

LAW N° 96 -985 OF 12 NOVEMBER 1996

on the information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings and on development of collective bargaining

The national Assembly and the Senate have adopted,
With a view of decision n° 96-383 DC of 6 November 1996 of the Constitutional Council;
The President of the Republic has promulgated the following law:

ARTICLE 1

Article L 439-1 of the Labour Code shall be drafted as follows:

“Art. L 439-1:

“I.- The provisions in this Article shall apply to the undertakings and other bodies referred to in Article L 431-1¹, whatever the number of employees they employ.

“II.- A works council shall be formed by an undertaking, named dominant undertaking, and the undertakings which the former controls under the conditions laid down in Article 354, 355-I and in the second paragraph of Articles 357-1 of Law No 66-537 of 24 July 1966, on commercial companies², which undertaking has its registered office on French territory.

“An undertaking shall also be considered as dominant for the establishment of a group works council, when such undertaking exercises a dominant influence over another undertaking in which the former

¹ Article 431-1 mentions: “...all industrial and commercial undertakings, lawyers’ and law-court officials’ offices, the liberal professions, non-trading corporations, trade unions, mutual benefit societies, social security institutions, except those that are public administrative establishments, and associations, irrespective of their form and purpose, if they employ at least 50 employees” (1st alinea); “...farms and agricultural and equivalent undertakings and establishments (...) occupational institutions of all kinds in the agricultural sector, if they employ employees covered by clauses 1 to 7, 9 and 10 of section 1144 of the Rural Code” (5th alinea); “...public industrial and commercial establishments and (...) such public establishments as may be specified by decree that provide a public service of both an administrative and an industrial and commercial nature, if they employ staff under private law. (...) (4th alinea).

² Article L. 354: “When a company holds more than a majority of the capital of another undertaking, the second is considered (...), as subsidiary of the first one.”

Article L. 355-1: “A company is considered (...) as controlling another one:

- when it holds directly or indirectly a fraction of the capital, ensuring it the majority of the voting rights in the general assemblies of the company;
- when it controls alone the majority of the voting rights in that company in accordance with an agreement which has been considered with other companies or shareholders and which is not contrary to the interest of that company;
- when it determines in practice, through its voting rights, the decisions of the general assembly of that company. This company is presumed to exercise its control when it holds directly or indirectly a fraction of the voting rights higher than 40% and when no other associate or shareholder holds directly or indirectly a higher fraction.”

Article L. 357-1 (2nd alinea): “The exclusive control by a company results from:

- either holding directly or indirectly the majority of voting rights of another undertaking;
- or the appointment, during the two successive years, of the majority of members in the administrative, management or supervisory body of another undertaking; the consolidating company is presumed to have made such appointment when it has held directly or indirectly a higher fraction than this;
- or the right to exercise a dominant influence over an undertaking in accordance with contract or statutory provisions, when the applicable law allows it and when the dominant company is a shareholder or associate of that undertaking.”

holds at least 10% of capital, where the permanence and importance of their relations establish the belonging of the one and the other to a same economic whole.

“The existence of a dominant influence shall be presumed, without prejudice to proof to the contrary, when an undertaking can directly or indirectly:

- can appoint more than half of the members of the undertaking's administrative, management or supervisory body;
- controls a majority of the votes attached to another undertaking's issued share capital;
- holds a majority of an undertaking's subscribed capital.

“Where several undertakings satisfy, with respect to the same dominated undertaking, one or several of the above mentioned criteria, the undertaking which can appoint more than half of the members of the undertaking's administrative, management or supervisory bodies of the dominated undertaking, shall be regarded as the dominant undertaking, without prejudice to proof that another undertaking may exercise a dominant influence.

“III.- The works council of a controlled undertaking or of an undertaking over which a dominant influence is exercised within the meaning of I and II above may request, for the purpose of application of the provisions of this Chapter, that the undertaking be included in the group thus formed. The request shall be conveyed via the head of the undertaking concerned to the head of the dominant undertaking who shall accede to that request within three months.

“Should relations such as those defined in II above between the two undertakings cease, prior and reasoned information shall be provided to the works council of the undertaking concerned. The latter shall no longer be taken into account with a view to the composition of the group council.

“Where a group council has already been set up, any undertaking establishing directly or indirectly relations as defined in II of this article, shall be taken into account with a view to the composition of the group council on the occasion of its renewal.

“IV.- In the case of dispute, the works council or the representative trade union organisations in the undertaking concerned or of a group undertaking, may take the matter to the Court (Tribunal de grande instance) of the registered office of the dominant undertaking.

“V.- The companies referred to in Article 3(5)(a) and (c) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings³, shall not be deemed to be dominant undertakings.”

ARTICLE 2

³ “A concentration shall not be deemed to arise where:

a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the sale of all part of that undertaking or of its assets or the sale of those securities and that any such sale takes place within one year of the date of acquisition; that period may be extended by the Commission on request where such institutions or companies justify the fact that the sale was not reasonably possible within the period set; (...)

c) the operations (direct or indirect acquisition) carried out by the financial holding companies (...), provided however that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings.”

For the application of Chapter IX⁴ of Title III of Volume IV of the Labour Code in the groups of undertakings having already established a group works council on the date of entry into force of this law, the provisions in II of Article L 439-1 of this Code cannot have the result of modifying the composition of the group works council before the first renewal of this council, except where the provisions in the first paragraph of II of Article L 439-1 are applied.

ARTICLE 3

Title III of Volume of the Labour Code, shall be completed by a Chapter X drafted as follows:

“Chapter X

“European works council or information and consultation procedure in Community-scale undertakings

“Section 1

“Scope

“Art. L 439-6.:

“In order to guarantee the right of employees to European-scale information and consultation, a European works council or a procedure for the provision of information, exchange of views and dialogue shall be established in Community-scale undertakings or groups of undertakings.

“A Community-scale undertaking is an undertaking according to I of Article 439-1 which employs at least 1 000 employees in the Member States of the European Community parties to the Agreement on Social Policy annexed to the Treaty on European Union and in the Member States of the European Economic Area which are not belonging to the European Community and having at least one establishment with at least 150 employees in at least two of these Member States.

“A Community-scale group of undertakings is a group according to II of Article L 439-1 which satisfies the conditions of workhorse and activity referred to in the above paragraph and which comprises at least an undertaking employing at least 150 employees in at least two of these Member States.

“For the purpose of application of this Chapter, consultation means the organisation of an exchange of views and the establishment of a dialogue.

“These provisions in this chapter shall apply to :

- a) to Community-scale undertakings or groups of undertakings whose headquarters or dominant undertaking within the meaning of Article L 439-1 are located in France;
- b) to Community-scale undertakings or groups of undertakings whose headquarters or dominant undertaking within the meaning of Article L 439-1 are located in a Member State other than those referred to in the first subparagraph which have appointed, for the purpose of application of these provisions, a representative in France;

⁴ “Group Committee”

- c) to Community-scale undertakings or groups of undertakings whose headquarters or dominant undertaking within the meaning of Article L 439-1 are located in a Member State other than those referred to in the first subparagraph which have not appointed a representative in one of the Member States concerned and whose establishment or undertaking with the greatest number of employees within those Member States is located in France."

"Section 2

"Special negotiating body

"Art. L 439-7.:

"The head of the Community-scale undertaking or dominant undertaking of a group of undertakings or his representative shall set up a special negotiating body in accordance with Article L 439-18, comprising representatives of all employees, authorised to sign an agreement for the purpose of implementing the right referred to in Article L 439-6.

"The head of the undertaking or his representative shall embark upon the procedure for setting up a special negotiating body once the numbers of employees referred to in Article L 439-6 have been attained on average during the whole of the previous two years. The numbers of employees shall be calculated in accordance with Article L 431-2⁵ for undertakings or establishments situated in France, and according to national law in the other Member States. The head of the undertaking shall ensure that the information on the numbers of employees of the Community-scale undertaking or group of undertakings is made available, upon their request, to the employees' representatives.

"Failing such an initiative on the part of the head of undertaking, the procedure shall be launched at the written request of 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States referred to in the second paragraph of Article L 439-6.

"Art. L 439-8.:

"The special negotiating body shall have the task of determining, with the head of undertaking or his representative, by written agreement, the undertakings or establishments concerned as well as the composition, functions and term of office of the European works council(s) or the arrangements for implementing a procedure for the provision of information, exchange of views and dialogue.

"For that purpose the head of the undertaking or his representative shall invite the special negotiating body to meet with him and shall convene it for that purpose. He shall inform the local management of the Community-scale undertaking or group of undertakings which shall pass on the information to the employee representatives.

"The time spent at meetings by the members of the special negotiating body shall be regarded as working time and paid as usual. Any expenses necessary for the special negotiating body to carry out

⁵ "Employees who are parties to contracts concluded for an unspecified period, homeworkers and handicapped workers employed in undertakings, sheltered workshops or centers where homework is given out shall be counted in full towards the number of persons employed in an undertaking. Employees under a contract of determined duration, employees under a contract of periodic employment, employees posted to the undertaking by an outside undertaking, including temporary employees, are taken into account in the workforce of the undertaking, pro-rata to the length of their presence in the undertaking over the previous twelve months. However, employees under a contract of temporary employment, or posted by an outside undertaking are excluded from the workforce when replacing an employee who is absent or had his contract suspended. Part-time employees, whatever the nature of their employment contract, are taken into account for a workforce calculated by dividing the total sum of working times laid down in the employment contracts by the legal or contractual duration of their work."

its task in an appropriate manner, shall be borne by the undertaking or dominant undertaking of the group of undertakings.

“Where required for the purposes of the negotiations, the special negotiating body may be assisted by experts of its choice. Any costs relating to assistance from one expert shall be borne by the undertaking or the dominant undertaking in a Community-scale group of undertakings.

“Art. L 439-9.:

The head of the undertaking or his representative and the special negotiating body shall negotiate with a view to reaching an agreement which shall determine:

- a) the establishments of the Community-scale undertaking, or the undertakings of the Community-scale group of undertakings which are covered by the agreement;
- b) the composition of the European works council, and in particular the number of members, the allocation of seats and the term of office;
- c) the functions of the European works council and the arrangements for the provision of information, exchange of views and dialogue therein;
- d) the venue, frequency and duration of the meetings of the European works council;
- e) the financial and material resources to be allocated to the European works council;
- f) the duration of the agreement and the procedure for its renegotiation.

“Art. L 439-10.:

“The head of the undertaking or his representative and the special negotiating body may decide, by agreement, to establish one or more procedures for the provision of information, exchange of views and dialogue, instead of establishing a European works council.

“The agreement shall stipulate by what method the employees' representatives shall have the right to meet to discuss the information which is conveyed to them and which shall relate in particular to transnational questions significantly affecting the employees' interests.

“Art. L 439-11.:

“The decision to conclude an agreement shall be taken by the special negotiating body by a majority of its members.

“The special negotiating body may decide, by at least two thirds of the votes, not to open negotiations or to terminate negotiations already opened. In such case, a new request to set up a special negotiating body may be made at the earliest two years after the above-mentioned decision unless the parties concerned lay down a shorter period.

“The special negotiating body shall cease to exist once the procedure for the provision of information, exchange of views and dialogue or a European works council has been set up or if it decides to terminate the negotiations in accordance with the preceding subparagraph.

“Section 3

“European works council set up in the absence of an agreement

“Art. L 439-12.:

“Where the head of the Community-scale undertaking or the dominant undertaking refuses to set up a special negotiation or to open negotiations within six months of reception of the request referred to in Article L 439-7, third subparagraph or, without prejudice to the provisions in the second subparagraph of Article L 439-11, where, within three years from the date of reception of the above request or of the initiative taken by the management of the undertaking or the group, the special negotiating body has not concluded an agreement, a European works council shall be established in accordance with the provisions of this section.

“The European works council shall be established and convened at the latest within six months following the six-month or three year periods referred to in the preceding paragraph.

“Art. L 439-13.:

“The European works council established in the cases provided in Article 439-12 shall be made up, on the one hand, of the head of the undertaking or the dominant undertaking of the Community-scale group or his representative, assisted by two persons of his choice acting as advisers and, on the other, of representatives of the staff of the establishments of the undertaking or the undertakings constituting the Community-scale group. It shall be competent regarding matters which concern the entire Community-scale undertaking or group of undertakings or at least two establishments or undertakings of a group located in two of the Member States referred to in Article L 439-6.

“Art. L 439-14.:

“The European works council shall be chaired by the head of the undertaking or dominant undertaking of the Community-scale group or his representative. It shall possess legal personality.

“The European works council shall appoint, by a majority of votes, a secretary from among its members and, where it comprises at least ten employees' representatives, it shall elect a three-member bureau.

“The European works council shall meet once a year on convocation by its chairman, and on the basis of a report drawn up by its chairman. This report shall relate the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The managers of the establishments or heads of undertakings of group undertakings shall be informed accordingly.

“In compliance with the provisions on professional secrecy and discretion, the members of the staff delegation in the works council shall inform the representatives of the staff of establishments or undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the workings of the council.

“The agenda shall be adopted by the chairman and secretary and notified to the members of the works council at least 15 days before the meeting. However, failing an agreement on the content of the agenda, it shall be established by the chairman and notified to the members of the European works council at least ten days before the meeting.

“Art. L 439-15.:

“The annual meeting of the European works council shall relate in particular to the structure and economic and financial situation of the undertaking or group of undertakings, the probable development of the business, production and sales, the situation and probable trends of employment, investments, substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cutbacks or closures of undertakings, establishments or important parts thereof, and collective redundancies.

“In the event of exceptional circumstances affecting the employees' interests to a considerable extent, particularly in event of relocation, the closure of establishments or undertakings or collective redundancies, the bureau or, where no such bureau exists, the European works council shall have the right to be informed. It shall have the right to meet, at its request, the head of the undertaking or his representative or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having decision-making powers so as to be informed, and to carry out an exchange of views and a dialogue about measures significantly affecting employees' interests. The members of the European works council who have been elected or appointed by the establishments or undertakings directly concerned by the measures in question shall also have the right to participate in the meeting with the bureau. This meeting shall take place as soon as possible on the basis of a report drawn up by the head of the undertaking or his representative or any other appropriate level of management of the Community-scale undertaking or group of undertakings on which an opinion may be delivered at the end of the meeting or within a reasonable time. This meeting shall not affect the prerogatives of the head of the undertaking.

“Before any meeting, the representatives of the employees on the European works council or the bureau, where necessary enlarged in accordance with the preceding subparagraph, shall be entitled to meet without the representatives of the management of the undertaking concerned being present.

“Art. L 439-16.:

“The European works council and the bureau may be assisted by experts of their choice in so far as this is necessary for the purpose of carrying out their tasks. Any cost relating to assistance from one expert shall be borne by the undertaking or the dominant undertaking in the Community-scale group of undertakings.

“The operating expenses of the European works council shall be borne by the undertaking or dominant undertaking in the Community-scale group of undertakings, which shall provide its members with such financial and material resources necessary for the performance of their duties. In particular, the cost of arranging meetings and interpreting and the accommodation and travel expenses of the members of the European works council and the bureau shall be met by the undertaking unless otherwise agreed.

“The time spent at meetings by the members of the European works council shall be regarded as working time and paid as usual.

“The head of the undertaking shall be required to grant the secretary of the European works council and the members of the bureau the time needed to carry out their duties up to a maximum of 120 hours per year, save in exceptional circumstances. This time shall be regarded as working time and paid as usual.

Should the employer dispute the use to which the time thus granted is put, he shall refer the matter to the relevant court. The time spent by the secretary and the members of the bureau at meetings of the works council and of the bureau shall not be deducted from these 120 hours.

“The documents transmitted to the employees' representative shall include at least one version in French.

“Art. L 439-17.:

“The European works council shall adopt its own rules of procedure laying down its operating methods.

“These rules may arrange for an evaluation of the repercussions onto the European works council of changes which have occurred in the structure or size of the Community-scale undertaking or group of undertakings. Examination of such changes may take place on the occasion of the annual meeting of the council. Modifications to the composition of the European works council may be decided by agreement concluded therein between the head of the undertaking or his representative and the employee representatives.

“Four years after the European works council is established pursuant to this section, it shall examine whether to renew it or to open negotiations for the conclusion of the agreement referred to in Article L 439-8 and L-439-9. In the event of the latter, the members of the European works council shall constitute the special negotiating body provided for in Article L 439-7 and entitled to conclude the above agreement. The head of the undertaking or his representative shall convene a meeting for that purpose within six months following the four-year period of time. The European works council shall remain in function as long as it has not been renewed or replaced.

“Section 4

“Distribution of seats in the special negotiating body and in the European works council set up in the absence of an agreement

“Art. L 439-18.:

The number of seats on the special negotiating body and on the European works council established in accordance with Article L 439-12, shall be determined in accordance with the following rules:

- a) one member for each of the Member States referred to in Article L 439-6 in which the Community-scale undertaking or group of undertakings has one or more establishments or undertakings;
- b) additional members in proportion to the workforce employed in the establishments or undertakings. These additional seats shall be allocated on the basis of one additional seat per Member State having at least 20% of the workforce, two additional seats per Member State having at least 30% of the workforce, three additional seats per Member State having at least 40% of the workforce, four additional seats per Member State having at least 50% of the workforce, five additional seats per Member State having at least 60% of the workforce and six additional seats per Member State having at least 80% of the workforce.

“The number of staff representatives on the European works council set up pursuant to Article L 439-12 may not, however, be fewer than three or more than 30.

“In addition, the head of the undertaking or his representative and the employees' representatives may decide to associate in the work of the special negotiating body or Europeans works council representatives of employees working in Member States other than those referred to in Article 459-6, second paragraph. These associated members shall not have the right to vote in the body concerned.

“Section 5

“Common provisions

“Art. L 439-19.:

“The members of the special negotiating body and the representatives of the employees on the European works council of the employees in the establishments or undertakings located in France, shall be appointed by the employees' trade union organisations from among their members elected to the works council of the undertaking or establishment, or among their trade union representatives in the undertaking or group, on the basis of the results of the most recent elections. The same applies with respect to the representatives of the employees in establishments or undertakings located in France belonging to a Community-scale undertaking or group having set up a special negotiating body or a European works council in a Member State other than France.

“In the case of establishments or undertakings located in France, the seats shall be distributed among electoral bodies in proportion to the numerical size of each. The seats allocated to each electoral body shall be shared between the trade union organisations in proportion to the number of elected members they have obtained in such bodies. The list system of proportional representation shall be applied, using the greatest remainder method.

“The members of the special negotiating body and the representatives of the employees on the European works council set up under Article L 439-12 who have to be selected by the establishments and undertakings located in the Member States referred to in Article L 439-6, second paragraph, other than France, shall be elected or appointed in accordance with the national rules or practice in force in those Member States.

“Art. L 439-20.:

“Where there is no trade union organisation in the Community-scale undertaking or group of undertakings whose registered office or that of its dominant undertaking within the meaning of Article L 439-1 is located in France, the staff representatives on the special negotiating body or European works council shall be elected directly in accordance with the rules laid down in Articles L 433-2 to L 433-11. The same applies where there is no trade union organisation in the establishment or undertaking located in France belonging to a Community-scale undertaking or group of undertakings required to set up a European works council or a procedure for the provision of information, exchange of views and dialogue in one of the Member States other than France referred to in Article L 439-6, second paragraph, and where the said establishment or undertaking has at least 50 employees.”

“Art. L 439-21.:

“The members of the special negotiating body, the members of the European works council set up by agreement or in accordance with Article L 439-12, and the representatives of employees in the context of a procedure for the provision of information, exchange of views and dialogue and experts assisting them are required to observe professional secrecy and discretion in accordance with Article L 432-7⁶.

“Art. L 439-22.:

“Where on account of a reduction in staff, the Community-scale undertaking or group of undertakings no longer satisfies the threshold conditions in Article L 439-6 the European works council set up by agreement or under Article L 439-12 may be dissolved by agreement. Failing any agreement, the

⁶ “The members of the works Council and trade union delegates are bound by professional secrecy for all questions relating to manufacturing process. In addition, the members of works councils and trade union delegates are bound by an obligation of discretion with respect to information with a confidential character and presented as such by the head of the undertaking or his replacement.”

departmental labour director may authorise dissolution of the European works council in the event of a significant and lasting reduction in staff which brings down their numbers below the thresholds laid down in Article L 439-6.

“Art. L 439-23.:

“The members of the special negotiating body and the members of the European works council set up by agreement or in accordance with Article L 439-12 shall be afforded the special protection established under Chapter VI of this title.

“No employee may be penalised or dismissed for having exercised the right of initiative provided for in Article L 439-7. Any decision or action to the contrary shall automatically be null and void.

“Art. L 439-24.:

“Where a group of undertakings within the meaning of Article L 439-1 has established a European works council, an agreement pursuant to Article L 439-8 or an agreement entered into within the group, it may decide to adapt its operating conditions or, where appropriate, to dissolve the group works council. Entry into force of the agreement shall be subject to the positive vote from the group works council. Where the group council is dissolved, Article L 439-2 shall apply to the European works council.”

ARTICLE 4

An Article L 483-1-2 shall be added following Article L483-1-1 to Chapter III of title VIII of volume IV of the Labour Code, and read as follows:

“Art. L 483-1-2.:

“Any interference with the establishment of a special negotiating body, a European works council whether or not set up by agreement, or with the operation of a procedure for the provision of information, exchange of views and dialogue, or with the freedom of appointment of their members or with their normal operation, notably on account of failure to take into account Articles L 439-7, L 439-8 and L 439-12, shall be sanctioned in accordance with Article L 483-1.”

ARTICLE 5

The Community-scale undertakings and groups of undertakings which already have, on the date this law is enacted, an agreement covering the entire workforce and providing for bodies or for other forms of information, exchange of views and dialogue at Community level, shall not be subject to the obligations arising from Chapter X of title III of volume IV of the Labour Code as worded as a result of this law. This shall also be the case where such agreements run out and the signatory parties decide to renew them.

However, the provisions in Article L 439-24 of the Labour Code in the drafting resulting from this law, shall apply to the groups of undertakings referred to in the first paragraph, which have established bodies for information, exchange of views and dialogue at Community level.

Done in Paris on 12 November 1996.