



Regulation on employees' right to influence in European companies

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Overview of chapters:

Chapter I. Introductory provisions (sections 1-3)

Chapter II. Negotiating procedure (sections 4-10)

Chapter III. Miscellaneous provisions (sections 11-17)

Annex I - Standard provisions

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Chapter I. Introductory provisions

Section 1 Purpose

The purpose of this Regulation is to guarantee employees' rights to information, consultation and representation in European companies (Societas Europaea), hereafter referred to as SEs: cf. Law No. 14 of 1 April 2005 on European companies when implementing the EEA Agreement, Annex XXII, No. 10a (Council Regulation (EC) No. 2157/2001) (the SE Law).

Section 2 *Scope and choice of law*

(1) This Regulation applies to SEs with registered offices in Norway. The Regulation also applies to the establishment of SEs that will have registered offices in Norway in future.

(2) The provisions in sections 1 to 6 and in section 10 shall apply to partner companies, subsidiaries and branches in Norway that participate in the establishment of SEs regardless of where the company has a business office.

0 Amended by Regulation No. 230 of 27 February 2007

Section 3 *Definitions*

The following definitions apply in this Regulation:

- a) *SE* means any company established in accordance with Law No. 14 of 1 April 2005 on European companies when implementing the EEA Agreement, Annex XXII, No. 10a (Council Regulation (EC) No. 2157/2001) (SE Law) implementing Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE);
- b) *participating companies* means companies that participate directly in the establishment of an SE;
- c) *branch* means part of a company that carries out a business activity in a different EU/EEA Member State from the one where the company has its registered office;
- d) *concerned subsidiary or branch* means a subsidiary or branch of a participating company that will become a subsidiary or branch of the SE when the SE is founded;
- e) *influence* means any means, including information, consultation and representation, that employees' representatives may use to influence decisions made within the company;
- f) *information* means information provided to the representative body or employees' representatives by the SE regarding issues pertaining to the SE and any subsidiary or branch located in another Member State; the same applies to issues that extend beyond the decision-making bodies' authority in a single Member State; the information must be provided at a point in time and in a manner and form that enable the employees' representatives to reasonably assess the potential effects and possibly prepare for consultations with the SE;
- g) *consultation* means dialogue and an exchange of views between the representative body or the employees' representatives and the SE; consultations shall take place at a point in time and in a manner and form that enable the employees' representatives, based on the information received, to express their opinions so that these views can be taken into consideration in the decision-making process of the SE;
- h) *representation* means the influence that the body representing the employees or their representatives exerts over the operations of a company:
 - by making use of the right to elect or appoint any of the members of the company's supervisory board or board of directors;
 - or
 - by making use of the right to recommend and/or oppose the appointment of any or all of the members of the company's supervisory board or board of directors.

0 Amended by Regulation No. 230 of 27 February 2007

Chapter II **Negotiating procedure**

Section 4 *Establishment of the special negotiating body*

(1) When the management bodies of the participating companies draw up a plan for the establishment of an SE, as soon as possible after publishing the merger plan they must plan the establishment of a holding company or, after adopting a plan for the establishment of a subsidiary or transformation to an SE, take the necessary steps to initiate negotiations with the representatives of the companies' employees about the employees' means of exerting influence within the SE. The employees must be given information about the names and number of employees in the participating companies, concerned subsidiaries and branches.

(2) A special negotiating body must be set up to represent the employees of the participating companies, concerned subsidiaries and branches. The members of the special negotiating body shall be selected or appointed based on the number of employees of the participating companies, affected subsidiaries and branches in each EU and/or EEA Member State. Each EU and/or EEA Member State shall be allocated one seat in the special negotiating body per share of employees representing 10 percent, or a fraction thereof, of the employees employed by the participating companies, concerned subsidiaries and branches in all Member States taken together.

(3) When the SE is established by way of a merger, additional members from each Member State shall be elected or appointed to the extent necessary to ensure that the special negotiating body comprises at least one member from each participating company, registered and having employees in the relevant EU and/or EEA Member State, that will cease to exist as a legal entity in its own right once the SE has been registered.

(4) However, paragraph 3 shall not apply if the number of such additional members exceeds 20 percent of the number of members elected or appointed in accordance with paragraph 2 or if the employees affected are already represented under the provision in paragraph 2. If the number of companies that will cease to exist in the course of the merger is greater than the number of additional seats found according to the first sentence, these additional seats shall be allocated to companies in different EU and/or EEA Member States in descending order based on the number of employees employed by the companies.

(5) If the number of employees in the participating companies, concerned subsidiaries or branches changes after the establishment of the special negotiating body, the distribution of seats in accordance with paragraphs 2, 3 and 4 shall be reallocated if the changes are so significant that they would alter the composition of the special negotiating body.

0 Amended by Regulation No. 230 of 27 February 2007

Section 5 *Distribution of seats in Norway*

(1) Seats in the special negotiating body reserved for employees in Norway in accordance with section 4, paragraph 2 shall be allocated to employees of the participating companies in Norway in descending order, based on the number of employees of the company in question. If the number of seats to be distributed is higher than the number of participating companies, seats shall be allocated to concerned subsidiaries and branches in descending order, based on the number of employees of the entity in question. Any remaining seats shall be allocated to the participating companies, concerned subsidiaries and branches in descending order, based on the number of employees they employ.

(2) If the SE is established by merger and seats are to be allocated to companies in Norway that cease to exist in the course of that merger, the seats of the employees of these companies shall be allocated in descending order, based on the number of employees of the company in question. This arrangement does not apply if the participating company is allocated a seat in the special negotiating body in accordance with paragraph 1 (see section 4, paragraph 1).

(3) If the geographical composition of the special negotiating body is adjusted in accordance with section 4, paragraph 5, the seats shall be redistributed in the special negotiating body in accordance with the rules in paragraphs 1 and 2.

(4) If an entity that has one or more representatives in the special negotiating body no longer has to be represented in the special negotiating body and this does not lead to any change in the composition of the special negotiating body in accordance with section 4, paragraph 5 (see paragraph 3 of section 5), the vacant seat(s) shall be allocated to the next entity in line, in accordance with paragraph 1 of section 5. If the employees of this entity are allocated a seat on the basis of the rule in section 5, paragraph 2, the seat shall also be passed on to the next entity, in accordance with the provision in section 5, paragraph 2. If there is no such entity, the seat in question shall not be allocated to any entities.

(5) If there are new participating companies after the special negotiating body has been established, and if this does not lead to changes in the distribution of seats in the special negotiating body in accordance with section 4, paragraph 5, such companies shall have one representative in the special negotiating body. The distribution set out in section 5, paragraph 3 shall apply accordingly.

(6) Representatives elected in accordance with section 4, paragraph 2 (see section 5, paragraph 1) shall represent the employees of the entity as well as a proportion of the employees of those entities without their own elected representatives. If more representatives are elected in accordance with section 4, paragraph 2, employees who do not have their own representatives shall likewise be divided up among the representatives. Representatives elected in accordance with section 4, paragraph 3 (see section 5, paragraph 2) shall only represent the employees of that company.

0 Amended by Regulation No. 230 of 27 February 2007

Section 6 *The election of members to the special negotiating body in Norway*

(1) If there are local trade unions that either alone or together represent at least two thirds of the employees in the entity assigned a representative in accordance with section 5, paragraphs 1 or 2, these unions shall appoint the said representative from among the employees of the said entity. If no agreement is reached on who is to be appointed, an election shall be held by and among the employees in accordance with the second paragraph.

(2) If in the entities assigned representatives there are no trade unions that either alone or together represent two thirds of the employees or they fail to reach agreement, an election shall be held directly by and among the employees in Norway. This election is subject to Regulation No. 1205 of 18 December 1998 (the Representation Regulation) on the right of employees to representation on the board and corporate assembly of joint stock companies and public limited companies etc., provided that it is compatible with and does not contradict the provision set out here. Paragraph 14 of section 12 of the Representation Regulation does not apply. The election committee may set shorter deadlines for implementing the election than those stipulated in section 12 of the Representation Regulation.

(3) The election may be held electronically if the election committee so decide and all employees have access to a computer. Otherwise the election shall be conducted in accordance with the Representation Regulation.

0 Amended by Regulation No. 230 of 27 February 2007

Section 7 *The duties of the special negotiating body*

(1) In the agreement, the special negotiating body and the participating companies shall make arrangements concerning the employees' rights to information, consultation and representation in the SE. To this end, the participating companies shall notify the special negotiating body about the plan and specific processes for establishing the SE, until the SE has been registered.

(2) Unless otherwise specifically determined, decisions shall be taken within the special negotiating body by a majority of its members, provided that such a majority also represents a majority of the employees.

(3) However, any agreement entailing a reduction of the right to representation in the SE's board of directors or supervisory board requires the backing 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 EU and/or EEA Member States. However, the majority requirement set out in the first sentence shall not apply when the SE is to be established through a merger and the right to representation comprises less than 25 percent of the total number of employees in the participating companies. The majority requirement in the first sentence shall not apply when the SE is set up by establishing a holding company or subsidiary, and the right to representation includes less than 50 percent of the total number of employees in the participating companies.

(4) Paragraph 3 does not apply to SEs established through transformation.

(5) A reduction of the right to representation means a lower proportion of the members of the board of directors or supervisory board of the SE than the highest proportion to be found in the participating companies.

(6) In negotiations, the special negotiating body may request assistance in its work from experts of its own choice, such as representatives from relevant employees' organisations. Such experts may attend negotiation meetings as advisors at the request of the special negotiating body. The special negotiating body may decide to inform the representatives of relevant external organisations, including trade unions, that negotiations are being initiated.

(7) The special negotiating body may decide, by the majority stipulated in paragraph 8, not to initiate negotiations or to terminate negotiations that have already commenced and to base its approach on the rules governing information and consultation that apply in the EU and/or EEA Member States where employees are employed by the SE. Such a decision shall suspend the procedure for concluding an agreement that is set out in section 8, but does not imply that the standard provisions in Annex I apply.

(8) The majority required to decide not to initiate or to terminate negotiations 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 EU and/or EEA Member States.

(9) In the event that an SE is established by transformation, paragraphs 7 and 8 shall not apply if the employees of the company to be transformed are entitled to representation.

(10) The special negotiating body shall be reconvened upon a written request from at least 10 percent of the employees of the SE, its subsidiaries and branches, or their representatives, at the earliest two years after the decision referred to in paragraph 8 (cf. paragraph 7), unless the parties agree that negotiations are to be initiated sooner. The standard provisions in Annex I will not apply if the special negotiating body decides to re-initiate negotiations with the company and if these negotiations do not lead to a consensus on an agreement as set out in section 8.

(11) The participating companies must cover the expenses associated with the duties of the special negotiating body, including the costs of an expert. The participating companies and special negotiating body may agree to cover the costs of experts beyond this.

0 Amended by Regulation No. 230 of 27 February 2007

Section 8 Contents of the agreement

(1) Any agreement between the participating companies and the special negotiating body on the employees' influence shall be made in writing and stipulate at least the following:

- a) the scope of the agreement;
- b) the composition, number of members and distribution of seats in the representative body that will serve as the SE's partner in defining arrangements governing information and consultation with the employees of the SE, its subsidiaries and branches;
- c) the function of the representative body and the information and consultation procedure;
- d) the frequency of meetings of the representative body;
- e) the financial and material resources to be allocated to the representative body;
- f) if, in the course of their negotiations, the parties decide to establish one or more procedures for information and consultation instead of a representative body, the arrangements for implementing such procedures;
- g) if in the course of negotiations the parties decide to make arrangements for representation, the content of these arrangements, including the number of members of the SE's board of directors or supervisory board whom the employees will be entitled to elect, appoint, recommend or oppose, the procedures on how the employees vote, appoint, recommend or oppose these members, and also their rights;
- h) the date of entry into force of the agreement and its duration, scenarios in which the agreement should be renegotiated and the renegotiation procedure.

(2) The agreement is not subject to the standard provisions in Annex I unless the agreement contains provisions on anything else.

(3) If an SE is established by transformation, the agreement shall at least stipulate the same level of influence existing in the company to be transformed into an SE.

Section 9 *The duration of negotiations*

The negotiations shall be initiated as soon as the special negotiating body has been established and may last for the following six months. The parties may agree to decide to extend the negotiations beyond six months, but they may not last longer than one year after the establishment of the special negotiating body.

Section 10 *Application of the standard provisions*

(1) The standard provisions set out in Annex I to this Regulation shall apply if:

- a) the parties agree; or
- b) no agreement has been reached within the time limit set in section 9 and each participating company decides to accept the application of the standard provisions of the SE and thus proceed with registration, and the special negotiating body has not made the decision stipulated in section 7, paragraphs 7 and 8.

(2) Unless otherwise stipulated in the agreement mentioned in paragraph 1a, the standard provisions of Annex I on representation shall only apply:

- a) in the event that an SE is established in the course of a transformation: if the rules governing employee representation on the board of directors or supervisory board applied to a company that was transformed into an SE;
- b) in the event that an SE is established in the course of a merger: if one or more forms of representation were applied in one or more of the participating companies prior to the registration of the SE and comprised at least 25 percent of the total number of employees of all the participating companies; the same shall apply if one or more forms of representation applied in one or more of the participating companies prior to the registration of the SE and included less than 25 percent of the total number of employees of all the participating companies if the special negotiating body so decides;
- c) in the event that an SE is established in the course of the formation of a holding company or foundation of a subsidiary: if one or more forms of representation applied in one or more of the participating companies prior to the registration of the SE and included at least 50 percent of the total number of employees of all the participating companies; the same shall apply if one or more forms of representation applied in one or more of the participating companies prior to the registration of the SE and included less than 50 percent of the total number of employees of all the participating companies if the special negotiating body so decides.

(3) If there were different forms of representation in the various participating companies, the special negotiating body must decide which of these forms is to be established in the SE. If the SE is to be registered in Norway and the special negotiating body has not decided which form of representation is to be established in the SE, the participating companies shall decide which form of representation is to be introduced in the SE. The special negotiating body shall notify the participating companies of all decisions it takes in the context of this section.

0 Amended by Regulation No. 230 of 27 February 2007

Chapter III. Miscellaneous provisions

Section 11 *Duty of confidentiality*

(1) If the SE's need for confidentiality necessitates the non-disclosure of information, under special circumstances the SE or participating company may impose a duty of professional secrecy on the employees' representatives.

(2) This duty of confidentiality shall continue to apply after the expiry of these representatives' mandate.

Section 12 *The right to withhold confidential information*

Under special circumstances, an SE or participating company may desist from submitting information to the special negotiating body, the representative body and similar bodies established on the basis of this Regulation if divulging the said information would clearly be significantly detrimental to the SE, participating companies or their subsidiaries or branches. The first sentence shall not apply to employees' representatives who are members of the board of directors or supervisory board.

Section 13 *Abuse of the rules governing SEs*

(1) If, within a year after the registration of the SE, the company or its subsidiaries or branches undergo significant changes and these changes would have given the employees greater influence than the current arrangements regarding their influence if they had occurred prior to registration, the rules governing SEs shall be deemed to have been abused unless the company provides evidence that the changes had other causes.

(2) If the rules on SEs are abused to deprive the employees of their influence, fresh negotiations may be demanded. Negotiations may be demanded by the representative body or by representatives of the majority of employees of the SE's new business sites or subsidiaries.

(3) The provisions in sections 4 to 10 shall apply correspondingly, if appropriate.

0 Amended by Regulation No. 230 of 27 February 2007

Section 14 *Dispute resolution*

(1) Pursuant to section 17-2 of the Working Environment Act, the dispute resolution board can decide on:

- disputes relating to the establishment of the special negotiating body pursuant to sections 4, 5 and 6; For elections of employees' representatives from Norway to the special negotiating body, the Representation Regulation shall apply correspondingly (cf. section 6, paragraph 2);
- disputes relating to the conclusion of an agreement on influence, including whether the agreement has been entered into in accordance with the Regulation's voting rules (cf. sections 6 and 7);
- disputes relating to whether the terms for the application of the standard provisions in the annex have been fulfilled (cf. section 10);
- decisions on confidentiality or the retention of information (cf. sections 11 and 12);
- disputes concerning the allocation of seats and the election or designation of employees' representatives to the board of directors or supervisory board in accordance with the standard provisions of Annex I, No. 13.

(2) Disputes relating to decisions referred to in paragraph 1e cannot be brought before the dispute resolution board after the information covered by the decision has entered the public domain.

0 Amended by Regulation Nos. 230 of 27 Feb 2007 and 1282 of 24 August 2017 (which entered into force on 1 January 2018)

Section 15 Rules of procedure

For the rules of procedure governing the dispute resolution board, see Regulation No. 1569 of 16 December on the dispute resolution board pursuant to the Working Environment Act, as applicable. The special negotiating body, representative body or similar bodies, SEs, participating companies, concerned subsidiaries, branches, local trade unions and one fifth of the employees may refer disputes to the dispute resolution board.

0 Amended by Regulation No. 1282 of 24 August 2017 (which entered into force on 1 January 2018)

Section 16 Relationship to other provisions

Act No. 63 of 23 August 1996 on the general application of provisions in collective agreements on European Works Councils, etc. and Regulation No. 797 of 28 July 2000 on European Works Councils, etc. does not apply to SEs unless the special negotiating body pursuant to section 7, paragraphs 7 and 8 has decided not to initiate negotiations or to conclude negotiations on arrangements governing influence within the company.

0 Amended by Regulation No. 230 of 27 February 2007

Section 17 Entry into force

The Regulation shall enter into force on 1 April 2005.

Annex I - Standard provisions

The standard provisions of this Annex shall apply in the cases that follow from section 10 of the Regulation.

0 Amended by Regulation No. 230 of 27 February 2007

General provisions

1 The composition of the employees' representative body

- (1) A representative body shall be set up in accordance with the following provisions:
 - a) The members of the representative body shall be selected or appointed based on the number of employees in each EU and/or EEA Member State by the participating companies and concerned subsidiaries or branches. One seat shall be allocated per proportion of employees in the relevant EU and/or EEA Member State representing 10 percent or a fraction thereof of the total number of employees of the participating companies and concerned subsidiaries or established business locations in all the EU and/or EEA Member States.

- b) The representative body shall be composed of the employees of the SE and its subsidiaries and branches. Representatives shall be elected or appointed in accordance with the rules set out in section 6 of the Regulation.
- c) In the event of significant changes that would have altered the composition of the representative body, these changes shall be reflected in the composition thereof. If necessary, an additional election must be held. Such an election shall be conducted in accordance with the rules set out in section 6 of the Regulation.
- d) The SE shall be informed of the composition of the representative body.
- e) Should the size of the representative body so require, this body shall set up a working committee consisting of a maximum of three members. The representative body shall adopt its own rules of procedure.
- f) Four years after the establishment of the representative body, the said body shall examine whether negotiations are to be initiated with a view to concluding an agreement as referred to in sections 8 and 10 of the Regulation or whether the standard provisions set out in this Annex shall continue to apply.

(2) The rules in sections 8 to 10 of the Regulation shall apply *mutatis mutandis* if it is decided to negotiate an agreement on the employees' influence. In this case, the term 'special negotiating body' shall be replaced by 'representative body'. If no agreement has been reached by the deadline for terminating the negotiations, the arrangements adopted in accordance with the standard provisions shall continue to apply.

0 Amended by Regulation No. 230 of 27 February 2007

Standard provisions on information and consultation

2 Regulation of the representative body's competence and authority

The competence of the representative body shall be limited to matters pertaining to the SE itself and any subsidiary or branch located in another EU and/or EEA Member State, or to matters that extend beyond the authority of the decision-making bodies in a single EU and/or EEA Member State.

3 Right to information and consultation

The representative body has the right to information and consultation in matters relating to the employees. Meetings shall be held at least once a year between the representative body and the company, based on regular reports drawn up by the company on the development of the business activities and future prospects of the SE. Local management shall be informed accordingly.

4 Informing the representative body

The SE shall submit to the representative body the agenda of meetings of the board of directors or supervisory board as well as a copy of all the documents submitted to the general assembly.

0 Amended by Regulation No. 230 of 27 February 2007

5 The content of meetings

Meetings held in accordance with item 3 shall focus in particular on the structure, the economic and financial situation, the expected development of business activities, production and sales, the employment situation and current and expected development, investments, significant organisational changes, the introduction of new working methods or new production processes, transfers of production, mergers, cut-backs or closures of undertakings, established business sites or significant parts thereof and mass redundancies.

6 Right to information under special circumstances

(1) Should special circumstances arise which significantly affect employees' interests, especially in connection with relocations, transfers, closures of branches or business sites or mass redundancies, the representative body shall be entitled to be notified accordingly. In such cases, the representative body or working committee shall have the right to meet the company upon request to secure information and consultations on matters that significantly affect employees' interests. The members of the representative body who represent the employees directly concerned shall also be entitled to participate in meetings arranged with the working committee.

(2) If the SE decides that it does not wish to act in accordance with the statements made by the representative body, it shall be entitled to another meeting with the company with a view to reaching an agreement.

(3) Before meetings with the company, the representative body or working committee must be able to meet without the representatives of the company being present.

7 Informing the employees' representatives

The members of the representative body shall inform the employees' representatives in the SE and its subsidiaries and branches about the content and results of the information provided and consultations that have occurred unless the information is subject to a duty of confidentiality pursuant to section 11 of the Regulation.

0 Amended by Regulation No. 230 of 27 February 2007

8 Right to expert assistance

The representative body or working committee may be assisted by experts of their choice.

9 Right to time off

If members of the representative body need to undergo training to enable them to perform their duties, they shall be entitled to take time off without loss of pay.

10 Coverage of expenses

The SE shall cover expenses incurred by the representative body to enable that body to perform its duties appropriately. Unless otherwise agreed, the SE shall cover expenses relating to the preparation of meetings, interpretation, including accommodation and travelling expenses for members of the representative body and working committee.

The SE must cover the costs of at least one expert. The coverage of additional experts' costs may be agreed between the SE and the representative body.

0 Amended by Regulation No. 230 of 27 February 2007

Standard provisions for representation

11 Continuation of representation in the event of transformation

When an SE is established by a transformation and an EU and/or EEA Member State's provisions regarding workforce representation on the board of directors or supervisory board applied prior to the registration of that SE, all elements of that workforce representation shall continue to apply to the SE. The provision in item 13 shall apply correspondingly for this purpose.

12 The right to representation when an SE is established by means other than transformation

(1) When an SE is established by means other than transformation, the employees of the SE, its subsidiaries and branches and/or their representative body shall be entitled to elect, appoint, recommend or oppose the appointment of a number of members of the board of directors or supervisory board of the SE corresponding to the highest proportion used in the participating companies concerned prior to the registration of the SE.

(2) If none of the participating companies were subject to rules on representation prior to the registration of the SE, no provision shall be made for the employees' representation.

13 Distribution of seats on the board of directors or supervisory board

(1) The representative body shall determine how the employees' representatives' seats on the board of directors or supervisory board are to be distributed or, if appropriate, the procedures governing how the employees of the SE may recommend or oppose the appointment of members to the board of directors or supervisory board based on the proportion of employees in each EU and/or EEA Member State.

(2) If employees from one or more EU and/or EEA Member States are not assigned a representative, the representative body shall appoint a member from the Member States in question. Special care shall be taken with respect to the representative of the country where the SE's registered office is located.

(3) Seats allocated to Norway shall be distributed to the participating companies in descending order, based on the number of employees in the individual entity. Representatives shall be elected in accordance with the provisions of section 6 of the Regulation.

0 Amended by Regulation No. 230 of 27 February 2007

14 Employees' representatives' status on the board of directors and supervisory board

Each member of the board of directors or supervisory board of the SE who is elected, appointed or recommended by the representative body or by the employees shall be a fully-fledged member with the same rights and obligations as the members representing the shareholders. The same applies to voting rights.