

ASSEMBLY OF THE REPUBLIC

Law No 96/2009

of 3 September 2009

European Works Councils

The Assembly of the Republic, pursuant to Article 161(c) of the Constitution, decrees as follows:

CHAPTER I General provisions

Article 1 Objective and scope

1— This Law transposes into national law 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.

2— This Law takes account of the fact that the Community legislation 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 applies in the European Economic Area.

3— In order to exercise the right to information and consultation, employees in Community-scale undertakings and Community-scale groups of undertakings may establish a European Works Council or an information and consultation procedure, which shall, in the case of a Community-scale undertaking, cover all the establishments located within the Member States or, in the case of a Community-scale group of undertakings, all group undertakings located within the Member States, even if the central management is not situated in a Member State, unless a wider scope is provided for in the agreement establishing the European Works Council or information and consultation procedure.

4— The European Works Council or the information and consultation procedure established in a Community-scale group of undertakings shall cover the Community-scale undertakings or groups of undertakings within that group, unless the agreement establishing it provides otherwise.

Article 2 Definitions

For the purposes of this Law:

a) ‘central management’ means the management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the controlling undertaking;

b) ‘consultation’ means the exchange of views between employees’ representatives and central management or any other appropriate level of management, at such time, in such fashion and with such content as enables employees’ representatives to express an opinion on the measures to which the consultation is related, within a reasonable time;

c) ‘Community-scale undertaking’ means any undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of two Member States;

d) ‘Member State’ means a Member State of the European Union or a State signatory to the Agreement on the European Economic Area;

e) ‘Community-scale group of undertakings’ means the group formed by the controlling undertaking and one or more controlled undertakings, where this has at least 1 000 employees within the Member States and two group undertakings in two Member States, with at least 150 employees in each one;

f) ‘information’ means the transmission of data by the central management or any other appropriate level of management to the employees’ representatives, at such time, in such fashion and with such content as enables them to acquaint themselves with, and assess the effects of, the issue in question and to prepare for consultations on it;

g) ‘transnational matter’ means those matters concerning the entire Community-scale undertaking or the entire Community-scale group of undertakings or at least two undertakings or establishments of the undertaking or of the group of undertakings situated in two different Member States.

Article 3

Controlling undertaking

1— An undertaking whose headquarters are in national territory and which belongs to a Community-scale group of undertakings is considered to have control over the group if it can exercise a dominant influence over one or more of the undertakings, by virtue, for example, of ownership of the share capital or the rules which govern it or them.

2— An undertaking is presumed to exercise a dominant influence over another when, directly or indirectly:

- a) it can appoint more than half of the members of the administrative or supervisory body;
- b) it holds more than half of the votes in the general meeting;
- c) it holds a majority of the share capital.

3— For the purposes of the above paragraph, a controlling undertaking’s rights shall include the rights of any controlled undertaking or of any person acting in his own name but on behalf of the controlling undertaking or of any other controlled undertaking. An office-holder exercising his functions in insolvency proceedings shall not be included in this respect.

4— Where two or more undertakings satisfy the criteria referred to in paragraph 2, these shall be applied in order of precedence.

5— 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 shall not be deemed to control an undertaking in which it has holdings.

6— Where the undertaking which controls a group of undertakings does not have its headquarters in a Member State, a group undertaking situated within national territory shall be deemed to exercise control if it represents, for this purpose, the undertaking which controls the group or, where the latter has no representative, if it employs the greatest number of employees of any of the group’s undertakings situated in the Member States.

CHAPTER II
Transnational provisions and agreements

SECTION I
Scope

Article 4
Application of transnational provisions and agreements

1— The provisions of this Chapter shall apply to Community-scale undertakings and groups of undertakings whose central management is situated in national territory, including the respective establishments and undertakings situated in other Member States.

2— Where the central management of the undertaking or group of undertakings is not situated in national territory, the provisions of this Chapter shall still apply provided that:

- a) there is a representative of the central management in national territory;
- b) there is no representative of central management in any Member State and the management of the establishment or group undertaking employing the greatest number of employees in a Member State is situated in national territory.

3— The agreement between the central management and the special negotiating body, in accordance with the legislation in the other Member State within whose territory the central management of the undertaking or group is situated, and the subsidiary provisions of that legislation concerning the establishment of a European Works Council, shall be binding on establishments or undertakings situated in national territory and on the respective employees.

SECTION II
Negotiation procedure

Article 5
Initiation of negotiations

1— The central management shall promote negotiations for the establishment of a European Works Council or an information and consultation procedure on its own initiative or at the written request of at least 100 employees in at least two establishments of a Community-scale undertaking or two undertakings in that group, provided that they are situated in different Member States, or their representatives.

2— The central management may express the wish to negotiate in a communication to the employees of the undertaking or group.

3— The employees or their representatives may express the wish to initiate negotiations to the central management or to the managements of the establishments or undertakings in which the employees are employed, who will in this case forward this to the central management.

4— Infringement of the provisions of the final part of the above paragraph shall constitute a serious administrative offence.

Article 6
Special negotiating body

1— In the negotiations referred to in the above Article, the employees of the Community-scale undertaking or Community-scale group of undertakings shall be represented

by a special negotiating body consisting of a number of members in proportion to the number of employees employed in each Member State, with each Member State being entitled to 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— The special negotiating body shall notify its composition to the competent European workers' and employers' organisations and to the central management, which shall inform the managements of the undertaking's establishments or group undertakings.

3— If, during the negotiations, there is a change in the structure of the undertaking or group or a change in the number of employees in the establishments or undertakings, where this is relevant for the purposes of the above paragraph, the composition of the special negotiating body shall be modified accordingly, without prejudice to the time-limits laid down in Article 12.

4— The members of the special negotiating body who represent employees in establishments or undertakings situated in national territory shall be appointed or elected in accordance with Article 26.

Article 7

Negotiation of the information and consultation agreement

1— The central management shall initiate negotiations with the special negotiating body on an agreement on the information and consultation of employees. This situation shall be notified to the managements of the undertaking's establishments or the group's undertakings and to the competent European workers' and employers' organisations.

2— The special negotiating body shall have the right to meet immediately before and after any negotiation meeting.

3— Unless otherwise agreed, the representatives of employees of establishments or undertakings not situated in Member States may be present at the negotiations as observers, without the right to vote.

4— The special negotiating body may be assisted by experts of its choice, particularly representatives of corresponding workers' organizations recognised at Community level.

5— The central management and the special negotiating body shall respect the principles of good faith during the negotiations.

6— The central management and the special negotiating body may agree, in writing, to establish a European Works Council or one or more information and consultation procedures.

7— The special negotiating body may decide by a majority to conclude the agreement referred to in the above paragraph.

8— The special negotiating body may decide, by two-thirds of the votes, not to open negotiations or to terminate negotiations already in progress.

9— In the case referred to in the above paragraph, the employees or their representatives may only propose opening new negotiations at the earliest two years after the abovementioned decision, unless the parties lay down a shorter period.

10— Infringement of the provisions of paragraphs 1, 2, 3 or 4 shall constitute a serious administrative offence.

SECTION III Information and consultation agreement

Article 8 Content of the agreement

1— Without prejudice to the provisions of the following Articles, the agreement establishing the European Works Council or one or more information and consultation procedures shall determine:

a) the establishments of the undertaking or the undertakings of the group which are covered by the agreement;

b) the frequency of the information to be provided by the central management on the number of employees working for the establishments of the undertaking or the undertakings of the group covered by the agreement;

c) the number and distribution of the employees' representatives for the Member States involved, taking into account where possible the need for balanced representation of employees with regard to their activities, occupational category and gender, and the term of office, and the changes needed where the structure of the undertaking or group changes;

d) the number of members, the appointment procedure, the functions and the procedural rules of the select committee, where this is set up;

e) the rules governing the agreement as regards with the applicable legislation, the date of entry into force and its duration, the arrangements for amending or terminating the agreement, particularly where the structure of the Community-scale undertaking or Community-scale group of undertakings changes, and the procedure for its renegotiation.

2— The agreement may regulate other matters, including the criteria for classifying as confidential any information to be provided by the central management.

3— Infringement of the agreement in the part relating to the provisions of paragraph 1(*b*) shall constitute a serious administrative offence.

Article 9 Establishment of the European Works Council

1— The agreement establishing the European Works Council shall determine:

a) the European Works Council's rights to information and consultation on transnational matters, the procedures for exercising these rights, and the link with the information and consultation rights of other structures collectively representing employees;

b) the venue, frequency and duration of meetings of the European Works Council;

c) the financial and material resources to be allocated to the European Works Council by the central management.

2— Where the agreement does not regulate the link referred to in paragraph 1(*a*), the European Works Council and other structures collectively representing employees shall be duly informed and consulted whenever decisions arise that may involve significant changes to the organisation of work or to employment contracts.

3— The right to information and consultation shall be observed by the central management or any other relevant level of representation, within a reasonable time.

4— The members of the European Works Council who represent employees of the establishments or undertakings situated in national territory shall be appointed or elected in accordance with Article 26.

5— Infringement of the agreement in the part relating to the provisions of paragraph 1(a) or (b) shall constitute a very serious administrative offence, and infringement of the agreement in the part relating to the provisions of paragraph 1(c) shall constitute a serious administrative offence.

Article 10

Establishment of one or more information and consultation procedures

1— The agreement establishing one or more information and consultation procedures shall determine:

a) the rights to information and consultation on transnational matters likely to significantly affect employees' interests and, in this case, other rights;

b) the right of employees' representatives to meet in order to assess information provided by the central management.

2— The right to information and consultation shall be observed by the central management or any other relevant level of representation, within a reasonable time.

3— Representatives of employees of establishments or undertakings situated in national territory shall be appointed or elected in accordance with Article 26.

4— Infringement of the agreement in the part relating to the provisions of paragraph 1(a) or (b) shall constitute a very serious administrative offence.

Article 11

Communications to the Ministry of Employment

1— The central management shall inform the competent department of the Ministry of Employment of the agreement's content.

2— The European Works Council and the employees' representatives involved in the information and consultation procedure shall inform the department referred to in the above paragraph of the identity and countries of origin of the members.

3— Where the central management is situated in another Member State, the employees' representatives appointed within national territory shall communicate their identity in accordance with the above paragraph.

4— Infringement of the provisions of paragraph 1 shall constitute a minor administrative offence.

SECTION IV

Compulsory establishment of the European Works Council

Article 12

Cases in which the establishment of the European Works Council is compulsory

A European Works Council, regulated in accordance with this Section, shall be established in a Community-scale undertaking or group of undertakings in the following cases:

a) where the central management refuses to commence negotiations within six months of the request to open negotiations being made by the employees or their representatives;

b) where an agreement has not been reached after three years from a wish to negotiate being expressed by the central management or from the request to open negotiations being made by the employees or their representatives if prior, and the special negotiating body has not decided to open negotiations or terminate those already opened.

Article 13

Composition of the European Works Council

1 — The provisions of Article 6(1) shall apply to the composition of the European Works Council.

2 — The members of the European Works Council shall be employees of the undertaking or group of undertakings.

3 — The members of the European Works Council who represent employees of establishments or undertakings situated in national territory shall be appointed or elected in accordance with Article 26.

4 — The European Works Council shall notify the identity and countries of origin of its members to the central management, which shall inform the managements of the undertaking's establishments or group's undertakings.

Article 14

Operation of the European Works Council

1 — The activities of the European Works Council shall be coordinated by a select committee with up to five members, elected from among its members.

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

3 — Before any meeting with the central management, the European Works Council or the select committee shall have the right to meet. In the latter case, other members of the Council who represent employees of establishments or undertakings directly affected by the measures in question may also participate in such meetings.

4 — The European Works Council and the select committee may be assisted by experts of their choice, insofar as this is necessary for them to carry out their tasks.

5 — Infringement of the provisions of paragraph 3 shall constitute a serious administrative offence.

Article 15

Information and consultation of the European Works Council

1 — The European Works Council shall have the right to be informed and consulted by the central management or any other relevant level of representation, within a reasonable time, on transnational matters, in particular the situation and probable trend of employment, investments, 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.

2 — The European Works Council shall also have the right to be informed, in particular, on the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings.

3 — The European Works Council shall also have the right to be informed and consulted by the central management on any measures affecting the employees' interests to a considerable

extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies.

4— In the case referred to in the above paragraph and without prejudice to the provisions of Article 17, the European Works Council shall have the right to meet, at its request, the central management, or any other level of representation competent to take decisions, so as to be informed and consulted on the measures in question.

5— Before the meeting referred to in the above paragraph, the central management shall present the European Works Council with a detailed and documented report on the proposed measures.

6— The meeting shall take place as soon as possible and, where the meeting is requested by the select committee, other members of the European Works Council who represent employees of establishments or undertakings directly affected by the measures shall also have the right to participate in the meeting.

7— The select committee or the European Works Council may issue an opinion on the measures referred to in paragraph 2 either during the meeting or within 15 days thereof or even within a longer period where agreed.

8— Infringement of the provisions of paragraphs 1, 2, 3, 4 or 5 shall constitute a very serious administrative offence, and infringement of the provisions of paragraph 6 shall constitute a serious administrative offence.

Article 16

Annual report of the central management

1— The central management shall present the European Works Council with a detailed and documented annual report on the progress of the business of the undertaking or group of undertakings. This report shall also be presented to the managements of the establishments or group undertakings.

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

3— Infringement of the provisions of this Article shall constitute a very serious administrative offence.

Article 17

Meeting with the central management

1— After receiving the annual report, the European Works Council shall have the right to meet with the central management at least once a year in order to be informed and consulted.

2— The meeting referred to in the above paragraph shall be held one month after the report has been received, unless the European Works Council agrees to a shorter period.

3— The central management shall inform the managements of the undertaking's establishments or the group's undertakings of the holding of the meeting.

4— The central management and the European Works Council shall, by agreement, lay down the procedural rules for these meetings.

5— Infringement of the provisions of paragraphs 1 or 2 shall constitute a very serious administrative offence.

Article 18

Negotiation of an information and consultation agreement

1— Four years after its compulsory establishment, the European Works Council may propose to the central management that a European Works Council or an information and consultation procedure be established by agreement.

2— The central management shall respond to the proposal and the parties shall respect the principles of good faith during the negotiations.

3— The provisions of Articles 8 to 11 shall apply to the agreement.

4— In the event of agreement, the provisions of this Section shall cease to apply from the appointment or election of the members of the European Works Council thus established or of the employees' representatives in the context of the information and consultation procedure.

5— Infringement of the provisions of paragraph 2 shall constitute a very serious administrative offence.

SECTION V

Common provisions

Article 19

Relations between the central management and the employees' representatives

The central management, the members of the European Works Council and the employees' representatives shall cooperate and act in good faith while exercising their rights and carrying out their respective duties in the context of the information and consultation procedure.

Article 20

Confidential information and judicial review

1 — The provisions of the Labour Code [*Código do Trabalho*] on the duty of confidentiality with regard to information received by structures collectively representing employees in the exercise of the information and consultation right shall apply to members of the special negotiating body, to experts from the latter and from the European Works Council, and to employees' representatives in the context of the information and consultation procedure.

2 — The provisions of the above paragraph shall extend to representatives of employees of establishments or undertakings situated in countries that are not Member States and who attend the negotiations pursuant to Article 7(3).

3 — The central management may only classify information as confidential or refuse to provide information under the terms of the agreement or, where this does not exist, under the terms of the law.

4 — The decision referred to in the above paragraph shall be justified, where possible, without jeopardising the confidentiality of the information.

5 — The special negotiating body, the European Works Council and the employees' representatives in the context of the information and consultation procedure may challenge the central management's decision to require confidentiality, not to provide certain information and not to carry out a consultation, under the terms of the Code of Labour Procedure [*Código de Processo do Trabalho*].

6 — Infringement of the provisions of paragraph 3 shall constitute a very serious administrative offence.

Article 21

Information of local representatives or employees' representatives

The members of the European Works Council shall inform representatives of employees of the undertaking's establishments or group's undertakings or, in the absence of such representatives, all the employees of the information received and the outcome of the consultations held.

Article 22

Financial and material resources

1— The central management shall:

- a) pay the negotiating costs of the special negotiating body, so as to enable it to appropriately perform its duties;
- b) provide the European Works Council with the financial resources needed for its operation, including that of the select committee;
- c) pay the costs of at least one expert from the special negotiating body or the European Works Council;
- d) provide the members of the special negotiating body and the European Works Council with the training needed to perform their duties, without any loss of pay.

2— The costs of the observers referred to in Article 7(3) shall not be covered by the above paragraph.

3— The costs referred to in paragraph 1 shall include in particular those for the organisation of meetings, translations, subsistence and travel, and also the expert's remuneration.

4— With regard to the European Works Council, the provisions of the above paragraph may be regulated differently by agreement with the central management, except with regard to the costs of one expert.

5— The central management may pay the subsistence and travel costs of members of the special negotiating body and the European Works Council, based on the rules on travel for work purposes in the establishments or undertakings in which they are employed and, with regard to the expert's costs, based on the rules applicable to members from the same Member State.

6— In applying the criterion referred to in the above paragraph, all members of the special negotiating body or the European Works Council shall be treated equally in terms of payment of subsistence and travel costs.

7— The special negotiating body, the European Works Council, the select committee and the employees' representatives in the context of the information and consultation procedure shall have a right to the material and technical resources needed to perform their duties, including installations and premises for displaying information.

8— Infringement of the provisions of paragraph 1 shall constitute a very serious administrative offence, and infringement of the provisions of paragraphs 6 or 7 shall constitute a serious administrative offence.

CHAPTER III National provisions

Article 23 Scope of national provisions

The provisions of this Chapter shall apply to establishments and undertakings situated in national territory, which belong to Community-scale undertakings or groups of undertakings whose central management is situated in any other Member State, and also to representatives of the respective employees.

Article 24 Calculation of the number of employees

1— For the purposes of this Chapter, the number of employees of establishments or undertakings shall be regarded as the average number of employees in the two years prior to the initiation of negotiations or the compulsory establishment of the European Works Council, in accordance with Article 5 or Article 12.

2— For the purposes of the above paragraph, part-time employees shall be taken into account regardless of their normal number of working hours.

3— The central management of the undertaking or, where this does not have a representative, the central management of the undertaking or establishment employing the greatest number of employees among the group undertakings situated in Member States shall inform interested parties, at their request, of the number of employees and their distribution by Member State.

4— Infringement of the provisions of the above paragraph shall constitute a very serious administrative offence.

Article 25 Employees' representatives for the purpose of requesting the commencement of negotiations

For the purpose of requesting the commencement of negotiations as stipulated in Article 5(1), the workers' committee and trade union organisations shall be regarded as employees' representatives.

Article 26 Appointment or election of members of the special negotiating body and the European Works Council

1— Within two months of the central management's initiative or the request for negotiations referred to in Article 5(1), or in the case set out in Article 12, which lays down the compulsory establishment of the European Works Council, representatives of employees of establishments or undertakings situated in national territory shall be appointed in the following order:

a) by agreement between the workers' committee and trade union organisations or between the works councils of group undertakings and trade union organisations;

b) where there are no trade union organisations, by the workers' committee or by agreement between the workers' committees of group undertakings;

c) where there is no workers' committee, by agreement between the trade union organisations which together represent over half of the employees who are trade union members in the establishments or undertakings.

2— Only trade union organisations which represent at least 5% of employees of establishments or undertakings may participate in the appointment of employees' representatives, without prejudice to the provisions of the following paragraph.

3— Trade union organisations which together represent at least 5% of employees may delegate one of their number to participate in the appointment of employees' representatives.

4— Where they are not appointed in accordance with the above paragraphs or where at least one-third of employees so request, employees' representatives shall be elected, by direct secret ballot, from among the candidates proposed by at least 100 or 10% of employees.

5— The notice of elections, proposal of candidates, ballot tables, voting procedure, verification of the election results and their disclosure in establishments or undertakings shall be governed by the provisions applicable to workers' committees, adapted as necessary.

Article 27

Term of office

The term of office of members of the European Works Council in the context of the information and consultation procedure shall be four years, unless otherwise agreed.

Article 28

Protection of employees' representatives

1— The members of the special negotiating body, the employees' representatives in the context of the information and consultation procedure, and the members of the European Works Council shall benefit from the legal protection afforded to members of bodies collectively representing employees and shall have the right to be credited with:

- a) 25 hours per month in order to perform their respective duties;
- b) the time needed to attend meetings with the central management and in preparatory meetings, including travel time.

2— The credit referred to in the above paragraph shall count as actual working hours, including for the purpose of salaries.

3— The credit referred to in paragraph 1(a) may not be added to that resulting from any other body collectively representing employees or from being a trade union representative.

Article 29

Rules on administrative liability

The procedural rules on administrative offences in labour matters contained in the respective law and the provisions of the Labour Code [*Código do Trabalho*] on administrative liability shall apply to the administrative offences resulting from infringement of this Law.

CHAPTER IV
Final and transitional provisions

Article 30

Adaptation of the agreement due to significant changes in the body of the undertaking or group

1 — When significant changes occur in the body of the Community-scale undertaking or group of undertakings, and in the absence of provisions laid down in an agreement or in the event of conflict between the provisions of two or more applicable agreements, the central management shall initiate negotiations in order to adapt the existing agreements to these changes, in accordance with Article 5(1).

2 — In the case indicated in the above paragraph, the special negotiating body shall consist of members appointed or elected in accordance with Article 26 and of at least three members of the European Works Council or of each of the existing European Works Councils.

Article 31

Agreements in force

1 — Without prejudice to the provisions of the above Article, the Community-scale undertaking or group of undertakings which concluded or updated an agreement after Law No 40/99 of 9 June 1999, which provides for the information and consultation of employees or groups of transnational undertakings and which regulates the establishment of European Works Councils or simplified information and consultation procedures in Community-scale undertakings and groups of undertakings, entered into force, shall not be subject to the obligations resulting from this Law.

2 — The agreement referred to in the above paragraph shall continue to be subject to the legislation in force at the time when it was concluded or updated.

Article 32

Entry into force

This Law shall enter into force 60 days after its publication.

Adopted on 23 July 2009.

President of the Assembly of the Republic, *Jaime Gama*.

Enacted on 26 August 2009.

Let it be published.

President of the Republic, ANÍBAL CAVACO SILVA.

Legalised on 26 August 2009.

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