities shall be considered for the purposes of those paragraphs as if they were that participating company.

(7) Employees in undertakings or establishments in which there are no employees' representatives shall not, by virtue of that fact alone, be prevented from exercising their right to elect or appoint members of the special negotiating body.

(8) An employee who is employed in the State by the participating companies, concerned subsidiaries or establishments on the day the date or dates for the election of members of the special negotiating body conducted in accordance with this Regulation and Regulation 7 is fixed and who is, on the election day or days, an employee of such a company, subsidiary or establishment shall be entitled to vote in the election.

(9) Each of the following is eligible to stand as a candidate in the election of members of the special negotiating body conducted in accordance with this Regulation and Regulation 7, namely—

- (a) an employee who has been employed in the State by the participating companies, concerned subsidiaries or establishments for a continuous period of not less than one year on the nomination day,
- (b) a trade union official, whether or not he or she is an employee, and
- (c) an official of an excepted body, whether or not he or she is an employee,

provided that, in each case, he or she is nominated as such a candidate by—

- (i) a trade union or an excepted body which is already recognised by the relevant participating companies, concerned subsidiaries or establishments located in the State for collective bargaining or information and consultation purposes, or
- (ii) at least two employees.

Supplemental provisions in relation to Regulation 6

7. (1) In this Regulation—

“Irish election” means an election of members of the special negotiating body conducted in accordance with Regulation 6 and this Regulation;

“returning officer” means the person appointed under paragraph (5).

(2) Where the number of candidates on the nomination day exceeds the number of members to be elected in the Irish election, a poll or polls shall be taken by the returning officer and voting in the poll shall take place by a secret ballot on a day or days to be decided by the returning officer.

(3) Where the number of candidates on the nomination day equals the number of members to be elected in the Irish election, those candidates shall be deemed elected.

(4) Where the number of candidates on the nomination day is less than the number of employees’ representatives to be elected in the Irish election then the returning officer may extend the time for making nominations until such time as the number of candidates is greater than or equal to the number of employees’ representatives to be elected in the Irish election.

(5) The competent organs of the participating companies, their subsidiaries or establishments shall, in consultation with employees or their representatives (or both), appoint one or more persons as returning officers in the Irish election whose duties shall include the organisation and conduct of nominations and the election and any person so appointed may authorise other persons to assist in the performance of the duties of returning officer.

(6) The returning officer shall perform his or her duties in a fair and reasonable manner and in the interests of an orderly and proper conduct of nomination and election procedures.

(7) As soon as is reasonably practicable after the result of the Irish election is known, the returning officer shall make such arrangements as are necessary to ensure that the result is sent to the candidates, employees, employees’ representatives and to the competent organs of the participating companies, their subsidiaries or establishments.

(8) Once the result of the Irish election is sent by the returning officer in accordance with paragraph (7), the candidates concerned shall be regarded as having been duly elected in the Irish election.

(9) All reasonable costs of the nomination and election procedure in the Irish election shall be borne by the competent organs of the participating companies.

(10) Where, for any reason, a vacancy arises amongst those of the members of the special negotiating body who have been elected in accordance with Regulation 6 and this Regulation, arrangements shall be made by the competent organs of the participating companies, concerned subsidiaries and establishments and the special negotiating body for that vacancy to be filled.

(11) Where a member of the special negotiating body whose nomination for election was on the basis of his or her satisfying the requirement contained in Regulation 6 (9)(a) ceases to be employed by the participating companies, concerned subsidiaries or establishments, that person shall cease to be a member of the special negotiating body.

(12) Where a member of the special negotiating body whose nomination for election was on the basis of his or her satisfying the requirement contained in Regulation 6 (9)(b) or (c) ceases to be an official of the trade union or excepted body concerned, that person shall cease to be a member of the special negotiation body.

Remit of special negotiating body

8. (1) The special negotiating body and the competent organs of the participating companies shall negotiate and determine, by written agreement, arrangements for the involvement of employees within the SE.

(2) With a view to the conclusion of that agreement, the competent organs of the participating companies shall—

- (a) convene a meeting with the special negotiating body and shall inform local managements accordingly, and
- (b) inform the special negotiating body of the plan, the expected timetable, and the actual process of establishing the SE, up to its registration.

(3) The agreement referred to in paragraph (1) shall be binding on the entire group of companies within the SE, irrespective of the Member State in which it was signed and the location of those companies.

Voting procedure in the special negotiating body

9. (1) Subject to paragraph (2) and Regulation 11, the special negotiating body shall take its decisions (including the final decision whether to approve the entering into of an agreement under Regulation 8) by an absolute majority of its members, with each member having one vote, provided that such a majority also represents an absolute majority of the employees.

(2) In each of the following cases, if the result of negotiations would lead to a reduction of participation rights, the majority required for a decision to approve the entering into of an agreement under Regulation 8 shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the total number of employees, including the votes of members representing employees employed in at least two Member States.

(3) The cases mentioned in paragraph (2) are—

- (a) the case of an SE to be established by way of a merger, if participation covers at least 25% of the overall number of employees of the participating companies,
- (b) the case of an SE to be established by way of creating a holding company or forming a subsidiary, if participation covers at least 50% of the overall number of employees of the participating companies.

(4) In paragraph (2) ‘reduction in participation rights’ means a proportion of members of the organs of the SE within the meaning of ‘participation’, as defined in Regulation 2, which is lower than the highest proportion existing within the participating companies.

(5) Any decision made under paragraph (2) shall be brought to the attention of the employees by the special negotiating body as soon as reasonably practicable and in any event no later than 14 days after the decision has been made.

Engagement of experts by special negotiating body

10. (1) For the purpose of the negotiations, the special negotiating body may engage experts of its choice to assist with its work.

(2) The experts may be representatives of appropriate Community level trade union organisations.

(3) The experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at Community level.

(4) The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions and excepted bodies, of the start of the negotiations.

Termination of process by special negotiating body

11. (1) The special negotiating body may decide, by the majority specified in paragraph (3), not to open negotiations with the competent organs of the participating companies or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in each of the Member States (including the State) where the SE has its employees.

(2) A decision taken under paragraph (1) shall terminate the procedure referred to in Regulation 13 for the conclusion of an agreement, and the provisions of Schedule 1 shall not apply.

(3) The majority required for the purposes of paragraph (1) shall be the votes of two thirds of the members representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States.

(4) This Regulation shall not apply in the case of an SE to be established by way of transformation where there is participation in the company to be transformed.

(5) Subsequent to a decision taken under paragraph (1), the special negotiating body shall reconvene on the written request of at least 10% of the employees of the SE, its subsidiaries and establishments, or the representatives of that percentage of employees.

(6) The special negotiating body shall only be reconvened in accordance with paragraph (5) where at least 2 years have elapsed since the taking of a decision under paragraph (1), unless the parties agree to reopen negotiations sooner.

(7) Where the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, none of the provisions of Schedule 1 shall apply.

Expenses

12. The reasonable expenses relating to the functioning of the special negotiating body and, in general, to negotiations under these Regulations shall be borne by the participating companies so as to enable the special negotiating body to carry out its functions in an appropriate manner.

Content of agreement

13. (1) Without prejudice to the autonomy of the parties, and subject to paragraph (3), the agreement referred to in Regulation 8 (1) shall specify:

- (a) the scope of the agreement;
- (b) the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SE in connection with arrangements for the information and consultation of the employees of the SE and its subsidiaries and establishments;
- (c) the functions and 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 by the SE 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 the negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including, where 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; and
- (h) the date of entry into force of the agreement, its duration, the circumstances requiring renegotiation of the agreement and the procedure for its renegotiation.

(2) Unless it otherwise provides, the agreement shall not be subject to the Standard Rules.

(3) Without prejudice to Regulation 23 (4)(a), in the case of an SE established by means of transformation, the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the company to be transformed into an SE.

(4) The agreement shall be signed on behalf of the competent organs of the participating companies and by the members of the special negotiating body and included in the minutes of the meeting at which it was agreed.

(5) Once the agreement is signed, the special negotiating body shall take the necessary steps for it, or its contents, to be communicated to the employees of the SE.

Duration of negotiations

14. (1) The competent organs of the participating companies and the special negotiating body shall commence negotiations as soon as the special negotiating body is established and those negotiations may continue for up to 6 months from the establishment of that body.

(2) The parties may decide, by joint agreement, to extend negotiations beyond the period referred to in paragraph (1) up to a total of one year from the establishment of the special negotiating body.

Standard Rules

15. (1) In order to ensure the establishment of arrangements for the involvement of employees in the SE, the Standard Rules set out in Schedule 1 shall apply, from the date of its registration, to an SE if its registered office is located in the State and—

- (a) the parties so agree, or
- (b) no agreement has been concluded within the time limit specified in Regulation 14 and—
 - (i) the competent organs of each of the participating companies decide to accept the application of the Standard Rules in relation to the SE and so to continue with its registration of the SE, and
 - (ii) the special negotiating body has not made a decision under Regulation 11 (1).

(2) The Standard Rules set out in Part 3 of Schedule 1 shall only apply—

- (a) in the case of an SE established by transformation, if the company which is transformed into an SE was subject to provisions regarding employee participation in the administrative or supervisory body;
- (b) in the case of an SE established by merger if, before registration of the SE—
 - (i) one or more forms of participation applied to one or more of the participating companies covering at least 25% of the total number of employees in all participating companies in the Member States, or
 - (ii) one or more forms of participation applied in one or more of the participating companies covering less than 25% of the total number of employees in all the participating companies in the Member States and the special negotiating body decides that the rules set out in that Part shall apply;

- (c) in the case of an SE established by setting up a holding company or a subsidiary if, before registration of the SE—
 - (i) one or more forms of participation applied in one or more of the participating companies covering at least 50% of the total number of employees in all the participating companies in the Member States; or
 - (ii) one or more forms of participation applied in one or more of the participating companies covering less than 50% of the total number of employees in all the participating companies in the Member States and the special negotiating body decides that the rules set out in that Part shall apply.

(3) Where there was more than one form of participation within the various participating companies, the special negotiating body shall choose which of those forms must be established in the SE.

(4) The special negotiating body shall inform the competent organs of the participating companies of any decisions taken pursuant to paragraph (3).

Spirit of cooperation

16. (1) The parties shall negotiate or work together, as the case may be, in a spirit of cooperation with due regard for their reciprocal rights and obligations, and taking into account the interests both of the SE and of the employees.

(2) For the purposes of paragraph (1), “the parties” means:

- (a) the competent organs of the participating companies and the special negotiating body, in relation to reaching an agreement in accordance with Regulation 8 on arrangements for the involvement of the employees within the SE;
- (b) the competent organ of the SE and the representative body; and
- (c) the supervisory or administrative organ of the SE and the employees or their representatives (or

both), with regard to a procedure for the information and consultation of employees.

PART 3

MISCELLANEOUS PROVISIONS

“Relevant undertakings”, etc

17. In this Part “relevant undertakings” means the participating companies, concerned subsidiaries or establishments and “relevant undertaking” means any one of those companies, subsidiaries or establishments.

Confidential information

18. (1) An individual who is or at any time was:

- (a) an employee,
- (b) a member of:
 - (i) the special negotiating body, or
 - (ii) the representative body,
- (c) an employees’ representative in an information and consultation procedure, or
- (d) an expert providing assistance,

shall not reveal any information which, in the legitimate interest of the relevant undertakings or the SE, has been expressly provided in confidence to him or her or to the body by the relevant undertakings or the SE.

(2) The duty of confidentiality imposed by paragraph (1) shall continue to apply after the cessation of the employment of the individual concerned or the expiry of his or her term of office.

(3) A relevant undertaking and the SE may refuse to communicate information to a special negotiating body, a representative body or employees or their representatives (or both) in an information and consultation procedure where the nature of that information is such that, by reference to objective criteria, it would:

- (a) seriously harm the functioning of one or more than one relevant undertaking or the SE, or
- (b) be prejudicial to one or more than one relevant undertaking or the SE.

(4) The Court or any member of the Court or the registrar or any officer or servant of the Court, including any person or persons appointed by the Court as an expert or mediator, shall not disclose any information obtained by it in confidence in the course of any proceedings before it under these Regulations.

Protection of employees' representatives

19. (1) A relevant undertaking or an SE shall not penalise—

- (a) a member of the special negotiating body,
- (b) a member of the representative body,
- (c) an employee's representative performing functions under an information and consultation procedure, or
- (d) an employee's representative in the supervisory or administrative organ of an SE who is an employee of the SE, its subsidiaries or establishments or of a participating company,

for the performance of his or her functions in accordance with these Regulations.

(2) For the purposes of this Regulation, a person referred to in paragraph (1) is penalised if he or she—

- (a) is dismissed or suffers any unfavourable change to his or her conditions of employment or any unfair treatment (including selection for redundancy), or
- (b) is the subject of any other action prejudicial to his or her employment.

(3) Schedule 2 has effect in relation to an alleged contravention of paragraph (1).

(4) Subject to paragraph (6), a person referred to in paragraph (1) shall be afforded any reasonable facilities, including time off, that will enable him or her to perform his or her functions as a member of the special negotiating body or representative body or as an employees' representative, as the case may be, promptly and efficiently.

(5) A person referred to in paragraph (1) shall be paid his or her wages for any period of absence afforded to him or her in accordance with paragraph (4).

(6) The granting of facilities under paragraph (4) shall have regard to the needs, size and capabilities of the participating company or the SE, as the case may be, concerned and shall not impair the efficient operation of the participating company or SE.

(7) This Regulation shall apply in particular to attendance by representatives at meetings of the special negotiating body or any other meetings within the framework of an agreement referred to in Regulation 8 or Schedule 1 or any meeting of the administrative or supervisory organ.

(8) If a penalisation of a person referred to in paragraph (1), in contravention of that paragraph, constitutes a dismissal of that person within the meaning of the Unfair Dismissals Acts 1977 to 2005, relief may not be granted to that person in respect of that penalisation both under Schedule 2 and under those Acts.

(9) This Regulation is in addition to, and not in substitution for, any rights enjoyed by an employee's representative, whether under any enactment or otherwise.

Dispute Resolution

20. (1) Disputes between one or more than one relevant undertaking or the SE and employees or their representatives (or both) concerning:

- (a) matters provided for in Regulations 5 to 12 relating to the special negotiating body,
- (b) the negotiation, interpretation or operation of an agreement in relation to Regulations 4, 13 and 14,

- (c) the interpretation or operation of the Standard Rules as provided for in Regulation 15 and Schedule 1,
- (d) matters provided for in paragraphs (4), (5), (6) and (7) of Regulation 19, or
- (e) a complaint by an employee or his or her representative (or both) that the SE is being or will be misused for the purpose of depriving employees of their rights to employee involvement or of withholding those rights,

may, subject to paragraph (2), be referred by one or more than one relevant undertaking, the SE, employees employed in the State or their representatives (or both) to the Court for investigation.

(2) Such a dispute may be referred to the Court only after—

- (a) recourse to the internal dispute resolution procedure (if any) in place in the relevant undertaking or SE concerned has failed to resolve the dispute, and
- (b) the dispute has been referred to the Commission which, having made available such of its services as are appropriate for the purpose of resolving the dispute, furnishes a certificate to the Court stating that the Commission is satisfied that no further efforts on its part will advance the resolution of the dispute.

(3) Having investigated a dispute under paragraph (1), the Court may make a recommendation in writing giving its opinion in the matter.

(4) Where, in the opinion of the Court, a dispute that is the subject of a recommendation under paragraph (3) has not been resolved, the Court may, at the request of—

- (a) one or more than one relevant undertaking or the SE, or
- (b) one or more employees or their representatives (or both),

and, following a review of all relevant matters, make a determination in writing.

(5) Disputes between one or more than one relevant undertaking or the SE and employees or their representatives (or both) concerning matters of confidential information provided for in Regulation 18 may be referred by—

- (a) one or more than one relevant undertaking,
- (b) the SE,
- (c) one or more than one employee or his or her representatives (or both),

to the Court for determination.

(6) As regards a dispute referred to it under this Regulation, the Court shall—

- (a) give the parties an opportunity to be heard by it and to present any evidence relevant to the dispute,
- (b) make a recommendation or, as the case may be, determination in writing in relation to the dispute, and
- (c) communicate the recommendation or, as the case may be, determination to the parties.

(7) The following matters, or procedures to be followed in relation to them, shall be determined by the Court, namely:

- (a) the procedure in relation to all matters concerning the initiation and hearing by the Court of a dispute under this Regulation;
- (b) the times and places of hearings of such disputes;
- (c) the publication and notification of recommendations and determinations of the Court;
- (d) any matters consequential on, or incidental to, the matters referred to in subparagraphs (a) to (c).

(8) In deciding what constitutes confidential information, the Court may be assisted by a panel of experts.

(9) A party to a dispute under this Regulation may appeal from a determination of the Court to the High Court on a point of law and the decision of the High Court shall be final and conclusive.

(10) The Court may refer a question of law arising in proceedings before it under this Regulation to the High Court for determination and the decision of the High Court shall be final and conclusive.

Power of Court to administer oaths and compel witnesses.

21. (1) The Court shall, on the hearing of a dispute referred to it for recommendation or determination under Regulation 20 or on the hearing of an appeal under Schedule 2, have power to take evidence on oath and for that purpose may cause to be administered oaths to persons attending as witnesses at that hearing.

(2) Any person who, upon examination on oath authorised by this section, wilfully makes any statement which is material for that purpose and which he or she knows to be false or does not believe to be true is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.

(3) The Court may, by giving notice in that behalf in writing to any person, require that person to attend at such time and place as is specified in the notice to give evidence in relation to a dispute referred to the Court for recommendation or determination under Regulation 20 or an appeal under Schedule 2, or to produce any documents in his or her possession, custody or control which relate to any such matter.

(4) A notice under paragraph (3) may be given either by delivering it to the person to whom it relates or by sending it by post in a prepaid registered letter addressed to that person at the address at which he or she ordinarily resides or, in the case of a participating company, its subsidiary or establishment or an SE, at the address at which the entity concerned ordinarily resides or carries on any profession, business or occupation.

(5) A person to whom a notice under paragraph (3) has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

(6) A witness in a hearing of a dispute or appeal before the Court has the same privileges and immunities as a witness before the High Court.

Enforcement

22. (1) If—

- (a) a party to a Court determination fails to carry out in accordance with its terms a determination of the Court in relation to a dispute under Regulation 20, or
- (b) a party to a complaint under Schedule 2 fails to carry out in accordance with its terms a decision of a rights commissioner or a determination of the Court under that Schedule in relation to the complaint,

within the period specified in the determination or decision or if no such period is so specified within 6 weeks from the date on which the determination or decision is communicated to the parties, the Circuit Court shall, on application to it in that behalf by one or more of the parties to the dispute or complaint, without hearing any evidence (other than in relation to the matters aforesaid) make an order directing the party concerned to carry out the determination or decision in accordance with its terms.

(2) The reference in paragraph (1) to a determination of the Court or a decision of a rights commissioner is a reference to such a determination or decision in relation to which, at the end of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought it has been abandoned and the references to the date on which the determination or decision is communicated to the parties shall, in a case where such an appeal is abandoned, be read as references to the date of that abandonment.

(3) In an order under this Regulation providing for the payment of compensation of the kind referred to in paragraph 2(3)(c) of Schedule 2, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct a relevant undertaking or an SE concerned to pay to the employee concerned interest on the compensation at the rate referred to in section 22 of the Courts Act 1981 (No.11 of 1981), in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Court or the decision of the rights commissioner is communicated to the parties and ending on the date of the order.

(4) An application under this Regulation to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the relevant undertaking or SE concerned has its principal place of business.

Link to other provisions

23. (1) Where an SE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of the Transnational Information and Consultation of Employees Act 1996 (No.20 of 1996) as amended by the European Communities (Transnational Information and Consultation of Employees Act 1996) (Amendment) Regulations 1999 (S.I. No. 386 of 1999), the provisions of that Act shall not apply to it or its subsidiaries.

(2) Notwithstanding paragraph (1), in relation to an SE referred to in that paragraph, if a special negotiating body decides in accordance with Regulation 11(1) not to open negotiations or to terminate negotiations already opened, the provisions of the Transnational Information and Consultation of Employees Act 1996 (No.20 of 1996) as amended by the European Communities (Transnational Information and Consultation of Employees Act 1996) (Amendment) Regulations 1999 (S.I. No. 386 of 1999) shall apply.

(3) Any right to participation conferred on employees by any enactment or instrument thereunder, other than these Regulations, shall not apply to an SE.

(4) These Regulations are without prejudice to:

(a) the existing rights to the involvement of employees as enjoyed by employees of the SE

and its subsidiaries and establishments, other than participation in the bodies of the SE, and

- (b) the rights to participation conferred on employees by any enactment or instrument thereunder applicable to the subsidiaries of the SE.

SCHEDULE 1

STANDARD RULES

Part 1

COMPOSITION OF BODY REPRESENTATIVE OF EMPLOYEES

1. In cases falling within Regulation 15, a representative body shall be set up in accordance with the provisions of this Part.

2. The representative body shall be composed of employees of the SE and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

3. The members of the representative body shall be elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries and establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10% or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together.

4. The election or appointment of members of the representative body shall be carried out in accordance with a procedure agreed by the special negotiating body.

5. The number of members of, and allocation of seats on, the representative body shall be adapted to take account of changes occurring within the SE and its subsidiaries and establishments, and the representative body shall take any steps it deems necessary to ensure this.

6. Where its size so warrants, the representative body shall elect a select committee from among its members, comprising at most three members.

7. The representative body shall adopt its own rules of procedure.

8. The competent organ of the SE shall be informed of the composition of the representative body as soon as is reasonably practicable.

9. (1) Four years after the representative body is established, it shall examine whether to open negotiations for the conclusion of an agreement referred to in Regulation 8 or to continue to apply the Standard Rules as provided for in this Schedule.

(2) If such a decision has been taken to negotiate an agreement, Regulations 9 to 14 shall apply with the necessary modifications and, for that purpose, references in those Regulations to “special negotiating body” shall be construed as references to “representative body”.

(3) Where, on the expiry of the time limit specified in Regulation 14 (as applied by this paragraph), no such agreement has been concluded, the arrangements initially adopted in accordance with the provisions of this Schedule shall continue to apply.

Part 2

STANDARD RULES FOR INFORMATION AND CONSULTATION

10. The competence and powers of the representative body set up in an SE shall be governed by the provisions of this Part.

11. (1) The competence of the representative body shall be limited to questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State.

(2) Without prejudice to meetings held pursuant to paragraph 13 (1), the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SE and its prospects and the local management shall be informed accordingly.

(3) The competent organ of the SE shall provide the representative body with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its shareholders.

(4) The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

12. (1) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall have the right to be informed.

(2) The representative body, or where it so decides, in particular for reasons of urgency, the select committee, shall have the right to meet at its request the competent organ of the SE or any more appropriate level of management within the SE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

(3) Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent organ of the SE with a view to seeking agreement.

(4) In the case of a meeting organised with a select committee, those members of the representative body who represent employees who are directly concerned by the measures in question shall also have the right to participate.

(5) The meetings referred to above shall not affect the prerogatives of the competent organ.

13. (1) Before any meeting with the competent organ of the SE, the representative body or the select committee, where necessary enlarged in accordance with paragraph

12(4), shall be entitled to meet without the representatives of the competent organ being present.

(2) Without prejudice to Regulation 18, the members of the representative body shall inform the employees of the SE and of its subsidiaries and establishments, or their representatives (or both), of the content and outcome of the information and consultation procedures.

14. (1) The representative body or the select committee may be assisted by experts of its choice.

(2) The reasonable costs of the representative body shall be borne by the SE which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner.

(3) In so far as is necessary for the fulfilment of their duties, the members of the representative body shall be entitled to time off for training without loss of wages.

Part 3

STANDARD RULES FOR PARTICIPATION

15. Employee participation in an SE shall be governed by the provisions of this Part.

16. (1) In the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SE, and subparagraph (2) shall apply, with the necessary modifications, to that end.

(2) In establishing an SE, other than by transformation as referred to in subparagraph (1), the employees of the SE, its subsidiaries and establishments and their representative body (or both) shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE.

(3) If none of the participating companies was governed by participation rules before registration of the SE, the SE

shall not be required to establish provisions for employee participation.

(4) The representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States or on the way in which the SE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SE's employees in each Member State.

(5) If, as a consequence of a decision under subparagraph (4), the employees of one or more Member States are not covered by the proportional criterion, the representative body shall, where possible, appoint a member from one of those Member States, in particular the Member State of the SE's registered office where that is appropriate.

(6) For the purposes of subparagraph (5) and the determination of the allocation of the seats given within the administrative or supervisory body to employees in the State, those members of the representative body representing employees in the State shall select, from amongst their number, a number of representatives equal to the number of seats available.

16. Every member of the administrative body or, where appropriate, the supervisory body of the SE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the shareholders, including the right to vote.

SCHEDULE 2

REDRESS FOR CONTRAVENTION OF REGULATION 19

Complaints to rights commissioner.

1. In this Schedule “relevant undertaking” shall be construed in accordance with Regulation 17.

2. (1) A person referred to in Regulation 19(1) may present a complaint to a rights commissioner that a relevant undertaking or the SE has contravened Regulation 19(1) in relation to him or her.

(2) Where a complaint under subparagraph (1) is made, the rights commissioner shall—

(a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,

(b) give a decision in writing in relation to it, and

(c) communicate the decision to the parties.

(3) A decision of a rights commissioner under subparagraph (2) shall do one or more of the following:

(a) declare that the complaint was or, as the case may be, was not well founded;

(b) require the relevant undertaking or the SE to take a specified course of action;

(c) require the relevant undertaking or the SE to pay to the person referred to in subparagraph (1) compensation of such amount (if any) as is just and equitable having regard to all the circumstances but not exceeding 2 years remuneration in respect of the person’s employment.

(4) A rights commissioner shall not entertain a complaint under this paragraph if it is presented to him or her after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates.

(5) Notwithstanding subparagraph (4), a rights commissioner may entertain a complaint under this paragraph presented to him or her after the expiration of the period referred to in subparagraph (4) (but not later than 6 months after such expiration) if he or she is satisfied that the failure to present the complaint within that period was due to reasonable cause.

(6) A complaint shall be presented by giving notice of it in writing to a rights commissioner.

(7) A copy of a notice under subparagraph (6) shall be given to the other party concerned by the rights commissioner concerned.

(8) Proceedings under this paragraph before a rights commissioner shall be conducted otherwise than in public.

Appeals from decisions of rights commissioner

3. (1) A party concerned may appeal to the Court from a decision of a rights commissioner under paragraph 2 and, if the party does so, the Court shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, shall make a determination in writing in relation to the appeal affirming, varying or setting aside the decision and shall communicate the determination to the parties.

(2) An appeal under this paragraph shall be initiated by the party concerned giving, within 6 weeks (or such greater period as the Court may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, a notice in writing to the Court containing such particulars as are determined by the Court under subparagraph (4) and stating the intention of the party concerned to appeal against the decision.

(3) A copy of a notice under subparagraph (2) shall be given by the Court to any other party concerned as soon as practicable after the receipt of the notice by the Court.

(4) The following matters, or the procedures to be followed in relation to them, shall be determined by the Court, namely—

- (a) the procedure in relation to all matters concerning the initiation and the hearing by the Court of appeals under this paragraph,
- (b) the times and places of hearings of such appeals,
- (c) the representation of the parties to such appeals,
- (d) the publication and notification of determinations of the Court,
- (e) the particulars to be contained in a notice under subparagraph (2), and
- (f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Court may refer a question of law arising in proceedings before it under this paragraph to the High Court for determination and the determination of the High Court shall be final and conclusive.

(6) A party to proceedings before the Court under this paragraph may appeal to the High Court from a determination of the Court on a point of law and the determination of the High Court shall be final and conclusive.

Supplemental provisions

4. (1) A rights commissioner shall furnish the Court with a copy of each decision given by the commissioner under paragraph 2(2).

(2) A rights commissioner shall maintain a register of all decisions given by him or her under paragraph 2(2) and shall make the register available for inspection by members of the public during normal office hours.

(3) The Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under subparagraph (4)(a), (b), (c), (e) and (f) of paragraph 3 (not being a determination as respects a particular appeal under that paragraph).



GIVEN under my Official Seal,
14 December 2006

MICHEÁL MARTIN
Minister for Enterprise, Trade and
Employment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation).

The purpose of these regulations is to give effect to EU Directive 2001/86/EC of 8 October 2001 “Supplementing the Statute for a European Company with Regard to the Involvement of Employees”.

The European Company Statute is a new legal instrument that gives companies with commercial interests in more than one Member State the option of forming a European Company (to be known as *Societas Europaea*, “SE”), the objective of which is to make it easier for such companies to operate across the EU.

These regulations transpose the provisions of the Directive, providing that a new SE cannot be registered without first negotiating with employees on their involvement in the company, whether through information and consultation and/or, in certain circumstances, participation at board level.

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