

The Act of 2004 supplementing the Statute for a European company with regard to the involvement of employees is herewith promulgated via publication in the Official Journal of the Republic of Cyprus in accordance with Article 52 of the Constitution

Act No 277(1) of 2004

Act of 2004 supplementing the Statute for a European company with regard to the involvement of employees with a view to enhancing employees' rights to participate in management and decisions concerning the European public limited-liability company (SE)

With a view to transposing the instrument of the European Community entitled:

‘Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees’ and

with a view to improving the implementation of the instrument of the European Community entitled:

‘Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)’,

the House of Representatives has approved the following:

1. This Act shall be referred to as the Act of 2004 supplementing the Statute for a European company with regard to the involvement of employees.

**SECTION 1
GENERAL RULES**

2. For the purposes of this Act, except where the text requires a different interpretation:

"consultation" means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives 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 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;

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

"employees' representatives" means the employees' representatives provided for by the legislation in force and by practice

"information" means the informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE on 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 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;

"European public limited liability company" or "SE" means any company established in accordance with Regulation (EC) No 2157/2001;

"subsidiary" of a company means an undertaking over which that company exercises a dominant influence defined in accordance with Article 5 of the Act on the creation of European works councils 2002 to 2003;

"Regulation 257/2001" means the instrument of the European Community entitled 'Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)' as duly amended or replaced

"Member State" means a Member State of the European Union;

"Directive 94/45" means the instrument of the European Community entitled 'Council Directive 94/45/EC of 22 September 1994 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' as duly amended or replaced;

"representative body" means the body representative of the employees set up by the agreements referred to in Articles 12 to 15 of this Act, with 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;

"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;

"participating companies" means the companies directly participating in the establishing of an SE;

"participation" means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by 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 and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ

"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;

3. This Act governs the involvement of employees in the affairs of European public limited-liability companies.

4(1) This Act shall apply to European public limited-liability companies as defined in Regulation No 2157/2001.

(2) Articles 5 to 10 of this Act concerning the negotiating procedure shall be implemented in SEs which are registered in the Republic of Cyprus in accordance with Chapter 113 of the Companies Act.

(3) The provisions of this Act shall govern the role of employees in matters pertaining to the European companies, with the exclusion of all other legislation or practice which concern the participation of workers in company bodies.

(4) Where an SE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of Directive 94/45, the provisions of this Act shall not apply to them or to their subsidiaries.

When a special negotiating body decides, pursuant to Article 8(5) and (6), not to commence negotiations or to terminate negotiations which have already begun, Acts of 2002 and 2003 on the creation of a European works council and Directive 94/45 shall apply.

(5) This Act shall not prejudice:

(a) the existing rights to involvement of employees provided for by national legislation and/or practice in the Member States as enjoyed by employees of the SE and its subsidiaries and establishments, other than participation in the bodies of the SE;

(b) the provisions on participation in the bodies laid down by the legislation in force and/or practice applicable to the subsidiaries of the SE.

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SECTION II NEGOTIATING PROCEDURE

5.(1) Where the management or administrative organs of the participating companies draw up a plan for the establishment of an SE, they shall as soon as possible after publishing the draft terms of merger or creating a holding company or after agreeing a plan to form a subsidiary or to transform into an SE, as provided for in Article 2 of Regulation 2157/2001, take the necessary steps, including providing information about the identity of the participating companies, concerned subsidiaries or establishments, and the number of their employees, to start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE.

5(2) For the purpose of paragraph 1, a special negotiating body as provided for in Articles 6 and 7, representative of the employees of the participating companies and concerned subsidiaries or establishments.

6. In electing or appointing members of the special negotiating body, it must be ensured:

(a) that these members are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or 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;

(b) that in the case of an SE formed by way of merger, there are 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, in so far as:

(i) the number of such additional members does not exceed 20 % of the number of members designated by virtue of Paragraph (a), and

(ii) the composition of the special negotiating body does not entail a double representation of the employees concerned

If the number of companies referred to in the previous paragraph is higher than the number of additional seats available pursuant to paragraph (a), these additional seats shall be allocated to companies in different Member States by decreasing order of the number of employees they employ..

7.(1) The representatives who participate in the special negotiating body shall be elected along with their alternates as follows:

(a) from the existing trade union organisations which represent the employees

(b) if such organisations do not exist, by direct election on the part of the employees.

(2) Employees in undertakings or establishments in which there are no employees' representatives through no fault of their own have the right to elect or appoint members of the special negotiating body.

(3) As far as possible, the members of the special negotiating body shall include at least one member representing each participating company which has employees. Such measures must not increase the overall number of members.

8.(1) The special negotiating body and the competent organs of the participating companies shall determine, by written agreement, arrangements for the involvement of employees within the SE. To this end, the competent organs of the participating companies shall inform the special negotiating body of the plan and the actual process of establishing the SE, up to its registration.

(2) For the purpose of the negotiations, the special negotiating body may request experts of its choice. Such 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.

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

(4) Subject to paragraphs 5 and 6, the special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each member shall have one vote. However, should the result of the negotiations lead to a reduction of participation rights, the majority required for a decision to approve such an agreement shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States:

(a) in the case of an SE to be established by way of merger, if participation covers at least 25 % of the overall number of employees of the participating companies, or

(b) in 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.

For the purposes of this paragraph:

”Reduction of participation rights” means a proportion of members of the organs of the SE within the meaning of the term ‘participation’, which is lower than the highest proportion existing within the participating companies.

(5) The special negotiating body may decide, by a majority of two thirds of its members representing at least two thirds of the employees including the votes of members representing employees employed in at least two Member States, not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees. Such a decision shall stop the procedure to conclude the agreement referred to in Article 8 and none of the provisions of Articles 12 to 15 shall apply.

In the case of an SE established by way of transformation, this paragraph and paragraph 6 shall not apply if there is participation in the company to be transformed.

(6) The special negotiating body shall be reconvened on the written request of at least 10 % of the employees of the SE, its subsidiaries and establishments, or their representatives, at the earliest two years after the abovementioned decision, unless the parties agree to negotiations being reopened sooner. If the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, the provisions of Articles 12 to 15 shall not apply.

(7) Any expenses relating to the functioning of the special negotiating body and, in general, to negotiations shall be borne by the participating companies so as to enable the special negotiating body to carry out its task in an appropriate manner.

In particular, the participating companies shall bear the following costs:

(a) selection or appointment of the members of the special negotiating body;

(b) organisation of the meetings of the special negotiating body, including the costs of interpretation, stay, travel, and subsistence of its members and the costs of printing and communicating the results

(c) the costs of an expert appointed by the special negotiating body with a view to assisting it in its duties

9.(1) The competent organs of the participating companies and the special negotiating body shall negotiate in a spirit of cooperation with a view to reaching an agreement on arrangements for the involvement of the employees within the SE.

(2) Without prejudice to the autonomy of the parties, and subject to paragraph 3, the agreement referred to in paragraph 1 made in writing between the competent organs of the participating companies and the special negotiating body 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 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, cases where the agreement should be renegotiated and the procedure for its renegotiation.

(3) The agreement referred to in paragraph 1 shall not, unless provision is made otherwise therein, be subject to the standard rules referred to in Articles 12 to 15.

(4) Without prejudice to Article 21(5)(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.

10.(1) Negotiations shall commence as soon as the special negotiating body is established and may continue for six months thereafter.

(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.

SECTION III STANDARD RULES

11.(1) The standard rules as laid down by Articles 12 to 14 for an SE registered in Cyprus pursuant to Section 113 of the Companies Act shall apply from the date of the registration of the SE where either:

(a) the parties so agree; or

(b) by the deadline laid down in Article 10, no agreement has been concluded, and

(i) the competent organ of each of the participating companies decides to accept the application of the standard rules laid down in Articles 12 to 15 in relation to the SE and so to continue with its registration of the SE, and

(ii) the special negotiating body has not taken the decision provided in Articles 7(4) and

(6)

(2)(a) The standard rules fixed by Article 15 shall apply only:

(i) 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 to a company transformed into an SE;

(ii) in the case of an SE established by setting up a holding company or establishing a subsidiary:

(aa) if, before registration of the SE, 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; or

(bb) if, before registration of the SE, 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 and if the special negotiating body so decides.

(b) If there was more than one form of participation within the various participating companies, the special negotiating body shall decide which of those forms must be established in the SE. Member States may fix the rules which are applicable in the absence of any decision on the matter for an SE registered in their territory. The special negotiating body shall inform the competent organs of the participating companies of any decisions taken pursuant to this paragraph.

12. As regards the cases referred to in Article 11, a representative body shall be set up in accordance with the following rules:

(a) 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;

(b) the representative body shall adopt its rules of procedure;

(c) where its size so warrants, the representative body shall elect a select committee from among its members, comprising at most three members;

(d) the election or appointment of members of the representative body shall be carried out in accordance with Article 7. 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;

(e) The members of the representative body are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or 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.

(f) The competent organ of the SE shall be informed of the composition of the representative body and four years after the representative body is established, it shall examine whether to open negotiations for the conclusion of the agreement referred to in Articles 12 to 15;

(g) Article 8(2) to (7) and Articles 9 and 10 shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to Article 9, in which case the term "special negotiating body" shall be replaced by "representative body".

Where, by the deadline by which the negotiations come to an end, no agreement has been concluded, the arrangements initially adopted in accordance with the standard rules shall continue to apply.

13.(1) The competence of the representative body set up pursuant to Article 12 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 (4), 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. The local managements shall be informed about the results of the meeting. 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.

(3) The meeting referred to in paragraph 2 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.

(4) The representative body must be informed in good time of 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. In these cases 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.

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.

(5) If the meeting is organised with the 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. The meetings referred to above shall not affect the prerogatives of the competent organ.

(6) Before any meeting with the competent organ of the SE, the representative body or the select committee, where necessary enlarged in accordance with paragraph 4 of this Article, shall be entitled to meet without the representatives of the competent organ being present.

14.(1) Without prejudice to Article 16, the members of the representative body shall inform the representatives of the employees of the SE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.

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

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

(4) The costs of the representative body shall be borne by the SE, as provided for in Article 8(7) of this Act.

15.(1) In the case of an SE established by transformation, pursuant to Regulation 2157/2001 and in respect of which 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. Paragraphs (2), (3), (4) and (9) of this Article shall apply mutatis mutandis to that end.

(2) In cases in which the SE was not set up in accordance with paragraph 1 but in accordance with other rules provided for in Regulation 2157/2001, the employees of the SE, its subsidiaries and establishments and/or their representative body 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 latter 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. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SE's registered office where that is appropriate.

(5) 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.

SECTION IV MISCELLANEOUS PROVISIONS

16.(1)(a) Members of the special negotiating body or the representative body, experts who assist them, and employees' representatives in the context of an information and consultation procedure, are not authorised to reveal any information which has been given to them in confidence.

(b) This confidentiality obligation shall continue to apply, regardless to where the persons referred to may be, even after the expiry of their terms of office.

(c) The members of the special negotiating body or the representative body and the supervisory or administrative body of the SE shall jointly decide on matters covered by confidentiality and on the nature of the information to be communicated to third parties.

(2) The supervisory organ of an SE or of a participating company shall not be obliged to transmit information to the special negotiating body or the body representing the workers pertaining to matters which

(i) are of such a nature that, according to objective criteria, their transmission would seriously harm the functioning of the SE (or, as the case may be, the participating company) or its subsidiaries and establishments or would be prejudicial to them;

(ii) are deemed to be confidential in accordance with the legislation in force, pursuant to the requirements and restrictions laid down therein.

(3) The company inspector and the official receiver may, on the basis of a reasoned opinion delivered by the special negotiating body or the employee's representative body, instruct the competent body of the SE or a participating company to inform the special negotiating body or the employees' representative body on matters deemed to be confidential pursuant to this Article.

17.(1) The competent organ of the SE and the representative body shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations.

(2) Paragraph 1 shall apply to cooperation between the supervisory or administrative organ of the SE and the employees' representatives in conjunction with a procedure for the information and consultation of employees.

18.(1) The members of the special negotiating body, the members of the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative organ of an SE who are employees of the SE, its subsidiaries or establishments or of a participating company shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the Act pertaining to the Agreement on Workers' Representatives of 1995.

(2) The protection referred to in paragraph (1) shall apply in particular to attendance at meetings of the special negotiating body or representative body, any other meeting under the agreement referred to in Article 9(2)(f) of this Act or any meeting of the administrative or supervisory organ, and to the payment of wages for members employed by a participating company or the SE or its subsidiaries or establishments during a period of absence necessary for the performance of their duties.

19. No European company (SE) may deprive employees of their right to participate in the company or deny them that right.

20. Whosoever infringes the provisions of this Act shall be guilty of a felony and in the event of conviction shall be subject to imprisonment for a period of up to two years or a fine of up to 20000 pounds or to both penalties jointly.