

Information on act

Title of act: Act amending the Act on informing and consulting employees in multinational undertakings, groups of undertakings and European companies

Title of proposal: Proposal for an act amending the Act on informing and consulting employees in multinational undertakings, groups of undertakings and European companies

Date of adoption: 15 March 2011

State Gazette

No/year: 26/2011

DECREE No 55

Having regard to Article 98(4) of the Constitution of the Republic of Bulgaria,

I HEREBY ORDER AS FOLLOWS:

The Act amending the Act on informing and consulting employees in multinational undertakings, groups of undertakings and European companies, adopted by the 41st National Assembly on 15 March 2011, shall be published in the State Gazette.

Done in Sofia on 25 March 2011.

President of the Republic: Georgi Parvanov

Stamped with the state seal:

Minister for Justice: Margarita Popova

Proposal for an act amending the Act on informing and consulting employees in multinational undertakings, groups of undertakings and European companies (SG No 57/2006)

Section 1. In Chapter Two 'Informing and consulting employees in multinational undertakings or groups of undertakings', the following Article 3a is inserted:

'Implementing information and consultation

Article 3a (1) Employees in multinational undertakings or groups of undertakings shall be provided with information and consulted by means of a European works council or an information and consultation procedure.

(2) Employees shall be provided with information and consulted at the relevant level of management and representation, according to the subject under discussion; the competence of the European works council and the information and consultation procedure shall be limited to transnational matters.

(3) When providing information and conducting consultation, the European works council and the trade union organisations and employees' representatives referred to in Article 7(2) of the Labour Code shall cooperate within the limits of their competence.

(4) The method by which the European works council and the trade union organisations and employees' representatives referred to in Article 7(2) of the Labour Code cooperate and coordinate information and consultation procedures shall be established by the agreement referred to in Article 8.

(5) Where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged and the agreement referred to in Article 8 does not lay down a cooperation and coordination method, the procedures for information and consultation through the European works council and through the trade union organisations and employees' representatives referred to in Article 7(2) of the Labour Code must be conducted simultaneously.'

Section 2. Article 4 is amended as follows:

1. Paragraph 1 is repealed.

2. The following paragraph 7 is inserted:

'(7) The central management body referred to in paragraph 2 or the management body referred to in paragraph 5 or 6 shall be responsible for collecting and presenting to the members of the special negotiating body the information necessary for negotiations to begin, which shall enable the employees to assess whether the undertaking is a multinational undertaking or group of undertakings within the meaning of Section 1(2) and (3) of the Additional Provisions, including information on the number of employees.'

Section 3. Article 6 is amended as follows:

1. Paragraph 2 is replaced by the following:

‘(2) The members of the special negotiating body shall be elected or appointed in proportion to the number of employees employed in each Member State by the multinational undertaking or group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together.

2. Paragraphs 3 and 4 are repealed.

3. Paragraph 5 is replaced by the following:

‘(5) The special negotiating body shall inform the central management body referred to in Article 4(2) or the management body referred to in Article 4(5) or (6) and the management bodies of undertakings operating in another Member State which are subsidiaries of the multinational undertaking or members of a group of undertakings of the composition of the special negotiating body and of the start of the negotiations. This information shall also be communicated to the competent European-level employees’ and employers’ organisations.’

Section 4. Article 7 is amended as follows:

1. In paragraph (2) the following sentence is inserted after the first sentence:

‘Before and after any meeting the special negotiating body shall be entitled to meet without representatives of the relevant management body being present, using any necessary means for communication.’

2. The following paragraph 3 is inserted:

‘(3) Where necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body shall be provided with training. The cost of the training may not be deducted from their wages.’

3. Paragraph 3 becomes paragraph 4 and is replaced by the following:

‘(4) The special negotiating body may be assisted by experts of its choice, including representatives of the recognised European-level employees’ and employers’ organisations. At its request, they may be present at negotiation meetings in an advisory capacity without voting rights.’

4. Paragraph 4 becomes paragraph 5.

5. Paragraph 5 becomes paragraph 6 and the words ‘paragraph 4’ therein are replaced by ‘paragraph 5’;

6. Paragraph 6 becomes paragraph 7.

Section 5. Article 8 is amended as follows:

1. Paragraph 1 is replaced by the following:

‘(1) The central management body referred to in Article 4(2) or the management body referred to in Article 4(5) or (6) and the special negotiating body shall negotiate in a spirit of

cooperation with a view to reaching an agreement. The agreement shall be concluded in writing.’

2. In paragraph 2:

(a) subparagraph 2 is replaced by the following:

‘2. the composition of the European works council, its term of office, the number of its members, the allocation of seats, ensuring, where possible, balanced representation of employees in terms of function, grade and gender;

(b) subparagraph 3 is replaced by the following:

‘3. the functions and the procedure for informing and consulting the European works council and the obligations of its members to inform employees of the outcome of the information and consultation procedure carried out;’

(c) The following subparagraph 3a is inserted:

‘3a. the method by which the European works council and the trade union organisations and employees’ representatives referred to in Article 7(2) of the Labour Code cooperate and coordinate information and consultation procedures, in compliance with the principles laid down in Article 3a(2);’

(d) The following subparagraph 4a is inserted:

‘4a. the composition, mode of operation, functions and rules of procedure of the standing committee, if one needs to be set up within the European works council;’

(e) In subparagraph 6, the words ‘or terminated’ are inserted after ‘amended’.

Section 6. The following Article 8a is inserted:

‘Negotiations in the event of structural changes

Article 8a(1) Where the structure of the multinational undertaking or group of undertakings changes (takeover, merger, division of the activity, change of ownership etc.) and either in the absence of provisions established by the agreements in force or in the event of conflicts between the relevant provisions of two or more applicable agreements, the central management shall initiate the negotiations referred to in Article 4(3) on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

(2) In the cases referred to in paragraph 1, 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, in addition to the members elected or appointed pursuant to Article 6.

(3) During the negotiations, the existing European works council shall continue to operate in accordance with the agreement referred to in Article 8, where the agreement includes provisions to this effect.’

Section 7. Article 10 is amended as follows:

1. Paragraph 3 is replaced by the following:

‘(3) The members of the European works council shall be elected or appointed in proportion to the number of employees employed in each Member State by the multinational undertaking or group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together. The Council shall adopt its own rules of procedure.’

2. The following paragraph 4 is inserted:

‘(4) The European works council may elect a standing committee from among its members, comprising members, to enable it to operate effectively. The standing committee must benefit from conditions enabling it to perform its duties.’

3. Paragraphs 4, 5, 6, 7 and 8 are renumbered 5, 6, 7, 8 and 9 respectively.

4. Paragraph 9 becomes paragraph 10 and is replaced by the following:

‘(10) The rules on the establishment of a European works council shall not replace the right of employees under the Labour Code to be informed and consulted under Articles 130, 130a and 130b of the Labour Code.’

Section 8. Article 11 is amended as follows:

1. Paragraph 8 is replaced by the following:

‘(8) The members of the European works council shall inform the trade union organisations and employees’ representatives referred to in Article 7(2) of the Labour Code or, in the absence of trade union organisations or elected representatives referred to in Article 7(2) of the Labour Code, the workforce as a whole of the content of the information and the outcome of the consultations carried out.’

2. The following paragraph 9 is inserted:

‘(9) Where necessary for the exercise of their representative duties in an international environment, the members of the European works council or standing committee shall be provided with training. The cost of the training may not be deducted from their wages.’

3. Paragraphs 9 and 10 are renumbered 10 and 11 respectively.

Section 9. Section 1 of the Additional Provision is amended as follows:

1. In subparagraph 5, the second sentence is replaced by the following:

‘An undertaking shall not be deemed to be controlled where it is a company referred to in Article 3(5)(a) or (c) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.’

2. The following Article 16a is inserted:

‘16a ‘Transnational questions’ means questions affecting a multinational undertaking or group of undertakings or at least two undertakings or subsidiaries of a multinational undertaking or group of undertakings located in different Member States.’

3. Subparagraph 17 is amended as follows:

‘17. ‘Information’ means the transmission by the management bodies referred to in Articles 4, 12 and 20 to employees’ representatives of data so that they can acquaint themselves with the subject matter and examine it.

Information shall be given at such time that it does not delay the decision-making process, in such fashion and with such content as are appropriate to enable employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the body of the multinational undertaking or group of undertakings.’

4. Subparagraph 18 is amended as follows:

‘18. ‘Consultation’ means the establishment of dialogue and exchange of views between employees’ representatives and/or their representative body and the relevant management body referred to in Articles 4, 12 and 20 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 the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account in the decision-making of the multinational undertaking or group of undertakings.’

Additional provisions

Section 10. This Act implements the requirements of Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 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 (Recast) (OJ L 122, 16.5.2009, p. 28).

Final provisions

Section 11. This Act shall enter into force as of 5 June 2011.

This Act was adopted by the 41st National Assembly on 15 March 2011 and sealed with the National Assembly's official seal.

President of the National Assembly:

Tsetska Tsacheva

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