

DECISIONS OF THE GOVERNMENT OF ROMANIA

THE GOVERNMENT OF ROMANIA

DECISION

on information and consultation procedures and other arrangements for employee involvement in the activities of a European company

Pursuant to Article 108 of the Constitution of Romania, republished, and Article 13 of Law No. 467/2006 on establishing a general framework for informing and consulting employees,

the Government of Romania adopts this Decision.

CHAPTER I

General provisions

Article 1. – (1) This Decision regulates information, consultation, participation and other arrangements for employee involvement in the activities of a European company, established in accordance with Council Regulation (EC) No. 2157/2001 on the Statute for a European company (SE).

(2) This Decision shall apply to employees of European companies having their registered office in Romania and to employees having an individual employment contract under Romanian law of participating companies, subsidiaries, branches or other secondary establishments of any European company having its registered office in any other Member State of the European Union or any Member State of the European Economic Area.

(3) Information and consultation procedures and other arrangements for employee involvement in the activities of a European company are adopted by every European company, in accordance with the negotiation procedure set out in Article 3–11 or, in the cases set out in Articles 22 and 23, in accordance with the provisions of Articles 12–21.

Article 2. – For the purposes of this Decision, the terms and expressions below shall have the following meanings:

a) *European company*, referred to hereinafter as SE, means any company established in accordance with Council Regulation (EC) No. 2157/2001;

b) *participating companies* means the companies directly participating in the establishing of an SE;

c) *subsidiary of a company*, also referred to as *controlled undertaking*, means an undertaking over which that company exercises a dominant influence, in accordance with the provisions of Law No. 217/2005 on the establishment, organisation and functioning of a European Works Council, including subsequent amendments and additions;

d) *concerned subsidiary, branch or other secondary establishment* means a subsidiary, branch or other secondary establishment of a participating company which is proposed to become a subsidiary, branch or other secondary establishment of an SE upon its formation;

e) *employees' representatives* – representatives of trade union organisations or if no trade union exists, persons elected and mandated to represent employees according to national law and/or practice;

f) *representative body* means the body representative of the employees established by the agreements set out in Article 10(1) or in accordance with the provisions of Articles 12–21, with the purpose of informing and consulting the employees of an SE and its subsidiaries, branches or secondary establishments situated in the European Community and, where applicable, of exercising participation rights in relation to the SE;

g) *special negotiating body* means the body established in accordance with Article 3(2) to negotiate with the competent management organ of the participating companies regarding the establishment of arrangements for the involvement of employees within the SE;

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

i) *information* refers to the informing of the body representative of the employees and/or employees' representatives by the competent management organ of the SE on questions which concern the SE itself and any of its subsidiaries, branches or secondary establishments situated in another Member State or whose affairs exceed the powers of the decision-making organs in a single Member State at a given time; content and arrangements for information shall be realised such that they allow the employees' representatives to assess the possible effects and prepare consultations with the competent organ of the SE, where deemed appropriate;

j) *consultation* means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives on the one hand and the competent management organ of the SE on the other; the content and arrangements for consultation shall allow the employees' representatives to formulate, on the basis of information provided, a view on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE;

k) *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:

- the right to elect or appoint some of the members of the company's supervisory or administrative organ, or
- the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.

CHAPTER II Negotiating procedure

SECTION 1 *Creation of the special negotiating body*

Article 3. – (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 company established in another way or after approving a plan to form a subsidiary or to transform into an SE, take the necessary steps, including providing information about the identity of the participating companies or concerned subsidiaries, branches or other secondary establishments, and the number of their employees, to start negotiations with the employees' representatives on arrangements for the involvement of employees in the SE.

(2) In applying the provisions of paragraph (1), a special negotiating body representative of the employees of the participating companies and concerned subsidiaries, branches or other secondary establishments shall be created in accordance with the following provisions:

a) the members of the special negotiating body shall be elected or appointed in proportion to the total number of employees of the participating companies or concerned subsidiaries, branches or other secondary establishments; employees shall be allocated a seat for 10% or a fraction of that percentage, as the case may be, of the total number of employees of the participating companies, subsidiaries, branches or other secondary establishments of the SE in all the Member States of the European Union or of the European Economic Area;

b) in the case of an SE established by merger, each participating company which, further to the proposed merger, will cease to exist as a separate legal entity following the registration of the SE, shall ensure that the special negotiating body includes at least one member, under the following conditions:

- the number of such additional members does not exceed 20% of the number of members appointed in accordance with letter a); and
- the composition of the special negotiating body does not entail double representation of the employees concerned;

c) if the number of companies provided for in b) exceeds 20% of the number of members appointed in accordance with a), the additional seats shall be allocated to the companies concerned by decreasing order of their number of employees.

Article 4. – (1) In Romania, the members of the special negotiating body shall be appointed by legally constituted trade union organisations. In the absence of such trade union organisations, the members of the special negotiating body shall be designated by the employees' representatives or, in the absence of such representatives, by a majority vote of the employees of the SE in Romania.

(2) The members of the special negotiating body shall draw up and adopt their own internal rules and regulations.

(3) The internal rules and regulations shall provide for the arrangements for appointing or electing the members of the special negotiating body and also the procedures for suspending, cancelling or terminating their terms of office.

(4) Seats on the special negotiating body shall be allocated by participating companies or concerned subsidiaries, branches or other secondary establishments of the SE to employees with individual employment contracts based on Romanian law in proportion to the number of employees of each participating company in Romania, within the SE, by descending order of number of employees.

Article 5. – (1) The special negotiating body and the management organs of the participating companies shall determine, by written agreement, arrangements for information, consultation and other means of employment involvement in the activities of a European company.

(2) In applying the provisions of paragraph (1), 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.

Article 6. – (1) 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.

(2) Where the results 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,

(3) Reduction of participation rights, within the meaning of Article 2k), means a proportion of members of the organs of the SE which is lower than the highest proportion existing within the participating companies.

(4) The provisions of paragraph (2) shall apply:

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 company in another way or forming a subsidiary, if participation covers at least 50% of the overall number of employees of the participating companies.

Article 7. – For the purpose of the negotiations, the special negotiating body may request experts of its choice, for example representatives of appropriate Community-level trade union organisations, to assist it with its work. 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. The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions, of the start of the negotiations.

Article 8. – (1) By way of exception to the provisions of Article 6(1), the special negotiating body may decide, by the majority set out in Article 8(2), not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the SE has employees. Such a decision shall stop the agreement negotiating procedure as set out in Article 10(1). Where such a decision is taken, the provisions of Articles 12–21 shall not apply.

(2) The majority required to decide not to open or to terminate negotiations shall be the votes of two thirds of the number of members representing at least two thirds of the employees,

including the votes of members representing employees employed in at least two Member States.

(3) In the case of an SE established by way of transformation, the provisions of Article 8(2) shall not apply if there is participation in the company to be transformed.

(4) The special negotiating body shall be reconvened on the written request of at least 10% of the number of employees of the SE, its undertakings and subsidiaries, or of the number of their representatives, at the earliest two years after the above-mentioned 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 12–21 shall not apply.

Article 9. – (1) 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.

(2) In so far as central management and the special negotiating body do not decide otherwise, if the special negotiating body is assisted by experts, the participating companies shall only bear the expenses of one expert.

SECTION 2

Content of the agreement and duration of negotiations

Article 10. – (1) The competent management 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 in accordance with the provisions of Article 6, the agreement referred to in paragraph (1) between the competent management organs of the participating companies and the special negotiating body shall specify:

- a) the scope;
- b) the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent management organ of the SE in connection with arrangements for the information and consultation of the employees of the SE and its subsidiaries, branches and other secondary 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 shall not, unless provision is made otherwise, be subject to the standard rules set out in Articles 12–21.

(4) 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.

Article 11. – (1) Negotiations shall commence as soon as the special negotiating body is established and may continue for 6 months thereafter.

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

SECTION 3

Standard rules on information and consultation and other arrangements for employee involvement in the activities of an SE

Article 12. – (1) The provisions of Articles 6–11 shall apply accordingly if a decision has been taken to negotiate an agreement according to Article 10(1), in which case the term "special negotiating body" shall be replaced by a reference to "representative body".

(2) If, 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 as follows:

a) the representative body shall be composed of employees of the SE and its subsidiaries, branches or other secondary establishments, elected or appointed from their number by the trade union organisations or, if such organisations do not exist, the employees' representatives or, in the absence thereof, by the entire body of employees;

b) members of the representative body shall be elected or appointed by the trade union organisations or the employees' representatives, in accordance with procedures established by them for each SE or subsidiary, branch or other secondary establishment thereof;

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

d) the representative body shall draw up and adopt their own internal rules and regulations;

e) the members of the representative body shall be elected or appointed in proportion to the total number of employees employed in each Member State by the participating companies and subsidiaries, branches or other secondary establishments, by allocating for each Member State one seat representing 10%, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries, branches or other secondary establishments in all Member States taken together;

f) the competent organ of the SE shall be informed of the composition of the representative body;

g) four years after the representative body is established, it shall examine whether to open negotiations for the conclusion of the agreement set out in paragraph (1) and Article 10(1) or to continue to apply the standard rules adopted in accordance with the provisions of Articles 12–21.

Article 13. – The competence of the representative body shall be limited to questions which concern the SE itself and any of its subsidiaries, branches or other secondary establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State.

Article 14. – (1) Without prejudice to meetings held pursuant to Article 15(1), the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SE and its prospects. The local management shall be informed accordingly.

(2) The competent management 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 set out in paragraph (1) shall relate in particular to the structure, the 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.

Article 15. – (1) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall

have the right to be informed. This 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 management 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.

(2) If the competent management organ decides not to act in accordance with the point of view expressed by the representative body, this body shall have the right to meet again with the competent management organ of the SE with a view to seeking agreement.

(3) In the case of a meeting 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.

(4) The meetings set out in paragraphs (1)–(3) shall not affect the prerogatives of the competent management organ.

Article 16. – (1) The procedure for information and consultation meetings shall be established by agreement between the parties.

(2) Before any meeting with the competent management organ of the SE, the representative body or the select committee, where necessary enlarged in accordance with Article 15(3), shall be entitled to meet without the representatives of the competent organ being present.

Article 17. – (1) The members of the representative body shall inform the representatives of the employees of the SE and of its subsidiaries; branches or other secondary 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.

Article 18. – In so far as this is necessary for the fulfilment of their tasks, the members of the representative body shall be entitled to time off for training without losing any salary rights.

Article 19. – (1) The costs of the representative body shall be borne by the SE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner.

(2) In particular, the SE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities and the accommodation and travelling expenses of members of the representative body and the select committee.

(3) In so far as central management and the special negotiating body do not decide otherwise, if the representative body is assisted by experts. the participating companies shall only bear the expenses of one expert.

Article 20. – In the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SE. The provisions of Article 21 shall apply accordingly to that end.

Article 21. – (1) In other cases of the establishing of an SE, the employees of the SE, its subsidiaries, branches and other secondary 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.

(2) 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.

(3) 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. Each Member State may determine the allocation of the seats it is given within the administrative or supervisory body.

(4) 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.

Article 22. – (1) The provisions of Article 21 shall apply to the SE as follows:

A. In the case of an SE to be established by merger:

a) if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 25% of the total number of employees in all the participating companies; or

b) if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 25% of the total number of employees in all the participating companies, and if the special negotiating body so decides;

B. In the case of an SE to be established by way of creating a company in another way or a subsidiary:

a) if, before registration of the SE, one or more of the 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

b) 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.

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

SECTION 4

Application of the standard rules

Article 23. – The standard rules, set out in Articles 12–22, on information and consultation and other arrangements for employee involvement in the activities of a European company, shall apply from the date of the registration of the SE whose registered office is to be situated in Romania, if:

a) the parties so agree; or

b) by the deadline laid down in Article 11, no agreement has been concluded; and:

– the competent management organ of each of the participating companies decides to accept the application of the standard rules in relation to the SE and so to continue with its registration of the SE; and

– the special negotiating body has not taken the decision set out in Article 8(1).

CHAPTER II

Final provisions

SECTION 1

Standard rules on confidentiality

Article 24. – (1) Members of the special negotiating body or the representative body, and each of the experts who assist them, are not authorised to disclose any information which has been provided to them, in confidence, in the legitimate interest of the SE. The same shall apply to employees' representatives in the context of an information and consultation procedure.

(2) The obligation set out in paragraph (1) shall continue to apply to the representatives or experts concerned also after the expiry of their terms of office. The type of information subject to the confidentiality arrangement shall be agreed by the parties in collective agreements or in any other form approved by the partners.

Article 25. – (1) The supervisory or administrative organ of an SE or of a participating company having its registered office in Romania is not obliged to transmit information where

its nature is such that, according to objective criteria, to do so would seriously harm or be prejudicial to the functioning of the SE or, as the case may be, the participating company or its subsidiaries or branches or other secondary establishments thereof.

(2) The decision not to transmit such information shall be justified to the employees' representatives.

(3) If the members of the special negotiating body or of the representative body or the employees' representatives do not deem reasonable the refusal of the supervisory or administrative organ of an SE or a participating legal entity to provide information on a confidential basis, they shall have the right to refer the matter to the competent courts, pursuant to the law.

SECTION 2

Operation of the representative body and procedure for the information and consultation of employees on arrangements for the involvement of the employees within the SE

Protection of employees' representatives

Article 26. – The competent management organ of the SE, the SE's supervisory or administrative organ, the representative body or the employees' representatives, where appropriate, shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations.

Article 27. – (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, the SE's subsidiaries, branches or other secondary establishments or of a participating company shall in the exercise of their functions enjoy the protection and guarantees enabling them to properly fulfil the obligations entrusted to them pursuant to the provisions of Law No. 53/2003 – Labour Code, including subsequent amendments and additions, and of Trade Union Law No. 54/2003.

(2) The provisions of paragraph (1) shall also apply to attendance at meetings of the special negotiating body or representative body, any other meeting under the agreement referred to in Article 10(2)f) 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, branches or other secondary establishments during a period of absence necessary for the performance of their duties.

SECTION 3

Breaches and sanctions

Article 28. – Failure to comply with the obligations relating to employee information and consultation within an SE shall constitute a breach and shall be sanctioned pursuant to the provisions of Law No. 467/2006 on establishing a general framework for informing and consulting employees.

SECTION 4

Final provisions

Article 29. – (1) Provisions on the participation of employees in company bodies provided for by Romanian legislation, other than those implementing this Decision, shall not apply to European companies established in accordance with Council Regulation (EC) No. 2157/2001.

(2) This Decision shall not prejudice the existing rights to information, consultation, participation and involvement of employees, provided for by Romanian legislation, as enjoyed by employees of an SE and its subsidiaries, branches and secondary establishments, other than participation in the bodies of the SE, regulated by this Decision.

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This Decision transposes Council Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees, published in the Official Journal of the European Communities (OJEC) No. L294 of 10 November 2001.

THE PRIME MINISTER
CĂLIN POPESCU-TĂRICEANU

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