

MINISTRY OF LABOUR AND SOCIAL SOLIDARITY

Decree-Law 215/2005
of 13 December 2005

Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, following on from Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE), lays down special provisions aimed at ensuring that the establishment of a European public limited-liability company (*Societas Europaea* – hereinafter SE) does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of such a company. This Decree-Law transposes into national legislation the said Directive 2001/86/EC, which also applies to non-European Union Member States that are parties to the Agreement on the European Economic Area (EEA), pursuant to EEA Joint Committee Decision No. 89/2002 of 25 June 2002.

The involvement of employees in the affairs of European public limited-liability companies can, without prejudice to the autonomy of the parties, be ensured through the establishment of a Works Council, one or more information and consultation procedures or a mechanism for the participation of employees. Under these provisions for the involvement of employees, an SE that is a Community-scale undertaking or a company that exercises control over a group of Community-scale undertakings is not, as a rule, subject to the requirement of establishing a European Works Council or an information and consultation procedure.

As regards the transnational provisions and agreements applicable to the incorporation of an SE whose registered office is to be located in the national territory, this Decree-Law establishes the rules applicable to the negotiation procedure for concluding an agreement on the involvement of employees as well as to the agreement itself, in addition to specifying the cases and forms of mandatory adoption of specific rules for the involvement of employees. As regards the national provisions applicable to SEs and their subsidiaries and establishments situated in the national territory, as well as to the representatives of their employees, this Decree-Law regulates the procedures for the appointment or election of employees' representatives to the special negotiating body, the Works Council or the administrative or supervisory organ of the SE and also establishes a corresponding specific set of regulations for the protection of labour. Lastly, this Decree-Law establishes the administrative sanctions regime for the non-observance of the rules on the involvement of employees in the affairs of the SE.

The proposed text of this Decree-Law was published, for public consideration, as an offprint of Labour and Employment Bulletin (*Boletim do Trabalho e Emprego*) No. 10 of 20 October 2004. The opinions expressed by organisations representing employees and employers were duly taken into account and some provisions of the Decree-Law were amended accordingly.

The self-government bodies of the Autonomous Regions were consulted.

Thus:

In accordance with Article 198.1(a) of the Constitution, the Government decrees the following:

CHAPTER I
General provisionsArticle 1
Aim

This Decree-Law transposes into national legislation Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.

Article 2
Scope

1 – The involvement of employees in the affairs of a European public limited-liability company is achieved by means of the establishment of a Works Council, one or more information and consultation procedures or an employee participation scheme, in accordance with the provisions of this Decree-Law.

2 – The Works Council and the information and consultation procedures cover any subsidiaries and establishments of the SE.

Article 3
Community-scale undertakings

1 – An SE that is a Community-scale undertaking or a company that exercises control over a group of Community-scale undertakings, in accordance with Article 472.1 and Article 473 of the Labour Code, is not subject to the requirement of establishing a European Works Council or an information and consultation procedure.

2 – The provisions of paragraph 1 above shall not apply in the event that the special negotiating body decides, in accordance with the provisions of this Decree-Law, not to open negotiations or to terminate negotiations already opened.

Article 4
Definitions

For the purposes of this Decree-Law:

- a) 'Works Council' means the body which represents the employees of a European public limited-liability company and its subsidiaries and establishments situated in the European Economic Area, and which is set up in accordance with the provisions of this Decree-Law in order to inform and consult the represented employees and, where appropriate, enable them to exercise participation rights within the said company;
- b) 'consultation' means the procedure which, on the basis of information provided by the SE to the Works Council or the employees' representatives within the framework of the information and consultation procedure, consists in evaluating the relevant issues and information at a time, in a manner and with a content which allows the employees' representatives to express an opinion on measures envisaged by the competent body of the company such that the said opinion may be taken into account in the decision-making process within the company;
- c) 'involvement of employees' means the procedure, including information, consultation and participation, through which employees'

- representatives may exercise an influence on decisions taken by the SE;
- d) 'subsidiary' of a company means an undertaking over which an SE exercises a dominant influence within the meaning of Article 473 of the Labour Code;
 - e) '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;
 - f) 'special negotiating body' means the group of representatives of the employees of the participating companies, concerned subsidiaries or establishments, set up under the provisions of this Decree-Law for the purpose of negotiating with the participating companies regarding the involvement of employees within the SE to be established;
 - g) 'information' means the informing of the Works Council or employees' representatives by the SE, within the framework of an information and consultation procedure, on questions which concern the company itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making bodies in one or more subsidiaries or establishments, 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 body of the company;
 - h) 'participation' means the procedure by which the employees' representatives designate or elect, recommend or oppose the appointment of members of the supervisory or administrative organ of the European public limited-liability company;
 - i) 'quantitative reduction of employees' participation rights' means a diminution whereby the proportion of members in the SE's body concerned by participation is smaller than the highest proportion of members in the corresponding bodies of the participating companies concerned;
 - j) 'European public limited-liability company' (SE) means any company established in accordance with Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company and other applicable legislation;
 - l) 'participating company' means any company participating in the incorporation of a European public limited-liability company or, in the case of the incorporation of a European public limited-liability company which is a subsidiary, any other legal entity under public or private law participating in the said incorporation.

CHAPTER II
Transnational provisions and agreements

SECTION I
Scope

Article 5
Scope of the transnational provisions and agreements

1 — Where a European public limited-liability company (SE) is to be established and registered in the national territory, the provisions of this chapter shall apply to:

- a) the participating companies;
- b) the SE;
- c) the subsidiaries and establishments of the participating companies and of the SE, provided that they are located in the European Economic Area.

2 — Where an agreement on the establishment of a Works Council or of an information and consultation procedure is concluded under the legislation of another Member State in whose territory the registered office of the European public limited-liability company is situated, the said agreement shall be binding on the subsidiaries and establishments situated in the national territory as well as on their employees.

SECTION II
Negotiation procedure

Article 6
Establishment of the special negotiating body

1 — After publishing the plan for the establishment of an SE by way of merger or by way of creating a holding company, or after approval of the plan to form a subsidiary or to transform into an SE, participating companies must take the necessary steps to set up the special negotiating body by providing, in particular, the following information:

- a) information about the identity of the participating companies and concerned subsidiaries or establishments;
- b) number of employees of the companies, subsidiaries or establishments mentioned in subparagraph (a) above.

2 — The information specified in the preceding paragraph must be provided to:

- a) the employees' representatives participating in the appointment or election of the members of the special negotiating body, in accordance with the legislation of the Member States in whose territory the participating companies and concerned subsidiaries or establishments are situated;
- b) the employees of the participating companies, concerned subsidiaries or establishments in the event that, in accordance with the legislation of the Member States in whose territory the said companies, subsidiaries or establishments are situated, the employees' representatives do not participate in the appointment or election of the members of the special negotiating body.

Article 7
Composition of the special negotiating body

1 — The special negotiating body shall be composed of representatives of the employees of the participating companies, concerned subsidiaries or establishments in each Member State, and shall be formed 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 total number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together.

2 — In the case of an SE formed 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 employees' representative from each participating

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company which has employees in that Member State.

3 – The provisions of point 2 above shall not apply to participating companies which own other companies that already have members in the special negotiating body.

4 – The number of additional members provided for in paragraph 2 above may not exceed 20% of the number of members designated by virtue of paragraph 1 above.

5 – If the number of participating companies provided for in paragraph 2 above is higher than the overall number of additional seats available pursuant to the preceding paragraph, these additional seats shall be allocated to representatives from the companies with the largest number of employees, by decreasing order of the number of employees they employ.

6 – The employees of companies to which additional seats are allocated pursuant to paragraphs 2 to 5 shall not be represented by the members designated pursuant to paragraph 1.

7 – The election or appointment of the members of the special negotiating body shall be regulated by the legislation of each of the Member States in whose territory the represented employees are employed.

Article 8 Negotiations

1 – Participating companies must take the initiative in negotiating with the employees' representatives regarding the involvement of employees within the SE to be established.

2 – Negotiations shall start as soon as the special negotiating body is formed.

3 – The special negotiating body shall be entitled to meet shortly before any negotiation meeting.

Article 9 Obligations of the participating company with the largest number of employees and which is registered in the national territory

Where the participating company with the largest number of employees is registered in the national territory, the said company shall:

- a) determine the overall number of members of the special negotiating body and the Member States where they must be elected or appointed, taking into account the number of employees of the participating companies and their concerned subsidiaries and establishments as well as the provisions set out in Article 7;
- b) set a reasonable deadline, calculated from the date of the notification provided for in subparagraph (d), for the election or appointment of the members of the special negotiating body originating from each Member State, taking into account the applicable rules;
- c) inform the special negotiating body about the plan for the establishment of the SE and its progress until the registration of the company;
- d) notify the other participating companies and the entities provided for in Article 6.2 of the overall number of members of the special negotiating body, in addition to notifying them of the Member States in which the said members must be elected or appointed.

Article 10 Calculation of the number of employees

For the purposes of the establishment and functioning of the special negotiating body, the number of employees of the participating companies and concerned subsidiaries or establishments shall be determined with reference to the date of publication or approval of the plan for the establishment of the SE, as appropriate, depending on the cases referred to in Article 6.1.

Article 11 Decisions of the special negotiating body

1 – Each member of the special negotiating body shall have one vote.

2 – 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.

3 – Where an agreement leads to a quantitative reduction of employees' participation rights in the administrative or supervisory organ of the participating companies, the majority required for a decision by the special negotiating body 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 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.

4 – For the purposes of the preceding paragraphs and without prejudice to the following paragraphs, each member of the special negotiating body shall be deemed to represent the employees of his or her participating company.

5 – Where in a Member State there is a participating company, subsidiary or establishment of a participating company registered in a different State, from which none of the members of the special negotiating body originate, the representation of the employees concerned shall be shared equally among the members originating from the said State.

6 – Where in a Member State two or more members of the special negotiating body are from the same participating company, the representation of the employees concerned shall be shared equally among the said members.

7 – The minutes of any meeting where the special negotiating body adopts a negotiating position must specifically indicate compliance with the requirements laid down in paragraphs 2 to 6 above.

Article 12 Experts

1 – The special negotiating body may be assisted by experts of its choice.

2 – Such experts may be present at negotiation meetings, without voting rights, at the request of the

special negotiating body.

Article 13

Observance of the principle of good faith and provision of information in the course of negotiations

1 — During the negotiation process, the parties shall observe the principle of good faith, in particular by responding to proposals and counterproposals as promptly as possible and complying with the negotiation protocol, if one exists.

2 — Subject to its legitimate interests, either party shall provide the other party with any data or information requested by the latter.

3 — The special negotiating body may decide to inform employee collective representative structures of the start of the negotiations as well as of their progress and results.

Article 14

Duration of negotiations

1 — Negotiations shall commence as soon as the establishment of the special negotiating body has been notified to the participating companies and may continue for a maximum period of six months thereafter.

2 — The parties may decide, by joint agreement, to extend the period referred to in paragraph 1, up to a total of six months.

Article 15

Termination of negotiations

1 — The special negotiating body may decide not to open negotiations or to terminate negotiations already opened.

2 — The majority required for the decision referred to in the preceding paragraph shall be the votes of two thirds of the members representing at least two thirds of the employees, including employees employed in at least two Member States.

3 — The provisions of paragraph 1 shall not apply in the case of an SE established by way of transformation of a public limited-liability company in which arrangements for employees' participation already exist.

SECTION III

Agreement on the involvement of employees

Article 16

Content and form of the agreement

1 — Without prejudice to the autonomy of the parties, and subject to the provisions of the following Articles, the agreement on the involvement of the employees shall identify the European public limited-liability company (SE) to which it applies and shall regulate:

- a) the date of entry into force of the agreement and its duration;
- b) the SE and the subsidiaries or establishments covered by the agreement;
- c) the applicable rules for the involvement of employees;
- d) the cases where the agreement should be renegotiated, particularly in the event of changes in the number of employees which may affect the number or distribution of members of the Works Council or the distribution of the members of the SE's administrative or supervisory organ which the

employees or their representatives will be entitled to appoint, elect, recommend or oppose;

e) the process to review the agreement.

2 — In the case of an SE established by way of transformation of a public limited-liability company in which arrangements for employees' participation already exist, the agreement must provide for arrangements that are at least equivalent to the previous arrangements.

3 — The agreement referred to in paragraph 1 above shall be concluded in writing.

Article 17

Establishment of information and consultation procedures

1 — The agreement establishing an information and consultation procedure through a Works Council shall regulate:

- a) the composition of the Works Council, the number and distribution of its members and the duration of the terms of office;
- b) the information and consultation rights of the Works Council and the corresponding procedures;
- c) the frequency of meetings of the Works Council;
- d) the financial and material resources to be allocated to the Works Council.

2 — The agreement establishing one or more information and consultation procedures shall regulate the arrangements for implementing those procedures.

Article 18

Establishment of arrangements for participation of the employees

The agreement establishing arrangements for participation of the employees shall regulate the substance of those arrangements, including in particular:

- a) the number of members of the SE's administrative or supervisory body which the employees or their representatives will be entitled to appoint, elect, recommend or oppose;
- b) the applicable procedure for implementing the provisions of the preceding subparagraph.

Article 19

Mandatory communications

1 — The management or administrative organ of the SE shall provide the Ministry responsible for labour matters with a copy of the agreement.

2 — The Works Council shall inform the Ministry responsible for labour matters of the identity of the Works Council's members and their countries of origin.

3 — The provisions of the preceding paragraph shall apply to the employees' representatives, if any, participating in the information and consultation procedure.

SECTION IV

the preceding paragraph.

Mandatory establishment of arrangements for the involvement of employees

SUBSECTION I

General provisions

Article 20

Mandatory establishment

1 — In the event that no agreement has been reached at the end of the prescribed period for the negotiations, provided that the special negotiating body has not decided not to open negotiations, or to terminate negotiations already opened, information and consultation procedures shall be established through a Works Council, in accordance with the rules set out in this section.

2 — In the case referred to in the preceding paragraph, the participating companies that intend to register the European public limited-liability company (SE) must declare that they accept the establishment of an information and consultation mechanism through a Works Council.

3 — Without prejudice to the provisions of the preceding paragraphs, in the following cases the provisions of Articles 29 to 32, concerning employee participation in an SE, shall also apply:

- a) in the case of an SE to be established by way of transformation of a public limited-liability company in which arrangements for employee participation already exist;
- b) in the case of an SE to be established by way of merger, if a participation mechanism already exists which is applied in one or more of the participating companies and which covers at least 25% of the overall number of employees of the participating companies or which covers less than 25% of the total number of employees, and if the special negotiating body so decides;
- c) in the case of an SE to be established by way of creating a holding company or forming a subsidiary, if a participation mechanism already exists which is applied in one or more of the participating companies and which covers at least 50% of the total number of employees in all the participating companies or which covers less than 50% of the total number of employees, and if the special negotiating body so decides.

4 — In the cases referred to in subparagraphs (b) and (c) of the preceding paragraph, 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.

5 — In the absence of any decision by the special negotiating body pursuant to the preceding paragraph, the form of participation encompassing the largest number of employees in the participating companies shall apply to the SE.

6 — The decision of the special negotiating body regarding the participation mechanism it intends to apply in accordance with subparagraphs (b) or (c) of paragraph 3 above, as well as, where applicable, the chosen form of participation applicable to the SE, must be adopted within 15 days of the end of the negotiations.

7 — The special negotiating body shall inform the participating companies of the decision taken pursuant to

SUBSECTION II
Works CouncilArticle 21
Works Council

1 — The number of members of the Works Council is determined by the proportion of employees employed in each Member State, in relation to the total number of employees of the SE and concerned subsidiaries or establishments, by allocating one seat per portion of employees which equals 10%, or a fraction thereof, of the total number of employees.

2 — The number of members shall be reviewed at the end of each term of office in order to take account of any changes, in accordance with the rule laid down in the preceding paragraph.

3 — The obligations laid down in Article 9, with any appropriate adaptations, shall apply to the SE.

Article 22
Members of the Works Council

1 — The Works Council shall be composed of employees of the SE and its subsidiaries and establishments.

2 — The appointment or election of members of the Works Council shall be carried out in accordance with the legislation of the Member States in whose territory the represented employees are employed.

3 — The Works Council shall inform the SE's management or administrative organ of the identity of the members of the Works Council.

4 — The term of office of the members of the Works Council shall be four years.

Article 23
Operation

1 — A Works Council composed of 12 or more members shall elect a Select Committee from among its members, comprising at most three members.

2 — The Works Council shall adopt its internal rules of procedure.

3 — Before any meeting with the management or administrative organ of the SE, the Works Council or the Select Committee shall be entitled to meet without the said body being present.

4 — Those members of the Works Council who represent employees of the establishments or companies that are directly concerned by the measures in question shall also have the right to participate in the meetings of the Select Committee.

5 — Whenever it deems it necessary to fulfil its tasks, the Works Council or the Select Committee may be assisted by experts of its choice.

Article 24
Rights of the Works Council

1 — The rights of the Works Council shall encompass any matters which concern the SE itself and one or more of its subsidiaries or establishments situated in another Member State or which exceed the powers of the management organ of one or more subsidiaries or establishments.

2 — The Works Council shall have the right to be

informed and consulted by the SE's management or administrative organ on the progress and prospects of the business of the SE as well of the subsidiaries or establishments referred to in the previous paragraph.

3 — The management or administrative organ of the SE shall provide the Works Council with the agenda for meetings of the said management or administrative organ as well as with copies of all documents submitted to the SE's general meeting of shareholders.

Article 25 Annual report

1 — The management or administrative organ of the SE shall provide the Works Council with a detailed and documented annual report on the progress and prospects of the business of the SE as well of the subsidiaries or establishments referred to in paragraph 1 of the preceding Article.

2 — The report shall include information on the structure of the companies and establishments, the economic and financial situation, the probable development of the business, production and sales, the situation and probable trend of employment, investments, substantial changes concerning organisation, working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

Article 26 Meetings with the management or administrative organ

1 — Following the submission of the report provided for in the preceding Article, the Works Council shall be entitled to meet with the management or administrative organ of the SE for the purposes of information and consultation.

2 — The meeting referred to in the preceding paragraph shall be held one month from the submission of the report provided for in the preceding Article, unless the management or administrative organ of the SE agrees to an earlier date.

3 — The management or administrative organ shall inform the management organs of the subsidiaries or establishments about the information and consultation of the Works Council in accordance with the provisions of the preceding paragraphs.

Article 27 Information and consultation in exceptional circumstances

1 — The Works Council shall have the right to be informed of any circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations resulting in the transfer of workplaces, the closure of establishments or undertakings, or collective redundancies.

2 — The Works Council or, where it so decides, in particular for reasons of urgency, the Select Committee, shall have the right to meet at its request the management or administrative 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 — The meeting shall take place as soon as possible.

4 — In the case of a meeting organised with the Select Committee, those members of the Works Council who represent employees of the establishments or companies that are directly concerned by the measures in question

shall also have the right to participate.

5 — Where the probable outcome of the decision of the management or administrative organ runs counter to the opinion expressed by the Works Council, the latter shall have the right to a further meeting with the said body with a view to seeking agreement.

Article 28 Information of local representatives

The members of the Works Council shall inform the representatives of the employees of the SE and of its subsidiaries and establishments, or in their absence the employees themselves, of the content and outcome of the information and consultation procedures.

SUBSECTION III Participation of employees

Article 29 Mandatory arrangements

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, the said rules shall continue to apply to the SE.

2 — In the case of an SE established by any other means, the arrangements applicable to the SE as well as to its subsidiaries and establishments shall be those which applied to a participating company in any Member State before registration of the SE and which granted the employees' representatives, or the employees themselves, the right to appoint, elect, recommend or oppose the appointment of a number of members of the administrative or supervisory body equal to the highest proportion in force in the participating companies at the time.

Article 30 Allocation of seats

1 — Taking into account the proportion of employees of the SE employed in each Member State, the Works Council shall decide on:

- a) the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States;
- b) the way in which the SE's employees may recommend or oppose the appointment of the members of the administrative or supervisory body.

2 — Pursuant to point (a) of the previous paragraph, if the employees in one or more Member States have no representatives in the administrative or supervisory body, the Works Council shall appoint a member from each of those Member States.

3 — The number of seats allocated in accordance with the preceding paragraph shall be deducted from the number of seats allocated to Member States which would be entitled to more than one seat, by decreasing order of the total number of employees employed in those Member States.

Article 31

Appointment or election of members

1 — The appointment or election of employees' representatives from each Member State to the SE's administrative or supervisory organ shall be carried out in accordance with the national legislation of each State.

2 — In the absence of the national legislation referred to in the previous paragraph, the Works Council shall agree on the procedure to appoint or elect the member from the State concerned.

Article 32

Status of the members representing the employees

Every member of the administrative or supervisory body who has been appointed, elected or recommended by the Works Council or by the employees shall have the same rights and obligations as the members representing the shareholders, including the right to vote.

SECTION V
Common provisions

Article 33

Relations between the SE and the employees' representatives

The SE, the members of the special negotiating body, the Works Council and the employees' representatives participating in an information and consultation procedure shall work together in a spirit of cooperation and act in good faith in exercising their rights and fulfilling their respective tasks.

Article 34

Reservation and confidentiality

The information provided to the members of the special negotiating body, the members of the Works Council, the employees' representatives participating in an information and consultation procedure and the experts concerned, as well as non-compliance with the obligation of secrecy, the withholding of information, and the justification and judicial scrutiny of confidentiality or of the refusal to provide information shall be regulated by Articles 458 to 460 of the Labour Code.

Article 35

Financial and material resources

1 — Participating companies shall:

- a) bear the costs of the special negotiating body pertaining to negotiations, so as to enable it to perform its duties in an appropriate manner;
- b) provide the special negotiating body with the material resources needed to fulfil its tasks, including facilities and venues to publicise information;
- c) bear the costs of at least one expert of the special negotiating body.

2 — The SE shall:

- a) provide the members of the Works Council with the financial resources needed to cover its operating expenses as well as those of the Select Committee, where one exists;
- b) Provide the Works Council with the material resources needed to fulfil its tasks, including

facilities and venues to publicise information;

- c) bear the costs of at least one expert on the Works Council.

3 — Operating expenses include those relating to the organisation of meetings and the provision of interpretation facilities, as well as travelling and accommodation expenses and the fees of an expert.

4 — The arrangements provided for in the preceding paragraph, except for the fees of an expert, may be regulated differently by agreement with the management or administrative organ.

5 — Travelling and accommodation expenses may be defrayed through the mission expense allowance schemes applicable in the establishments or companies of the employees' representatives concerned or, in the case of the costs of an expert, through the arrangements applicable to members from the same Member State.

6 — The implementation of the provisions laid down in the preceding paragraph may not result in a more favourable payment in respect of travelling and accommodation expenses being made to one member of the special negotiating body or the European Works Council than to another member.

7 — The expenses pertaining to members of the special negotiating body shall be borne by their respective participating companies, subsidiaries or establishments of origin.

8 — Participating companies shall cover the costs of an expert in proportion to their respective number of employees.

9 — The expenses of any member of the special negotiating body who does not originate from any of the participating companies, subsidiaries or establishments shall be borne by the participating companies whose employees are represented by him or her, in proportion to the said companies' respective number of employees.

Article 36

Reopening of negotiations

1 — Two years after a decision by the special negotiating body not to open negotiations or to terminate negotiations already under way, the negotiations shall be reopened provided a request to this effect is made by at least 10% of the employees of the SE, its subsidiaries and establishments, or their representatives.

2 — Four years after its mandatory establishment, the Works Council may propose to open negotiations on arrangements for the involvement of employees in the company.

3 — By agreement with the SE, negotiations may take place before expiry of the time limits specified in the preceding paragraphs.

4 — The number of employees specified in paragraph 1 above shall be determined with reference to the date of the request.

5 — For the purposes of the negotiations referred to in paragraph 1, the provisions of Articles 6 and 7 shall apply to the establishment and composition of the special negotiating body.

6 — If the negotiations conducted in accordance with paragraph 1 do not result in an agreement, the provisions of Articles 20 to 32 shall not apply.

7 — If the negotiations provided for in paragraph 2 result in an agreement, the provisions concerning the mandatory establishment of a Works Council shall cease to apply as of the date of implementation of the arrangements for the involvement of employees as per

the agreement.

CHAPTER III National provisions

Article 37 Scope

The provisions laid down in this chapter shall apply to European public limited-liability companies and their subsidiaries and establishments situated in the national territory, as well as to the representatives of their employees.

Article 38 Appointment or election of employees' representatives

1 — The members of the special negotiating body and the Works Council – as well as the employees' representatives participating in the information and consultation procedure – who represent the employees employed in the national territory shall be appointed or elected in accordance with the provisions of the following Articles.

2 — The appointment or election provided for in the preceding paragraph shall be conducted so as to ensure that the special negotiating body includes one member from each participating company registered in the national territory or, if this is impossible, from those employing the largest number of employees.

3 — A member of a trade union representing the employees of the participating companies and concerned subsidiaries or establishments may be a member of the special negotiating body regardless of whether he or she is an employee of any of the aforementioned companies.

Article 39 Appointment or election of the members of the special negotiating body

1 — The members of the special negotiating body shall be appointed:

- a) where only one participant company or subsidiary is situated in the national territory, by means of an agreement between the relevant employees' representative body and the trade unions or, in the absence of trade unions, by the employees' representative body;
- b) where two or more participating companies or subsidiaries are situated in the national territory, by means of an agreement between the relevant employees' representative bodies and the trade unions or, in the absence of trade unions, by means of an agreement between the employees' representative bodies;
- c) where one or more participating companies or subsidiaries and one or more establishments of another participating company or subsidiary are situated in the national territory, by means of an agreement between the relevant employees' representative bodies and the trade unions, provided that the latter represent at least the employees of said establishments;
- d) by means of an agreement between the trade unions which, taken together, must represent at least two thirds of the employees of the participating companies, subsidiaries and establishments situated in the national territory;

e) in the event that the circumstances provided for in the preceding subparagraph do not obtain, by means of an agreement between the trade unions, each one of which must represent [at least] 5% of the employees of the participating companies, subsidiaries and establishments situated in the national territory.

2 — Only trade unions representing at least 5% of the employees of the participating companies, subsidiaries and establishments situated in the national territory shall be entitled to participate in the appointment of the employees' representatives, without prejudice to the provisions of the following paragraph.

3 — Trade unions which, taken together, represent at least 5% of the employees of the participating companies, subsidiaries and establishments situated in the national territory may delegate an association chosen among themselves to take part in the designation of the employees' representatives.

4 — The members of the special negotiating body shall be elected directly by secret ballot among the candidacies submitted by at least 100 or alternatively 10% of the employees of the participating companies, subsidiaries and establishments situated in the national territory, in [either] of the following circumstances:

- a) if the designations in question could not take place in accordance with the provisions of the preceding paragraphs;
- b) at the request of at least one third of the employees of the participating companies, subsidiaries and establishments.

5 — The call for elections, the submission of candidacies, the polling stations, the voting arrangements, the counting of votes and publication of the results of the elections, as well as the control of the latter's legality, shall be regulated by the provisions applicable to European Works Councils.

6 — The appointment or election of members of the special negotiating body must be accompanied by an indication of the number of employees represented by each of them.

Article 40 Appointment or election of the members of the Works Council

1 — The members of the Works Council shall be designated as follows:

- a) Where only one SE exists in the national territory, by means of an agreement between the relevant employees' representative body and the trade unions or, in the absence of trade unions, by the employees' representative body;
- b) where an SE and one or more subsidiaries are situated in the national territory, by means of an agreement between the relevant employees' representative bodies and the trade unions or, in the absence of trade unions, by means of an agreement between the employees' representative bodies;
- c) where an SE, one or more subsidiaries and one or more establishments are situated in the national territory, by means of an agreement between the relevant employees' representative bodies and the trade unions, provided that the latter represent at least the employees of the said establishments;
- d) by means of an agreement between the trade unions, which, taken together, must represent at

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least two thirds of the employees of the SE and its subsidiaries or establishments;

- e) if the agreement provided for in the preceding subparagraph could not be reached, by means of an agreement between the trade unions, each one of which must represent [at least] 5% of the employees of the SE and its subsidiaries or establishments.

2 — The provisions of paragraphs 2 and 3 of the preceding Article shall apply to the designation of the members of the Works Council.

3 — If the designations in question could not take place in accordance with the provisions of the preceding paragraphs, the members of the Works Council shall be elected directly by secret ballot among the candidacies submitted by at least 100 or alternatively 10% of the employees of the SE and its subsidiaries or establishments situated in the national territory.

4 — The call for elections, the submission of candidacies, the polling stations, the voting arrangements, the counting of votes and publication of the results of the elections, as well as the control of the latter's legality, shall be regulated by the provisions applicable to European Works Councils.

Article 41

Appointment or election of employees' representatives within the framework of an information and consultation procedure

The provisions set out in the preceding Article shall also apply to the appointment or election of employees' representatives within the framework of an information and consultation procedure.

Article 42

Appointment or election of the members of the administrative or supervisory organ

The appointment or election of employees' representatives to the administrative or supervisory organ of the SE shall be governed by the provisions of Article 39, with any appropriate adaptations.

Article 43

Term of office

Unless otherwise agreed, the term of office of the members of the Works Council and the employees' representatives in the framework of an information and consultation procedure shall be four years.

Article 44

Special protection of employees' representatives

1 — The members of the special negotiating body and the Works Council, and the employees' representatives in the administrative or supervisory organ shall be entitled, in particular, to the following:

- a) a number of monthly time-off hours to perform their tasks, equal to that available to the members of the employees' representative body;
- b) the amount of paid time off, including travel time, needed to take part in meetings with the SE or with the management or supervisory organ as well as in preparatory meetings;
- c) justification of absences from work in the performance of their duties in excess of the

prescribed time off, in accordance with the provisions laid down in the Labour Code for members of employees' collective representation structures;

- d) protection in the event of disciplinary action, dismissal or transfer, in accordance with the provisions laid down in the Labour Code for members of employees' collective representation structures.

2 — Members of the special negotiating body shall only be entitled to the arrangements provided for in the preceding paragraph if they are employees of a participating company or its concerned subsidiaries or establishments.

3 — Where an employee belongs to more than one employee collective representation structure, this shall not entail an accumulation of time off.

4 — Employees' representatives who are members of the management or supervisory organ of the SE shall be entitled to:

- a) paid time off to perform their respective duties;
- b) protection in accordance with the provisions of subparagraph (d) of paragraph 1.

Article 45

Calculation of the number of employees

Part-time employees shall be taken into account, regardless of their normal number of working hours, for the purpose of calculating the number of employees.

CHAPTER IV

Liability for administrative offences

Article 46

General provisions

1 — The general provisions laid down in Articles 614 to 640 of the Labour Code shall apply to offences relating to violations of this Decree-Law.

2 — In applying this Decree-Law to the Autonomous Regions, account shall be taken of the legal competences attributed to the relevant regional bodies and departments.

Article 47

Specific administrative offences

1 — Any violation of the provisions of Articles 6 and 9 of the agreement establishing a Works Council or one or more information and consultation procedures, in the part concerning information and consultation rights and the right of assembly, as well as any violation of paragraphs 1 and 3 of Article 20, of the provisions of Articles 24 and 25, of paragraphs 2 and 3 of Article 26, of paragraphs 1 and 2 of Article 27 and of paragraphs 1 and 2 of Article 35, shall be deemed a very serious offence.

2 — Any violation of paragraphs 1 and 2 of Article 8 or of paragraph 2 of Article 12 of the agreement establishing a Works Council or one or more information and consultation procedures, in the part concerning financial and material resources, as well as any violation of paragraphs 3 to 5 of Article 27, shall be deemed a serious offence.

3 — Any violation of paragraph 1 of Article 19 shall be deemed a minor offence.

Read and approved by the Council of Ministers of

Commented [RK4]: Notre ajout (la phrase n'a pas de sens autrement)

20 October 2005. — *José Sócrates Carvalho Pinto de Sousa*
— *Diogo Pinto de Freitas do Amaral* — *Fernando Teixeira*
dos Santos — *Alberto Bernardes Costa* — *José António*
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Approved for publication

The President of the Republic, JORGE SAMPAIO

Ratified on 29 November 2005

The Prime Minister, *José Sócrates Carvalho Pinto de*
Sousa