

Bulletin of Acts and Decrees (*Staatsblad*) of the Kingdom of the Netherlands

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Act of 7 November 2011 amending of the European Works Councils Act (*Wet op de Europese ondernemingsraden*) in conjunction with the implementation of Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 (OJ 122/2009) recasting Council Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees

We, Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that, in view of the adoption of Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 (OJ 122/2009) recasting Council Directive 94/45/EC, it is necessary to amend a number of provisions of the European Works Councils Act;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as we hereby approve and decree:

ARTICLE I

The European Works Councils Act shall be amended as follows:

A

Article 1, first paragraph, shall be amended as follows:

1. In subsection (a), the words "Member State" shall be replaced by the words "relevant State".

2. In subsection (b), the words "Council Directive 94/45/EC of 22 September 1994" shall be replaced by the words "Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009" and the reference to "(OJ L 254)" shall be replaced by a reference to "(OJ L 122/2009)".

3. Subsection (e) shall become subsection (f) and a new subsection (e) shall be inserted which reads as follows:

"(e) cross-border issues: issues of importance to the entire Community-scale undertaking or the entire Community-scale group of undertakings, or at least two undertakings or establishments of a Community-scale undertaking or Community-scale group of undertakings in two different relevant States;"

4. The full-stop at the end of subsection (f) shall be replaced by a semicolon and the following two subsections shall be added which read as follows:

"(g) provision of information: the transmission of information concerning cross-border issues by the central management or any more appropriate level of management to employees' representatives at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the impact and, where appropriate, to prepare for consultations with the central management or any more appropriate level of management;

(h) consultation: the establishment of dialogue and exchange of views between the central management or any more appropriate level of management and employees' representatives at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about proposed measures concerning cross-border issues to which the consultation relates within a reasonable time, which may be taken into account when a decision is taken."

B

In Article 1 first paragraph (d), second paragraph (a) and (b) and third paragraph, Article 2, sixth paragraph, Article 3 first and second paragraphs, Article 9 second paragraph, Article 16 third paragraph, Article 23 and Article 25 second paragraph, the words "Member State" shall in each case be replaced by the words "relevant State".

C

In Article 1 first paragraph (c) and (d), second paragraph and third paragraph, Article 3 first paragraph, Article 6 second paragraph, Article 8 second paragraph, Article 11 sixth paragraph and Article 25 first and second paragraphs, the words "Member State" shall in each case be replaced by the words "relevant State".

D

In Article 2 fifth paragraph, the words "Council Regulation (EEC) No 4064/89 of 21 December 1989" shall be replaced by the words "Council Regulation (EEC) No 139/2004 of 20 January 2004" and the reference to "(OJ L 395)" shall be replaced by a reference to "(OJ L 24/2004)".

E

In Article 3 second paragraph, the words "Article 4 eighth paragraph, Article 7, Article 8 second paragraph, Article 11 sixth paragraph and Article 19 seventh paragraph" shall be replaced by the words "Article 4 eighth to tenth paragraphs, Article 7, Article 8 second paragraph and Article 11, third paragraph (e), sixth paragraph and eighth paragraph".

F

Article 4 shall be amended as follows:

1. A sentence shall be added to the third paragraph which reads as follows: "They shall be provided with such facilities as they reasonably require for the performance of their duties".

2. The eighth and ninth paragraphs shall be renumbered as the ninth and tenth paragraphs and a new paragraph shall be inserted which reads as follows:

"8. Notwithstanding any of their obligations of confidentiality, employees who are members

of a European Works Council or act as representatives under any other procedure for informing and consulting employees shall inform the employee representatives within the Community-scale undertaking or group of undertakings or, if these do not exist, all the employees about the content and results of the information and consultation procedure carried out under this Act."

3. In the ninth paragraph (under the new numbering), the words "provides an overview of the number of employees working in the Community-scale undertaking or group of undertakings, and the distribution of these employees between the various Member States" shall be replaced by the words "provide information which is required to open negotiations as referred to in Article 8 first paragraph. This information shall in all instances include an overview of the number of employees working in the Community-scale undertaking or group of undertakings, and the distribution of these employees between the various relevant States."

G

In Article 5 second paragraph (a) and (b), the words "Article 19 fifth paragraph" shall be replaced by the words "Article 19 sixth paragraph".

H

Article 7 shall read as follows:

"Article 7

1. A Community-scale undertaking or the parent undertaking shall provide employees or their representatives with information which is required to open negotiations as referred to in Article 8 first paragraph. This information shall in all instances include an overview of the number of employees working in the Community-scale undertaking or group of undertakings, and the distribution of these employees between the various relevant States.

2. Where the information as referred to the first paragraph changes significantly after the special negotiating body has been established, a Community-scale undertaking or the parent undertaking shall, as quickly as possible after such change, provide an amended overview to the special negotiating body and, where appropriate, to the employees or the representatives of employees of a Community-scale undertaking or group of undertakings from a relevant State who are not yet represented in the special negotiating body."

I

Article 9 shall be amended as follows:

1. The first paragraph shall read as follows:

"1. The number of employee representatives from the Community-scale undertaking or group of undertakings sitting in the special negotiating body shall be such as to ensure that, in respect of each relevant State, one member shall be appointed for each portion of employees employed in that State amounting to 10%, or a fraction thereof, of the number of employees working in all the relevant States taken together."

2. The third paragraph shall read as follows:

"3. The number of members of the special negotiating body and the allocation of seats shall be in keeping with the provisions of the first paragraph. Where the number of members from a relevant State changes without any new election or appointment taking place with respect to these seats, the sitting members representing that State shall, for the purposes of Article 13,

together have as many votes as correspond to the number of members determined for the relevant State in accordance with the first paragraph, and shall together represent the employees of the Community-scale undertaking or group of undertakings in the relevant State in ratios to be determined by them or, if no agreement can be reached, in proportion to the number of workers whom they represented before such change occurred."

J

Article 11 shall be amended as follows:

1. In the first paragraph, second sentence, the words "before this meeting takes place" shall be replaced by the words "before and after this meeting".

2. The third paragraph, subsection (b) shall read as follows:

"(b) the size and composition of the Council, with as balanced a representation of workers as possible, and the period of appointment of its members;"

3. In the third paragraph, subsections (e) and (f) shall become subsections (f) and (g) and a subsection shall be inserted which reads as follows:

"(e) how the information and consultation of the Council and the information and consultation of employee representatives, as referred to in Article 3 second paragraph, are linked together, taking into account their responsibilities;"

4. The full-stop at the end of subsection (g) (new) at the end of the third paragraph shall be replaced by a semicolon and a subsection shall be added which reads as follows:

"(h) if a select committee is set up within the Council: its composition, appointment procedure, terms of reference and rules of procedure."

5. In the sixth paragraph, the words "shall contain provisions on the duration of the contract, the manner of negotiating a new agreement" shall be replaced by the words "shall contain provisions on the date of entry into force, the duration of the agreement, how the agreement may be amended or terminated, where and how to negotiate a new agreement,".

6. The eighth paragraph shall become the ninth paragraph and a new eighth paragraph shall be inserted which reads as follows:

"8. If the agreement contains no provisions as referred to in the third paragraph, subsection (e), and decisions are envisaged which are likely to entail significant changes in work organisation or contractual relations, the information and consultation of the Council and the information and consultation of employee representatives, as referred to in Article 3 second paragraph, shall as far as possible begin at the same time."

K

The following shall be added after the word "experts" in Article 12 first paragraph: "of their choice, including representatives of authorised and recognised employee organisations at Community level, as provided for in Article 154 of the Treaty on the Functioning of the European Union. These experts may, at the request of the special negotiating body, attend the meetings referred to in Article 11 first paragraph in an advisory capacity."

L

Article 14 shall be amended as follows:

1. The number "1." shall be inserted in front of the existing text.

2. A new paragraph shall be added which reads as follows:

"2. The central management shall also notify the authorised and recognised employee organisations at Community level, as provided for in Article 154 of the Treaty on the Functioning of the European Union, about the composition of the special negotiating body, and about the start of negotiations as referred to in Article 8 first paragraph."

M

After Article 14, a new Article shall be added to Chapter 2 Section 2 which reads as follows:

"Article 14a

1. If the structure of the Community-scale undertaking or group of undertakings is significantly altered and the relevant agreements contain no relevant provisions, or conflicting provisions, the central administration shall, on its own initiative or at the written request of at least 100 employees or their representatives in at least two companies or establishments in at least two different relevant States, start the negotiations referred to in Article 8 first paragraph and shall set up a special negotiating body for this purpose.

2. In addition to the members of the special negotiating body elected or appointed in accordance with Article 9, at least three members of the existing European Works Council, or of each of the existing European Works Councils, shall be members of the special negotiating body.

3. During the negotiations as referred to in the first paragraph, the existing European Works Council(s) shall function in accordance with the applicable agreement or agreements, or another procedure for informing and consulting workers shall apply if this has been agreed upon."

N

In Article 15 subsection (b) and Article 21 first paragraph, the words "Article 11 first paragraph" shall be replaced by the words "Article 8 first paragraph".

O

Article 16 shall be amended as follows:

1. The first paragraph shall read as follows:

"1. The number of employee representatives from the Community-scale undertaking or group of undertakings sitting on the European Works Council shall be such as to ensure that, in respect of each relevant State, one member shall be appointed for each portion of employees employed in that State amounting to 10 %, or a fraction thereof, of the number of employees working in all the relevant States taken together."

2. The second paragraph shall be deleted and the third and fourth paragraphs shall become the second and third paragraphs.

3. The third paragraph (new) shall read as follows:

"3. The number of members of the European Works Council and the allocation of seats shall be in keeping with the provisions of the first paragraph. Where the number of members from

a relevant State changes without any new election or appointment taking place with respect to these seats, the sitting members representing that State shall, for the purposes of the relevant provisions concerning the voting weights within the European Works Council, together have as many votes as correspond to the number of members determined for the relevant State in accordance with the first paragraph, and shall together represent the employees of the Community-scale undertaking or group of undertakings in the relevant State in ratios to be determined by them or, if no agreement can be reached, in proportion to the number of workers whom they represented before such change occurred."

P

Article 18 shall be amended as follows:

1. In the second paragraph, the words "no more than three members" shall be replaced by the words "no more than five members".
2. The third sentence in the third paragraph shall read as follows: "If a select committee is elected, the powers of that committee shall be set out in the rules of procedure, which shall also establish the resources necessary to enable it to pursue its activities."

Q

Article 19 shall read as follows:

"Article 19

1. The information supplied to the European Works Council shall in all events relate to:
 - (a) the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings;
 - (b) the situation and probable trend of employment, investments, and any substantial changes concerning organisation, introduction of new working methods or production processes, environmental concerns, mergers or downsizing of undertakings, establishments or important parts thereof.
2. The central management shall inform the European Works Council or the select committee as quickly as possible about any exceptional circumstances or decisions which seriously affect the interests of the employees of at least two establishments or undertakings of the Community-scale undertaking or group of undertakings in different relevant States, particularly with respect to the relocation or closure of undertakings, establishments or significant parts thereof, or collective redundancies.
3. The consultation of the European Works Council shall be conducted in such a way that the employees' representatives can meet with the central management or any more appropriate level of management within the Community-scale undertaking or group of undertakings with its own decision-making powers, and can obtain a reasoned response to the opinions they express. Consultation shall in all events relate to the subjects referred to in the first paragraph (b) and the second paragraph.
4. The central management and the European Works Council shall meet at least once per calendar year. At such meeting, the European Works Council shall be informed and consulted, on the basis of a written report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The central management shall ensure that this annual meeting

is publicised within the Community-scale undertaking or Community-scale group of undertakings.

5. If the European Works Council or the select committee so requests, it shall meet the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings with its own decision-making powers, so as to be informed and consulted on the basis of a written report drawn up by the Community-scale undertaking or group of undertakings and relating to the circumstances or decisions referred to in the second paragraph. The members of the European Works Council who are also elected or appointed by the employees of the establishments or undertakings directly affected by the circumstances or decisions concerned shall also be invited to attend a meeting with the select committee. The meeting shall not affect the powers of the central management.

6. The central management shall not be required to provide information in so far as it may reasonably be assumed that this would seriously harm the functioning of the undertakings concerned or would be prejudicial to them. If justifiable reasons exist, the central management may impose confidentiality requirements on the provision of information. It shall, as far as possible, be stated with respect to the specific matter what reasons exist for treating it confidentially, what written or verbal information is covered by the confidentiality requirement, how long it will apply, and whether there are any persons who are not required to maintain such confidentiality.

7. The central management shall give the European Works Council or the select committee the opportunity to meet before or after each meeting with the central management.

8. Unless otherwise agreed, meetings as referred to in the fourth or fifth paragraphs shall be chaired alternately by the central management and the European Works Council."

R

Article 24 shall be amended as follows:

1. The first and second paragraphs shall read as follows:

"1. Subject to the provisions of Articles 5 and 14a, this Act shall not apply to any Community-scale undertaking or group of undertakings which was a party to one or more agreements which entered into force before 5 February 1997, provided that such agreements made provision for information and consultation of employees regarding cross-border issues, and were concluded with employee representatives whom the Community-scale undertaking or group of undertakings could reasonably consider representative of the employees in the relevant States.

2. Subject to the provisions of Articles 5 and 14a, this Act, as applicable on the day before the entry into force of the Act of 7 November 2011 amending the European Works Councils Act in conjunction with the implementation of Directive 2009/38/EC of the European Parliament and the Council of the European Union of 6 May 2009 (OJL 122/2009) recasting Council Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, shall remain applicable to a Community-scale undertaking or group of undertakings which is a party to an agreement as referred to in Article 8, first paragraph, relating to the entire workforce, and which was signed or revised in the period from 5 June 2009 to 5 June 2011."

2. In the third paragraph, the words "eighth paragraph" shall be replaced by the words "ninth

paragraph".

S

In Article 25 second paragraph, the words "Article 11" shall be replaced by the words "Article 8".

T

Article 26 shall be deleted.

ARTICLE II

This Act shall enter into force on 5 June 2011. If the Bulletin of Acts and Decrees (*Staatsblad*) in which this Act is made known is published after 4 June 2011, the Act shall enter into force on the day after its publication in the Bulletin of Acts and Decrees.

We order and command that this Act be published in the Bulletin of Acts and Decrees and that all ministries, authorities, bodies and officials whom it may concern shall diligently implement it.

Done at The Hague, 7 November 2011

Beatrix

The Minister for Social Affairs and Employment,
H.G.J. Kamp

Published on 14 November 2011

The Minister for Security and Justice
I.W. Opstelten