

A.L. 217 tal-2011**ATT DWAR L-IMPIEGI U R-RELAZZJONIJIET
INDUSTRIJALI
(KAP. 452)****Regolamenti tal-2011 dwar il-Kunsill tax-Xogħlijiet Ewropew
(Dispożizzjonijiet Ulterjuri)**

BIS-SAHHA tas-setgħat mogħtija bl-Artikolu 48 tal-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, il-Prim Ministru għamel ir-regolamenti li ġejjin:–

1. (1) It-titolu ta' dawn ir-regolamenti huwa **Regolamenti tal-2011 dwar il-Kunsill tax-Xogħlijiet Ewropew (Dispożizzjonijiet Ulterjuri)**. Titolu u ambitu.

(2) L-iskop ta' dawn ir-regolamenti hu li jtejjeb id-dritt tal-impjegati, f'intraprizi ta' skala Komunitarja u ta' gruppi ta' intraprizi ta' skala Komunitarja, biex ikunu infurmati u konsultati permezz tat-twaqqif ta' Kunsill tax-Xogħlijiet Ewropew jew arrangamenti ekwivalenti biex jiehdu hsieb l-informazzjoni u l-konsultazzjoni tal-impjegati f'kull intrapriza u gruppi ta' intraprizi ta' din ix-xorta kif mitlub bil-mod stabbilit fir-regolament 5 u biex jimplimentaw id-dispożizzjonijiet tad-Direttiva 2009/38/KE tal-UE.

(3) Dawn ir-regolamenti għandhom japplikaw għall-arrangamenti kollha li jimmiraw li jwaqqfu Kunsill tax-Xogħlijiet Ewropew jew arrangamenti oħra biex jiehdu hsieb l-informazzjoni u l-konsultazzjoni tal-impjegati f'intraprizi ta' skala Komunitarja jew ta' gruppi ta' intraprizi ta' skala Komunitarja kif provdut b'dawn ir-regolamenti, li jidhlu fis-seħħ għall-ewwel darba fis-6 ta' Ġunju, 2011 u wara s-6 ta' Ġunju, 2011.

(4) Dawn ir-regolamenti m'għandhomx japplikaw għal:

(a) intraprizi ta' skala Komunitarja u gruppi ta' intraprizi ta' skala Komunitarja li, fit-22 ta' Settembru

1996 diġà kien jeżisti ftehim li jkopri l-forza tax-xogħol fit-totalità tagħha, li jkun jipprovdi għall-informazzjoni u l-konsultazzjoni transnazzjonali tal-impjegati, jew meta ftehim ta' din ix-xorta jigu aġġustati minħabba tibdiliet fl-istruttura tal-intraprizi jew ta' gruppi ta' intraprizi; u

(b) ftehim konkluzi skont ir-regolament 7 tar-Regolamenti tal-2004 dwar il-Kunsill tax-Xogħlijiet Ewropew, li ġew iffirmati jew riveduti bejn il-5 ta' Ġunju 2009 u l-5 ta' Ġunju 2011; u

(ċ) baħrin tal-flotot merkantili navali:

Iżda sa fejn ikollu x'jaqsam il-paragrafu (b), il-liġi nazzjonali applikabbli meta l-ftehim jiġi ffirmat jew rivedut għandha tkompli tapplika għall-intraprizi jew gruppi ta' intraprizi involuti:

A.L. 324 tal-2004.

Iżda wkoll li fil-każ tal-ftehim imsemmija fil-paragrafi (a) u (b), il-liġi applikabbli għandha tkun ir-Regolamenti tal-2004 dwar il-Kunsill tax-Xogħlijiet Ewropew u meta jiskadu dawn il-ftehim, il-partijiet f'dawn il-ftehim jistgħu jiddeciedu b'mod kongunt biex iġeddu jew jirrevedu dawk il-ftehim, f'każ bħal dan, ir-Regolamenti tal-2004 dwar il-Kunsill tax-Xogħlijiet Ewropew għandhom japplikaw. Meta l-ftehim la jigu mġedda u lanqas riveduti, id-dispożizzjonijiet ta' dawn ir-regolamenti għandhom awtomatikament japplikaw.

Tifsir.

2. (1) Għall-finijiet ta' dawn ir-regolamenti:

“l-Att” tfisser l-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali;

“tmexxija ċentrali” tfisser it-tmexxija ċentrali tal-intrapriza ta' skala Komunitarja jew, fil-każ ta' grupp ta' intraprizi ta' skala Komunitarja, tal-intrapriza li tikkontrolla;

“Grupp ta' intraprizi ta' skala Komunitarja” tfisser grupp ta' intraprizi li jkollu l-karatteristiċi li ġejjin:

(a) mill-inqas total ta' 1000 impjegat impjegati fi Stati Membri,

(b) mill-inqas żewġ intraprizi tal-grupp fi Stati Membri differenti, u

(ċ) mill-inqas intrapriża waħda tal-grupp li jkollha mill-inqas 150 impjegat fi Stat Membru wieħed u mill-inqas intrapriża waħda oħra tal-grupp li jkollha mill-inqas 150 impjegat fi Stat Membru ieħor;

“Intrapriża ta’ skala Komunitarja” tfisser kull intrapriża li jkollha mill-inqas 1000 impjegat fl-Istati Membri u li jkollha wkoll mill-inqas 150 impjegat f’kull wieħed minn mill-inqas żewġ Stati Membri;

“konsultazzjoni” tfisser it-twaqqif ta’ djalogo u l-iskambju ta’ fehmiet bejn ir-rappreżentanti tal-impjegati u t-tmexxija ċentrali jew kull livell iżjed adatt ta’ tmexxija f’dak il-ħin, b’dak il-mod u b’dak il-kontenut li, fuq il-bażi tal-informazzjoni mogħtija, jippermettu lir-rappreżentanti tal-impjegati li, fi żmien raġonevoli, jesprimu opinjoni dwar il-miżuri proposti li magħhom il-konsultazzjoni jkollha x’taqsam, mingħajr preġudizzju għar-responsabilitajiet tat-tmexxija, li jistgħu jitqiesu fl-intrapriża ta’ skala Komunitarja jew fil-grupp ta’ intrapriži ta’ skala Komunitarja;

“intrapriża li tikkontrolla” tfisser intrapriża li tista’ teżerċita influwenza dominanti fuq intrapriża oħra, hawn iżjed ’il quddiem imsejha “intrapriża kontrollata”, bis-saħħa ta’, fost raġunijiet oħra, proprjetà, parteċipazzjoni finanzjarja jew ir-regoli li jirregolawha;

“rappreżentanti tal-impjegati” tfisser jew ir-rappreżentant tal-*union* rikonoxxuta jew, fil-każ ta’ impjegati li m’humix f’*union*, ir-rappreżentant jew rappreżentanti eletti kif imiss minn fost l-impjegati;

“Kunsill tax-Xogħlijiet Ewropew” tfisser kunsill stabbilit skond is-subregolament (2) tar-regolament 1 tiegħu jew id-dispożizzjonijiet tal-Iskeda li tinsab ma’ dawn ir-regolamenti bil-għan li jiġu informati u konsultati l-impjegati;

“grupp ta’ intrapriži” tfisser intrapriża li tikkontrolla u l-intrapriži kontrollati minnha;

“informazzjoni” tfisser it-trażmissjoni ta’ *data* mingħand il-prinċipal lir-rappreżentanti tal-impjegati sabiex jiffaċilita li dawn jiffamiljarizzaw irwieħhom mal-materja tas-suġġett u biex ikunu jistgħu jeżaminawha. Dik l-informazzjoni għandha tkun mogħtija f’dak il-waqt, b’dak il-mod u b’dak il-kontenut

hekk kif ikun adatt sabiex tippermetti lir-rappreżentanti tal-impjegati li jwettqu evalwazzjoni dettaljata tal-impatt possibbli u meta jkun adatt jippreparaw konsultazzjonijiet mal-korp kompetenti tal-intrapriża ta' skala Komunitarja jew tal-grupp ta' intrapriži ta' skala Komunitarja;

“Stat Membru” tfisser stat membru tal-Unjoni Ewropea jew stat fi ħdan iż-Żona Ekonomika Ewropea jew kull stat ieħor skond mal-Ministru jista' jordna;

“Korp Speċjali għan-Negozjar” tfisser il-korp stabbilit skond ir-regolament 6 ta' dawn ir-regolamenti biex jinneozja mat-tmexxija ċentrali dwar it-twaqqif ta' Kunsill tax-Xogħlijiet Ewropew jew proċedura għall-informazzjoni u l-konsultazzjoni tal-impjegati skond is-subregolament tar-regolament 1.

(2) Bla ħsara għad-dispożizzjonijiet tas-subregolament (1) ta' dan ir-regolament, kliem u frażijiet użati f'dawn ir-regolamenti għandu jkollhom, sakemm ir-rabta tal-kliem ma tkunx teħtieġ xort' oħra, it-tifsira mogħtija lilhom fl-Att.

(3) Fin-nuqqas ta' tifsira mogħtija f'dawn ir-regolamenti, il-kliem u l-espressjonijiet użati f'dawn ir-regolamenti li jintużaw ukoll fid-Direttiva 2009/38/KE għandu jkollhom l-istess tifsira bħal dik li għandhom fid-Direttiva.

(4) Għall-finijiet ta' dawn ir-regolamenti, il-livelli ordnati biex jiddeterminaw jekk intrapriża tkunx intrapriża ta' skala Komunitarja jew grupp ta' intrapriži ta' skala Komunitarja, fil-każ tal-impjegati f'Malta, għandhom ikunu bbażati fuq il-medja ta' impjegati li kienu impjegati tul il-perjodu ta' sentejn li jagħlaq fl-aħħar gurnata tax-xahar li jiġi qabel ix-xahar li matulu tkun saret talba skond ir-regolament 5 ta' dawn ir-regolamenti, kemm jekk dawn l-impjegati jkollhom kuntratt definit kemm jekk dan ikun wieħed indefinit, u jinkludi impjegati *part-time*.

(5) Il-ħila ta' intrapriża li teżercita influwenza dominanti għandha tkun preżunta, sakemm ma jkunx ippruvat il-kuntrarju, meta, f'relazzjoni ma' intrapriża oħra, direttament jew indirettament, intrapriża:

(a) jkollha maġġoranza tal-kapital sottoskritt ta' dik l-intrapriża;

(b) tkun tikkontrolla maġġoranza tal-voti marbutin mal-kapital ta' ishma maħruġ ta' dik l-intrapriża; jew

(ċ) tista' taħtar aktar minn nofs il-membri tal-korp amministrattiv, maniġerjali jew ta' superviżjoni ta' dik l-intrapriża.

(6) Għall-finijiet tas-subregolament (5) ta' dan ir-regolament, id-drittijiet li l-intrapriża li tikkontrolla jkollha fir-rigward tal-votazzjoni u l-ħatriet, għandhom jinkludu d-drittijiet ta' kull intrapriża kontrollata oħra, u dawk ta' kull persuna li taġixxi f'isimha jew korp li jaġixxi f'ismu iżda f'isem l-intrapriża li tikkontrolla jew f'isem xi intrapriża kontrollata minnha oħra.

(7) Minkejja dak imsemmi f'dawn ir-regolamenti, intrapriża ma għandhiex titqies bħala "intrapriża li tikkontrolla" fir-rigward ta' intrapriża oħra li jkollha ishma fiha meta l-intrapriża hawn qabel imsemmija l-ewwel tkun kumpannija li tissemma fl-Artikolu 3(5)(a) jew (ċ) tar-Regolament tal-Kunsill (KE) Nru. 139/2004 tal- 20 ta' Jannar 2004, fuq il-kontroll ta' koncentrazzjonijiet bejn intrapriži.

(8) Influwenza dominanti ma għandhiex tkun preżunta li tkun eżerċitata biss bis-saħħa tal-fatt li detentur ta' kariga jkun qed jeżerċita l-funzjonijiet tiegħu, skond il-liġi tal-Istat Membru li tkun tirrigwarda stralċ, xoljiment, insolvenza, twaqqif ta' pagamenti, kompożizzjoni ta' kredituri jew proċedimenti bħal dawk.

(9) Il-liġi applikabbli sabiex tistabbilixxi jekk intrapriża tkunx intrapriża li tikkontrolla għandha tkun il-liġi tal-Istat Membru li jirregola dik l-intrapriża. Meta l-liġi li tkun tirregola intrapriża ma tkunx dik ta' Stat Membru, il-liġi applikabbli tkun il-liġi tal-Istat Membru li fit-territorju tiegħu jkun jinsab ir-rappreżentant tal-intrapriża jew, fin-nuqqas ta' dak ir-rappreżentant, it-tmexxija ċentrali tal-grupp tal-intrapriża li jimpjega l-ogħla numru ta' impjegati f'xi wieħed mill-Istati Membri.

(10) Meta, fil-każ ta' konflitt ta' liġijiet fl-applikazzjoni tas-subregolament (5) ta' dan ir-regolament, żewġ intrapriži jew aktar minn grupp, kemm jekk jinsabu f'Malta jew f'xi Stat Membru ieħor, jissodisfaw xi wieħed jew aktar mill-kriterji mnizzlin f'dak is-subregolament, l-intrapriża li tissodisfa l-kriterju mnizzel fil-paragrafu (ċ) tas-subregolament (5) għandha titqies bħala l-intrapriża li tikkontrolla, bla preġudizzju għall-prova li intrapriża oħra tista' tkun tista' teżerċita influwenza dominanti.

Għanijiet.

3. (1) L-arranġamenti għall-informazzjoni u l-konsultazzjoni tal-impjegati għandhom jiġu mfissra u implimentati b'dak il-mod li tiġi żgurata l-effettività tagħhom u li l-intrapriża jew il-grupp ta' intrapriži jkunu jistgħu jieħdu d-deċiżjonijiet b'mod effettiv.

(2) L-informazzjoni u l-konsultazzjoni tal-impjegati għandhom isiru fil-livell rilevanti ta' tmexxija u rappreżentazzjoni, skond is-sugġett li jkun qed jiġi diskuss. Għal dan il-għan, il-kompetenza tal-Kunsill tax-Xogħlijiet Ewropew u l-ambitu tal-proċedura ta' informazzjoni u konsultazzjoni tal-impjegati regolati minn dawn ir-regolamenti għandhom ikunu limitati għal kwistjonijiet transnazzjonali:

Iżda kwistjonijiet jitqiesu li huma transnazzjonali meta jkunu jikkonċernaw lill-intrapriża ta' skala Komunitarja jew lill-grupp ta' intrapriži ta' skala Komunitarja kollu kemm hu, jew mill-inqas żewġ intrapriži jew stabbilimenti tal-intrapriża jew tal-grupp li jkunu jinsabu f'żewġ Stati Membri differenti.

(3) Minkejja dak kollu msemmi f'dawn ir-regolamenti, meta grupp ta' intrapriži ta' skala Komunitarja jinkludi intrapriża waħda jew iktar jew grupp ta' intrapriži wieħed jew iktar li huma intrapriži ta' skala Komunitarja jew gruppi ta' intrapriži ta' skala Komunitarja, għandu jiġi stabbilit Kunsill tax-Xogħlijiet Ewropew fil-livell tal-grupp sakemm fir-regolament 7 ma jkunx provdut mod ieħor.

(4) Sakemm ma jkunx ipprovdut ambitu aktar wiesgħa fil-ftehim imsemmija fir-regolament 7 ta' dawn ir-regolamenti, is-setgħat u l-kompetenza tal-Kunsilli tax-Xogħlijiet Ewropej u l-ambitu tal-proċeduri ta' informazzjoni u konsultazzjoni stabbiliti sabiex jiksbu l-għan speċifikat fis-subregolament (2) tar-regolament 1 għandhom, fil-każ ta' intrapriża ta' skala Komunitarja, ikopru l-istabbilimenti kollha li jinsabu għewwa l-Istati Membri u, fil-każ ta' grupp ta' intrapriži ta' skala Komunitarja, l-intrapriži kollha tal-grupp li jinstabu fl-Istati Membri.

Responsabbiltajiet tat-tmexxija ċentrali.

4. (1) It-tmexxija ċentrali għandha tkun responsabbli biex toħloq il-kondizzjonijiet u mezzi neċessarji għat-twaqqif ta' Kunsill tax-Xogħlijiet Ewropew jew proċedura ta' informazzjoni u konsultazzjoni f'intrapriża ta' skala Komunitarja jew grupp ta' intrapriži ta' skala Komunitarja meta:

(a) it-tmexxija ċentrali tkun tinsab f'Malta;

(b) it-tmexxija ċentrali ma tkunx tinsab fi Stat Membru u l-aġent rappreżentattiv tat-tmexxija ċentrali (li għandu jinħatar jekk ikun meħtieġ) ikun jinsab f'Malta; jew

(ċ) la t-tmexxija ċentrali u lanqas l-aġent rappreżentattiv tat-tmexxija ċentrali (kemm għaliex ikun maħtur kemm jekk le) ikun jinsab fi Stat Membru u –

(i) fil-każ ta' intrapriża ta' skala Komunitarja, ikun hemm impjegati fi stabbiliment, li jkun jinsab f'Malta, aktar impjegati min-numru ta' impjegati f'xi stabbiliment ieħor li jkun jinsab fi Stat Membru ieħor, jew

(ii) fil-każ ta' grupp ta' intrapriži ta' skala Komunitarja, ikun hemm impjegati f'intrapriża tal-grupp li tkun tinsab f'Malta aktar impjegati min-numru ta' impjegati f'xi intrapriża oħra tal-grupp li tkun tinsab fi Stat Membru ieħor,

u t-tmexxija ċentrali tibda, jew tkun meħtieġa tibda, negozjati għal Kunsill tax-Xogħlijiet Ewropew jew proċedura ta' informazzjoni u konsultazzjoni skond ir-regolament 5 ta' dawn ir-regolamenti.

(2) Meta jkunu japplikaw iċ-ċirkostanzi kif hemm fil-paragrafi (b) jew (ċ) tas-subregolament (1) tiegħu, it-tmexxija ċentrali għandha titqies, għall-finijiet ta' dawn ir-regolamenti, bħala li tinsab f'Malta u –

(a) l-aġent rappreżentattiv imsemmi fil-paragrafu (b) tas-subregolament (1); jew

(b) it-tmexxija tal-istabbiliment imsemmija fil-partita (i), fil-paragrafu (ċ) tas-subregolament tiegħu jew tal-intrapriża tal-grupp imsemmija fis-subregolament (1) ta' dawn ir-regolamenti, għandhom jitqiesu, rispettivament, bħala t-tmexxija ċentrali.

(3) Għandu jkun id-dmir ta':

(a) t-tmexxija tal-istabbilimenti ta' intrapriża ta' skala Komunitarja li tinsab f'Malta, u

(b) t-tmexxija tal-intraprizi li jiffirmaw parti minn grupp ta' intraprizi ta' skala Komunitarja li jinsabu f'Malta, u

(ċ) ir-rappreżentanti tal-impjegati jew, skond kif inhu l-każ, l-impjegati,

li jkunu konformi mad-dispożizzjonijiet rilevanti ta' dawn ir-regolamenti, irrISPETTIVAMENT jekk it-tmexxija ċentrali tkunx f'Malta jew le.

(4) It-tmexxija ta' kull intrapriża li tagħmel parti mill-grupp ta' intraprizi ta' skala Komunitarja u t-tmexxija ċentrali jew it-tmexxija ċentrali skond it-tifsira tas-subregolament (2) ta' dan ir-regolament, tal-intrapriża jew tal-grupp ta' intraprizi ta' skala Komunitarja għandha tkun responsabbli għall-ksib u t-trażmissjoni lill-partijiet involuti bl-applikazzjoni ta' dawn ir-regolamenti, l-informazzjoni meħtieġa għall-bidu tan-negozjati msemmija fir-regolament 5 ta' dawn ir-regolamenti, u b'mod partikolari l-informazzjoni dwar l-istruttura tal-intrapriża jew tal-grupp u l-forza tax-xogħol tiegħu, li tkun tinkludi, b'mod partikolari, l-informazzjoni dwar l-għadd ta' impjegati.

Twaqqif ta' Korp Speċjali għan-Negozjar.

5. (1) Sabiex jintlaħaq l-għan stabbilit fis-subregolament (2) tar-regolament 1 ta' dawn ir-regolamenti, ikun id-dmir tat-tmexxija ċentrali li twaqqaf Korp Speċjali għan-Negozjar biex jinnegozja mat-tmexxija ċentrali t-twaqqif ta' Kunsill tax-Xogħlijiet Ewropew jew proċedura għall-informazzjoni u l-konsultazzjoni.

(2) It-tmexxija ċentrali għandha tibda tiegħu passi biex taqdi l-obbligi msemmija fis-subregolament (1) tiegħu , jew

(a) b'inizjattiva tagħha stess, jew

(b) meta tircievi talba jew talbiet bil-miktub mill-inqas minn total ta' 100 impjegat, jew mir-rappreżentanti tal-impjegati li mill-inqas jirrappreżentaw dak in-numru, f'mill-inqas żewġ intraprizi jew stabbilimenti f'mill-inqas żewġ Stati Membri differenti, indirizzati jew lit-tmexxija ċentrali jew lit-tmexxija lokali, kemm jekk jaslu bħala talba waħda jew kemm bħala numru ta' talbiet separati, f'data waħda jew f'dati differenti.

(3) It-tmexxija ċentrali għandha tibda negozjati fuq it-twaqqif ta' Kunsill tax-Xogħlijiet Ewropew fi żmien sitt xhur mid-data tal-wasla tat-talba bil-miktub.

(4) Meta t-talba ssir lit-tmexxija lokali bis-saħħa tal-paragrafu (b) tas-subregolament (2) tiegħu, it-tmexxija lokali għandha tiżgura li t-talba tingħadda lit-tmexxija ċentrali fi żmien 15-il gurnata tax-xogħol minn meta tasal u kull dewmien li jista' jkun evitat jew mhux raġonevoli wara dak iż-żmien għat-trasmissjoni tat-talba lit-tmexxija ċentrali ma għandux minnu nnifsu jtawwal il-perjodu ta' sitt xhur imsemmi fis-subregolament (3) ta' dan ir-regolament.

6. (1) Il-Korp Speċjali għan-Negożjar għandu jkollu l-funzjoni li jistabbilixxi mat-tmexxija ċentrali, bi ftehim bil-miktub, l-iskop, il-kompożizzjoni, il-funzjonijiet u l-perjodu fil-kariga tal-Kunsill tax-Xogħlijiet Ewropew jew arrangamenti għall-implimentazzjoni ta' proċedura għall-informazzjoni u l-konsultazzjoni tal-impjegati.

Elezzjoni, ħatra, funzjonijiet u proċeduri tal-Korp Speċjali għan-Negożjar.

(2) Il-membri tal-Korp Speċjali għan-Negożjar għandhom jiġu eletti jew maħtura fi proporzjon mal-għadd ta' impjegati li jkunu impjegati f'kull Stat Membru mill-intrapriża ta' skala Komunitarja jew grupp ta' intrapriži ta' skala Komunitarja, billi jiġi allokati, fir-rigward ta' kull Stat Membru sigġu wieħed għal kull porzjon ta' impjegati li jkunu impjegati f'dak l-Istat Membru ekwivalenti għal 10 % jew frazzjoni tagħha, tal-għadd ta' impjegati li jkunu impjegati fl-Istati Membri kollha meħuda flimkien.

(3) Il-metodu ta' għażla tal-membri li jirrappreżentaw lill-impjegati li jkunu impjegati mill-intrapriża jew, skond il-każ, il-grupp ta' intrapriži, li jkunu jinsabu f'Malta biex iservu fil-Korp Speċjali għan-Negożjar għandu jkun dak ta' elezzjoni minn fost kandidati eligibbli li jissodisfaw il-kriterji mniżżlin fil-paragrafu (a) tas-subregolament (3) ta' dawn ir-regolamenti u li fid-data tan-nomina tagħhom ikunu fl-impjieg iżda ma jkunux waqt il-perjodu tal-impieg bi prova, u t-tmexxija ċentrali għandha taħtar persuna responsabbli biex taġixxi ta' kontrollur tal-votazzjoni sabiex jieħu ħsieb il-proċess kollu tan-nomina u elezzjoni, u kull spiża li jkollha x'taqsam mal-proċess tal-ħatra jew elezzjoni tal-Korp Speċjali għan-Negożjar għandhom isiru mit-tmexxija ċentrali.

(4) Id-data għan-nomina ta' kandidati, li għandha tkun stabbilita mill-kontrollur tal-votazzjoni, għandha tkun fi żmien xahrejn mid-data minn meta tkun saret it-talba biex jinbdew negożjati fuq ftehim biex jitwaqqaf Kunsill tax-Xogħlijiet Ewropew jew minn meta t-tmexxija ċentrali tkun ħadet id-deċiżjoni li tibda negożjati fuq inizjattiva tagħha nnifisha, skond liema data tiġi l-ewwel.

(5) Meta n-numru ta' kandidati fil-ġurnata tan-nomini jkun daqs in-numru ta' rappreżentanti li għandhom jiġu eletti għall-Korp Speċjali għan-Negożjar, dawn għandhom jitqiesu awtomatikament mahturin fil-Korp Speċjali għan-Negożjar.

(6) Meta n-numru ta' kandidati fil-ġurnata tan-nomini jaqbez in-numru ta' rappreżentanti li għandhom jiġu eletti fil-Korp Speċjali għan-Negożjar, għandhom isiru arrangamenti mit-tmexxija biex issir votazzjoni sigrieta biex ikun elett in-numru meħtieġ ta' rappreżentanti.

(7) Arrangamenti biex issir din l-elezzjoni għandhom ikunu finalizzati mit-tmexxija ċentrali fi żmien xahar mid-data tan-nomini tal-kandidati kif provdut fis-subregolament (4) ta' dan ir-regolament u t-tmexxija ċentrali għandha tiżgura li l-proċess tan-nomini u l-elezzjoni nnifisha jkunu kontrollati mill-kontrollur tal-votazzjoni. L-elezzjoni nnifisha, jekk tkun meħtieġa, għandha ssir fi żmien xahrejn mid-data tan-nomini tal-kandidati kif provdut fis-subregolament (4) ta' dan ir-regolament.

(8) Kull impjegat li jkun impjegat fil-ġurnata jew granet tal-elezzjoni u jkun jissodisfa l-kriterji msemmija fis-subregolament (4) tar-regolament 2 għandu jkun intitolat li jivvota f'din l-elezzjoni.

(9) Kull persuna tista' tressaq ilment bil-miktub fir-rigward ta' kull aspett li jkollu x'jaqsam mal-elezzjoni tar-rappreżentanti fil-Korp Speċjali għan-Negożjar li jkun jinkludi l-eligibilità li wiehed jikkontesta l-elezzjoni, l-eligibilità għall-vot jew l-organizzazzjoni ta' din l-elezzjoni, lid-Direttur responsabbli għar-Relazzjonijiet Industrijali u l-Impieg, li għandu jinvestiga jekk dak l-ilment ikunx fondat u li jista' jordna li jittieħdu mizuri xierqa minn kull persuna involuta biex jitneħħew ir-raġunijiet għal ilmenti fondati, u kull deċiżjoni meħuda mid-Direttur fuq kull materja li jkollha x'taqsam mal-organizzazzjoni tal-elezzjoni tkun finali.

(10) Ikun id-dmir tal-kontrollur tal-elezzjoni li jgħaddi r-rizultati formali tal-proċess tan-nomini jew tal-elezzjoni li ssir biex jinħatar il-Korp Speċjali għan-Negożjar lit-tmexxija ċentrali, lit-tmexxija lokali, u l-organizzazzjonijiet kompetenti Ewropej tal-ħaddiema u tal-prinċipali kemm jista' jkun malajr, u f'kull każ fi żmien xahar wara d-data tal-elezzjoni jew ħatra tal-membri tiegħu. Barra minn hekk, it-tmexxija ċentrali, it-tmexxija lokali u l-organizzazzjonijiet kompetenti Ewropej tal-ħaddiema u tal-

prinċipali għandhom ikunu infurmati meta jibdew in-negozjati bejn il-Korp Speċjali għan-Negozjar u t-tmexxija.

(11) Bil-ħsieb li jintlaħaq il-ftehim imsemmi fir-regolament 7 ta' dawn ir-regolamenti, it-tmexxija ċentrali għandha tlaqqa' laqgħa mal-Korp Speċjali għan-Negozjar u għandha tgħarraf b'dan lil kull tmexxija lokali.

(12) Qabel u wara kull laqgħa mat-tmexxija ċentrali, il-Korp Speċjali għan-Negozjar għandu jkun intitolat li jiltaqa' mingħajr il-preżenza tar-rappreżentanti tat-tmexxija ċentrali, bl-użu ta' kull mezz ta' komunikazzjoni meħtieġ.

(13) Għall-għan tan-negozjati, il-Korp Speċjali għan-Negozjar jista' jitlob biex jiġi assistit minn esperti tal-għazla tiegħu, li jistgħu jinkludu rappreżentanti ta' organizzazzjonijiet ta' *trade unions* kompetenti u rikonoxxuti fuq skala Komunitarja. Esperti bħal dawn u rappreżentanti ta' *trade unions* jistgħu jkunu preżenti fil-laqgħat tan-negozjati f'kapacità konsultattiva fuq it-talba tal-Korp Speċjali għan-Negozjar.

(14) Bla ħsara għas-subregolament (15) ta' dan ir-regolament, il-Korp Speċjali għan-Negozjar għandu jieħu d-deċiżjonijiet b'maġġoranza tal-voti mitfugħin mill-membri tiegħu u kull membru tal-Korp Speċjali għan-Negozjar għandu jkollu vot wieħed.

(15) Il-Korp Speċjali għan-Negozjar jista' jiddeciedi, b'mill-inqas żewġ terzi tal-voti, li ma jiftaħx negozjati skond is-subregolament (11) ta' dan ir-regolament, jew li jtemm in-negozjati digà miftuħa, li f'każ bħal dan id-dispożizzjonijiet tal-Iskeda li tinsab ma' dawn ir-regolamenti ma jkunux japplikaw.

(16) Talba ġdida biex jiltaqa' l-Korp Speċjali għan-Negozjar tista' ssir mhux qabel sentejn wara li tkun ittiehdet id-deċiżjoni msemmija fis-subregolament (15) ta' dan ir-regolament, sakemm il-partijiet involuti ma jaqblux fuq perjodu iqsar.

(17) Kull spiza raġonevoli li jkollha x'taqsam man-negozjati msemmija f'dan ir-regolament għandha tithallas mit-tmexxija ċentrali biex il-Korp Speċjali għan-Negozjar ikun jista' jaqdi l-funzjoni tiegħu kif imiss.

(18) Għall-finijiet tas-subregolament preċedenti, spejjeż raġonevoli għandhom jinkludu l-ispejjeż tal-laqgħat tal-

Korp Speċjali għan-Negożjar, kemm mat-tmexxija ċentrali kemm mod ieħor, inklużi l-ispejjeż tal-materjal, tal-post, traduzzjonijiet, ivvjaġġar u akkomodazzjoni, u l-ispejjeż ekwivalenti għal esperit wieħed għal kull laqgħa.

Kontenut tal-ftehim.

7. (1) It-tmexxija ċentrali u l-Korp Speċjali għan-Negożjar għandhom jinnegożjaw fi spirtu ta' koperazzjoni bil-ħsieb li jilħqu ftehim bil-miktub fuq l-arranġamenti dettaljati għall-implimentazzjoni tal-informazzjoni u l-konsultazzjoni provduti fis-subregolament (1) tar-regolament 1 ta' dawn ir-regolamenti.

(2) Mingħajr preġudizzju għall-awtonomija tal-partijiet, il-ftehim imsemmi fis-subregolament (1) tar-regolament 1 ta' dawn ir-regolamenti, u magħmul bil-miktub għandu jistabbilixxi:

(a) l-intrapriżi tal-grupp tal-intrapriżi ta' skala Komunitarja jew l-istabbilimenti tal-intrapriża ta' skala Komunitarja li jkunu koperti bil-ftehim;

(b) il-kompożizzjoni tal-Kunsill tax-Xogħlijiet Ewropew, in-numru tal-membri, l-allokkazzjoni tas-siġġijiet, b'kont meħud kull fejn possibbli tal-ħtieġa ta' rappreżentazzjoni bilanċjata tal-impjegati fir-rigward tal-attivitajiet, il-kategorija u s-sess tagħhom, u t-terminu tal-kariga;

(ċ) il-funzjonijiet u l-proċeduri għall-informazzjoni u l-konsultazzjoni tal-Kunsill tax-Xogħlijiet Ewropew u l-arranġamenti għall-irbit tal-informazzjoni u l-konsultazzjoni tal-Kunsill tax-Xogħlijiet Ewropew u l-korpi nazzjonali li jirrappreżentaw l-impjegati, skond il-prinċipji stabbiliti fis-subregolament (2) tar-regolament 3 ta' dawn ir-regolamenti;

(d) il-post, il-frekwenza u t-tul taż-żmien tal-laqgħat tal-Kunsill tax-Xogħlijiet Ewropew;

(e) kull fejn ikun meħtieġ, il-kompożizzjoni, il-proċedura tal-ħatra, il-funzjonijiet u r-regoli proċedurali tal-kumitat ristrett stabbilit fi ħdan il-Kunsill tax-Xogħlijiet Ewropew;

(f) ir-rizorsi finanzjarji u materjali li għandhom jiġu allokati lill-Kunsill tax-Xogħlijiet Ewropew;

(g) id-data tad-dhul fis-seħħ tal-ftehim u t-tul ta' żmien tiegħu, l-arranġamenti għall-emendar jew it-terminazzjoni tal-ftehim u l-każijiet li fihom il-ftehim għandu jerga jigi negozjat u l-proċedura sabiex dan jerga jigi negozjat mill-ġdid, inkluż, fejn ikun hemm bżonn, meta tinbidel l-istruttura tal-intrapriża ta' skala Komunitarja jew grupp ta' intrapriži ta' skala Komunitarja.

(3) It-tmexxija ċentrali u l-Korp Speċjali għan-Negozjar jistgħu jiddeċiedu, bil-miktub, li jistabbilixxu proċedura waħda jew iktar ta' informazzjoni u konsultazzjoni minflok il-Kunsill tax-Xogħlijiet Ewropew, f'każ bħal dan, il-ftehim għandu jistipula b'liema metodu r-rappreżentanti tal-impjegati għandu jkollhom id-dritt li jiltaqgħu sabiex jiddiskutu l-informazzjoni mgħoddija lilhom:

Iżda din l-informazzjoni għandu jkollha x'taqsam b'mod partikolari mal-kwistjonijiet transnazzjonali li jaffettwaw b'mod sinifikanti l-interessi tal-impjegati.

(4) Ftehim imsemmi fis-subregolamenti (2) u (3) ta' dan ir-regolament ma għandux ikun soġġett għar-rekwiziti sussidjarji tal-Iskeda li tinsab ma' dawn ir-regolamenti, ħlief sal-limitu li l-partijiet jipprovdu fil-ftehim li kull wieħed minn dawk ir-rekwiziti għandu japplika.

(5) Il-Korp Speċjali għan-Negozjar għandu jibqa' jeżisti sakemm jibqa' jkollu l-funzjoni li jinnegozja ftehim li jwassal għat-twaqqif ta' Kunsill tax-Xogħlijiet Ewropew jew proċedura alternattiva ta' informazzjoni u konsultazzjoni.

8. (1) Ir-rekwiziti sussidjarji kif mniżżla fl-Iskeda li tinsab ma' dawn ir-regolamenti għandhom japplikaw jekk tibqa' għaddejja xi waħda mis-sitwazzjonijiet ta' hawn taħt:

Rekwiziti sussidjarji.

(a) meta t-tmexxija ċentrali u l-Korp Speċjali għan-Negozjar jiddeċiedu hekk, jew

(b) meta t-tmexxija ċentrali tirrifjuta li tibda negozjati fi żmien sitt xhur mit-talba msemmija fis-subregolament (2) tar-regolament 5, jew

(ċ) meta, wara tliet snin mid-data ta' din it-talba, il-partijiet ma jkunux jistgħu jikkonkludu ftehim kif imniżżel fir-regolament 7 ta' dawn ir-regolamenti u l-Korp Speċjali

għan-Negożjar ma jkunx ħa d-deċiżjoni li jipprovdi dwarha s-subregolament (15) tar-regolament 6.

(2) Meta r-rekwiżiti sussidjarji japplikaw għal intrapriża jew grupp ta' intrapriži, it-tmexxija ċentrali għandha, fi żmien kemm jista' jkun prattikabbli, iżda mhux aktar tard minn sitt xhur wara li jsiru applikabbli l-ewwel darba, tikkonforma ma' dawn ir-rekwiżiti.

Informazzjoni
kunfidenzjali.

9. (1) Persuna li hi jew f'xi żmien kienet –

(a) membru ta' Korp Speċjali għan-Negożjar;

(b) membru ta' Kunsill tax-Xogħlijiet Ewropew;

(c) rappreżentant tal-impjegati fil-kwadru ta' proċedura ta' informazzjoni u konsultazzjoni; u

(d) espert li jassisti Korp Speċjali għan-Negożjar jew Kunsill tax-Xogħlijiet Ewropew,

m'għandiex tiżvela kull informazzjoni jew dokument li hu jew li kien fil-pussess tagħha minħabba l-pożizzjoni tagħha kif hemm fil-paragrafi (a) sa (d) ta' dan is-subregolament, li tkun giet espressament ipprovduta lilha konfidenzjalment.

(2) F'dan ir-regolament persuna speċifikata fil-paragrafi (a) sa (d) tas-subregolament (1) għandha tissejjaħ 'riċevitur'.

(3) Meta tirriżulta kwistjoni minħabba l-kunfidenzjalità tal-informazzjoni jew id-dokument mogħti lil riċevitur, ir-riċevitur li jkun gie fdat b'dik l-informazzjoni jew id-dokument mit-tmexxija ċentrali jew lokali, jista' jirreferi l-kwistjoni lit-Tribunal Industrijali għal deċiżjoni dwar jekk kienx raġjonevoli li t-tmexxija kienet teħtieġ li r-riċevitur iżomm l-informazzjoni jew id-dokument kunfidenzjali.

(4) Jekk it-Tribunal Industrijali jikkonsidra li l-iżvelar tal-informazzjoni jew id-dokument mir-riċevitur ma jwassalx jew x'aktarx ma jwassalx biex jippreġudika jew jikkawża dannu serju għall-intrapriża konċernata, għandu jagħmel dikjarazzjoni li ma kienx raġjonevoli għat-tmexxija li teħtieġ li r-riċevitur iżomm l-informazzjoni jew id-dokument kunfidenzjali.

(5) Jekk issir dikjarazzjoni taħt is-subregolament (4) ta' dan ir-regolament, l-informazzjoni jew id-dokument m'għandhomx, f'kull ħin wara, jitqiesu bħala li ġew fdati lir-riċevitur li għamel l-applikazzjoni taħt is-subregolament (3) ta' dan ir-regolament, jew lil xi riċevitur ieħor, b'kondizzjonijiet li jeħtieġu li jinżammu kunfidenzjali.

(6) It-tmexxija ċentrali jew lokali mhix meħtieġa li tiżvela informazzjoni jew dokument lil riċevitur meta x-xorta ta' din l-informazzjoni jew ta' dan id-dokument tkun b'dak il-mod li, skond kriterji oġġettivi, l-iżvelar tal-informazzjoni jew tad-dokument jagħmel ħsara serja lill-funzjonament tal-intrapriża konċernati jew ikun ta' preġudizzju għalihom.

(7) Meta jkun hemm kwistjoni bejn it-tmexxija ċentrali jew lokali u r-riċevitur dwar jekk ix-xorta tal-informazzjoni jew id-dokument li l-korp kompetenti naqas milli jipprovdi hija b'dak il-mod kif hemm fis-subregolament (6) ta' dan id-dokument, it-tmexxija jew ir-riċevitur jista' jirreferi l-kwistjoni lit-Tribunal Industrijali biex tittieħed deciżjoni jekk l-informazzjoni jew id-dokument jkunx ta' xorta bħal dik.

(8) Jekk it-Tribunal Industrijali jiddeċiedi li l-iżvelar tal-informazzjoni jew id-dokument inkwistjoni ma jagħmilx ħsara, skond il-kriterji oġġettivi, għall-funzjonament ta', jew ikun ta' preġudizzju kontra, l-intrapriża konċernata, it-Tribunal Industrijali għandu jordna lit-tmexxija biex tiżvela l-informazzjoni jew id-dokument, u l-ordni għandu jispeċifika:

- (a) l-informazzjoni jew id-dokument li għandu jiġi żvelat;
- (b) ir-riċevitur jew ir-riċevituri li lilhom għandhom jiġu żvelati l-informazzjoni jew id-dokument;
- (ċ) kull kondizzjoni li fuqha għandhom jiġu żvelati l-informazzjoni jew id-dokument; u
- (d) id-data sa meta l-informazzjoni jew id-dokument għandhom jiġu żvelati.

10. It-tmexxija ċentrali u l-Kunsill tax-Xogħlijiet Ewropew jew ir-rappreżentanti tal-impjegati fil-kwadru ta' proċedura għall-informazzjoni u l-konsultazzjoni għall-ħaddiema skond kif ikun il-każ, għandhom jaħdmu fi spirtu ta' koperazzjoni b'konsiderazzjoni lejn id-drittijiet u l-obbligi reċiproċi tagħhom.

Thaddim tal-Kunsill
tax-Xogħlijiet
Ewropew.

Rwol u protezzjoni tar-rappreżentanti tal-impjegati.

11. (1) Il-membri tal-Kunsill tax-Xogħlijiet Ewropew għandu jkollhom il-mezzi meħtieġa biex japplikaw id-drittijiet li jirriżultaw minn dawn ir-regolamenti, biex jirrappreżentaw kollettivament l-interessi tal-impjegati fl-intrapriża ta' skala Komunitarja jew grupp ta' intrapriži ta' skala Komunitarja.

(2) Mingħajr preġudizzju għar-regolament 9 ta' dawn ir-regolamenti, il-membri tal-Kunsill tax-Xogħlijiet Ewropew għandhom jinfurmaw lir-rappreżentanti tal-impjegati tal-istabbilimenti jew tal-intrapriži ta' grupp ta' intrapriži ta' skala Komunitarja, jew, fin-nuqqas tar-rappreżentanti, lill-forza tax-xogħol bħala korp sħiħ, bil-kontenut u bir-riżultat tal-proċedura tal-informazzjoni u l-konsultazzjoni mwettqa skond dawn ir-regolamenti.

(3) Membri tal-Korp Speċjali għan-Negozjar, membri tal-Kunsill tax-Xogħlijiet Ewropew u rappreżentanti tal-impjegati li jeżerċitaw il-funzjonijiet tagħhom skond il-proċedura msemmija fis-subregolament (3) tar-regolament 7 ta' dawn ir-regolamenti għandhom, fl-eżerċizzju tal-funzjonijiet tagħhom, igawdu mill-istess protezzjoni bħalma jgawdu rappreżentanti tal-impjegati skond il-paragrafu (a) tas-subartikolu (14) tal-artikolu 36 tal-Att.

(4) Dawk il-membri msemmija fis-subregolament (3) ta' dan ir-regolament għandu jkollhom il-permess jattendu kull laqgħa u għandhom jithallsu l-paga tagħhom tul il-perjodu ta' assenza mill-post tax-xogħol tagħhom skond ma jkun meħtieġ biex ikunu jistgħu jaqdu dmirijiethom skond dawn ir-regolamenti.

(5) Safejn ikun neċessarju għall-eżerċizzju tad-dmirijiet rappreżentattivi tagħhom f'ambjent internazzjonali, il-membri tal-Korp Speċjali għan-Negozjar u l-Kunsill tax-Xogħlijiet Ewropew għandhom jingħataw taħriġ mingħajr ma jitilfu l-paga.

Relazzjoni ma' regolamenti oħra.

12. (1) L-informazzjoni u l-konsultazzjoni tal-Kunsill tax-Xogħlijiet Ewropew għandhom ikunu marbuta ma' dawk tal-korpi nazzjonali li jirrappreżentaw lill-impjegati fil-post tax-xogħol, jekk ikun hemm b'konsiderazzjoni tal-kompetenzi u l-oqsma ta' azzjoni għal kull wieħed minnhom u tal-prinċipji stabbiliti fis-subregolament (2) tar-regolament 3.

(2) Mingħajr preġudizzju għar-regolamenti l-oħra dwar l-informazzjoni u l-konsultazzjoni tal-impjegati, l-arranġamenti għar-rabtiet bejn l-informazzjoni u l-konsultazzjoni tal-Kunsill tax-Xogħlijiet Ewropew u l-korpi nazzjonali li jirrappreżentaw lill-impjegati fil-post tax-xogħol, jekk ikun hemm, għandhom

jigü stabbiliti bil-ftehim imsemmi fir-regolament 7 ta' dawn ir-regolamenti.

(3) Meta arrangamenti bħal dawn ma jkunux ġew definiti bi ftehim, il-proċessi tal-informazzjoni u l-konsultazzjoni għandhom isiru fil-Kunsill tax-Xogħlijiet Ewropew kif ukoll fil-korpi nazzjonali li jirrappreżentaw lill-impjegati fil-post tax-xogħol, jekk ikun hemm, fil-każijiet meta jkun maħsub li jittieħdu deċiżjonijiet li aktarx iwasslu għal bidliet sostanzjali fl-organizzazzjoni tax-xogħol jew fir-relazzjonijiet kuntrattwali.

(4) Din id-Direttiva għandha tkun mingħajr preġudizzju għall-proċeduri ta' informazzjoni u konsultazzjoni msemmija fir-Regolament tal-2006 dwar Dritt għal Informazzjoni u Konsultazzjoni mal-Impjegati, ir-Regolamenti ta' l-2002 dwar Sensji Kollettivi (Harsien tal-Impiegi) u r-Regolamenti ta' l-2002 dwar Harsien ta' l-Impiegi fit-Trasferiment ta' Negożju.

A.L. 10 tal-2006.

A.L. 428 tal-2002.

A.L. 433 tal-2002.

13. Meta l-istruttura tal-intrapriża ta' skala Komunitarja jew il-grupp ta' intrapriži ta' skala Komunitarja tinbidel sostanzjalment, u jew fin-nuqqas tad-dispożizzjonijiet stabbiliti mill-istrumenti ta' ftehim fis-seħħ jew fil-każ ta' kunflitti bejn id-dispożizzjonijiet rilevanti taż-żewġ strumenti ta' ftehim applikabbli jew iktar, it-tmexxija ċentrali għandha tibda n-negożjati msemmija fir-regolament 5 ta' dawn ir-regolamenti fuq l-inizjattiva tagħha stess jew fuq it-talba bil-miktub ta' mill-inqas 100 impjegat jew ir-rappreżentanti tagħhom f'mill-inqas żewġ intrapriži jew stabbilimenti f'mill-inqas żewġ Stati Membri differenti:

Adattament.

Iżda mill-inqas tliet membri tal-Kunsill tax-Xogħlijiet Ewropew jew minn kull wieħed mill-Kunsilli tax-Xogħlijiet Ewropej eżistenti għandhom ikunu membri tal-Korp Speċjali għan-Negożjar, minbarra l-membri eletti jew maħtura skond ir-regolament 6 ta' dawn ir-regolamenti:

Iżda wkoll li matul in-negożjati, il-Kunsill tax-Xogħlijiet Ewropew jew Kunsilli tax-Xogħlijiet Ewropej eżistenti għandhom ikomplu joperaw skond kull arrangament adatt bi ftehim bejn il-membri tal-Kunsill tax-Xogħlijiet Ewropew jew Kunsilli tax-Xogħlijiet Ewropej u t-tmexxija ċentrali.

14. Kull persuna li tonqos milli tikkonforma ruħha ma' xi obbligu impost fuq dik il-persuna taħt dawn ir-regolamenti tkun ħatja ta' reat u tista', meta tinsab ħatja, teħel multa ta' mhux inqas minn elf, mija u erbgħa u sittin euro u disgħa u sittin ċenteżmu (1,164.69) u mhux aktar minn ħdax il-elf, sitt mija u erbgħa u sittin euro u sebgha u tmenin ċenteżmu (11,646.87).

Reati.

SKEDA
(Regolament 8)

Rekwiziti sussidjarji

1. Sabiex jinkiseb l-għan stabbilit fir-regolament 1 (2) ta' dawn ir-regolamenti u l-każijiet ipprovduti fir-regolament 8 (1) ta' dawn ir-regolamenti, it-twaqqif, il-kompożizzjoni u l-kompetenza ta' Kunsill tax-Xogħlijiet Ewropew għandhom ikunu regolati bir-regoli li ġejjin:

(a) Il-kompetenza tal-Kunsill tax-Xogħlijiet Ewropew għandha tkun stabbilita skond ir-regolament 3 (2) ta' dawn ir-regolamenti.

L-informazzjoni tal-Kunsill tax-Xogħlijiet Ewropew għandha tkun marbuta partikolarment mal-istruttura, il-qagħda ekonomika u finanzjarja, l-iżvilupp potenzjali u l-produzzjoni u l-bejgħ tal-intrapriża jew grupp ta' intrapriži ta' skala Komunitarja. L-informazzjoni u l-konsultazzjoni tal-Kunsill tax-Xogħlijiet Ewropew għandhom ikunu marbuta partikolarment mas-sitwazzjoni u x-xejra li aktarx jieħdu l-impjiegi, l-investimenti u l-bidliet sostanzjali li jikkonċernaw l-organizzazzjoni, l-introduzzjoni ta' metodi ta' hidma jew proċessi ta' produzzjoni godda, trasferimenti ta' produzzjoni, *mergers*, tnaqqis fid-daqs jew għeluq ta' intrapriži, stabbilimenti jew partijiet importanti tagħhom, u sensji kollettivi.

Il-konsultazzjoni għandha ssir b'dak il-mod li tippermetti lir-rappreżentanti tal-impjegati li jiltaqgħu mat-tmexxija ċentrali u biex jakkwistaw rispons, u għar-raġunijiet ta' dak ir-rispons, dwar xi opinjoni li huma jistgħu jifformulaw;

(b) Il-Kunsill tax-Xogħlijiet Ewropew għandu jkun kompost minn impjegati tal-intrapriża ta' skala Komunitarja jew tal-grupp tal-intrapriži ta' skala Komunitarja eletti jew maħtura minn fost in-numru tagħhom mir-rappreżentanti tal-impjegati jew, fin-nuqqas ta' dawn, mill-korp intier tal-impjegati.

L-elezzjoni jew il-ħatra tal-membri tal-Kunsill tax-Xogħlijiet Ewropew għandhom jitwettqu skond ir-regolament 6 ta' dawn ir-regolamenti;

(ċ) Il-membri tal-Kunsill tax-Xogħlijiet Ewropew għandhom jiġu eletti jew maħtura fi proporzjon mal-għadd ta' impjegati li jkunu impjegati f'kull Stat Membru mill-intrapriża ta' skala Komunitarja jew grupp ta' intrapriži ta' skala Komunitarja, billi jiġu allokati, għal kull Stat Membru sigġu wieħed kull porzjon ta' impjegati f'dak l-Istat Membru ekwivalenti għal 10 % jew frazzjoni tiegħu, tal-għadd ta' impjegati fl-Istati Membri kollha meħuda flimkien;

(d) Biex ikun garantit li l-Kunsill tax-Xogħlijiet Ewropew ikun jista' jikkoordina l-attivitajiet tiegħu, għandu jeleġgi kumitat ristrett minn fost

il-membri tiegħu, magħmul minn massimu ta' ħames membri, li għandu jibbenefika mill-kundizzjonijiet li jippermettulu jeżercita l-attivitajiet tiegħu fuq bażi regolari.

Għandu jadotta r-regoli ta' proċedura tiegħu;

(e) It-tmexxija ċentrali u kull livell xieraq ta' tmexxija għandhom jiġu infurmati bil-kompożizzjoni tal-Kunsill tax-Xogħlijiet Ewropew;

(f) Erba' snin wara li jiġi stabbilit il-Kunsill tax-Xogħlijiet Ewropew dan għandu jeżamina jekk jiftaħx in-negozjati għall-konklużjoni tal-ftehim imsemmi fir-regolament 7 ta' dawn ir-regolamenti jew li jkompli japplika r-rekwiżiti sussidjarji adottati skont din l-Iskeda.

Ir-regolamenti 7 u 8 ta' dawn ir-regolamenti għandhom japplikaw, *mutatis mutandis*, jekk tkun ittiegħdet deċiżjoni sabiex jiġi n-negozjat ftehim skond ir-regolament 7 ta' dawn ir-regolamenti, fejn, f'dan il-każ, il-frażi 'Korp Speċjali għan-Negozjar' għandha tiġi sostitwita bil-frażi 'Kunsill tax-Xogħlijiet Ewropew'.

2. Il-Kunsill tax-Xogħlijiet Ewropew għandu jkollu d-dritt li jiltaqa' mat-tmexxija ċentrali darba fis-sena, sabiex jiġi infurmat u kkonsultat, fuq il-bażi ta' rapport imfassal mit-tmexxija ċentrali, dwar il-progress tal-kummerċ tal-intrapriża ta' skala Komunitarja jew tal-grupp tal-intrapriži ta' skala Komunitarja u l-prospetti tagħhom. Il-korpi ta' tmexxija lokali għandhom jiġu infurmati kif xieraq.

3. Meta jkun hemm ċirkostanzi eċċezzjonali jew deċiżjonijiet li jaffettwaw l-interessi tal-impjegati b'mod konsiderevoli, b'mod partikolari fil-każ tal-allokazzjonijiet mill-ġdid, l-għeluq ta' stabbilimenti jew intrapriži jew sensji kollettivi, il-kumitat ristrett jew, fejn ma jeżisti l-ebda kumitat bħal dan, il-Kunsill tax-Xogħlijiet Ewropew għandu jkollu d-dritt li jiġi infurmat. Għandu jkollu d-dritt li jiltaqa', fuq it-talba tiegħu, mat-tmexxija ċentrali, jew ma' kull livell ta' tmexxija ieħor aktar xieraq fl-intrapriża jew fil-grupp ta' intrapriži ta' skala Komunitarja bil-poteri li jieħu d-deċiżjonijiet, sabiex jiġi infurmat u konsultat.

Dawk il-membri tal-Kunsill tax-Xogħlijiet Ewropew li kienu ġew eletti jew maħtura mill-istabbilimenti u/jew l-intrapriži li huma direttament interessati fiċ-ċirkostanzi jew id-deċiżjonijiet fil-kwistjoni għandu jkollhom ukoll id-dritt li jippartecipaw f'każ ta' laqgħa organizzata mal-kumitat ristrett.

Din il-laqgħa ta' informazzjoni u konsultazzjoni għandha ssir malajr kemm jista' jkun fuq il-bażi ta' rapport magħmul mit-tmexxija ċentrali jew minn kull livell ieħor ta' tmexxija xieraq tal-intrapriża jew tal-grupp tal-intrapriża ta' skala Komunitarja, li fiha tista' tingħata opinjoni fit-tmiem tal-laqgħa jew fi żmien raġjonevoli.

Din il-laqgħa ma għandhiex taffettwa l-prerogattivi tat-tmexxija ċentrali.

Il-proċeduri ta' informazzjoni u konsultazzjoni previsti fiċ-ċirkostanzi ta' hawn fuq għandhom jitwettqu bla ħsara għar-regolament 1(2) u r-regolament 9 ta' dawn ir-regolamenti.

4. L-Istati Membri jistgħu jistabbilixxu r-regoli dwar min jippresjedi l-laqgħat ta' informazzjoni u konsultazzjoni.

Qabel kull laqgħa mat-tmexxija ċentrali, il-Kunsill tax-Xogħlijiet Ewropew jew il-kumitat ristrett, mkabbar fejn meħtieġ skond it-tieni paragrafu tal-punt 3, għandu jkun intitolat li jiltaqa' mingħajr ma jkun preżenti l-korp ta' tmexxija interessat.

5. Il-Kunsill tax-Xogħlijiet Ewropew jew il-kumitat ristrett jistgħu jkunu assistiti minn esperti tal-għażla tagħhom, safejn dawn ikunu meħtieġa sabiex iwettqu d-dmirijiet tagħhom.

6. L-ispejjeż operattivi tal-Kunsill tax-Xogħlijiet Ewropew għandhom jingarru mit-tmexxija ċentrali.

It-tmexxija ċentrali interessata għandha ttiprovdi lill-membri tal-Kunsill tax-Xogħlijiet Ewropew b'dawk ir-riżorsi finanzjarji u materjali sabiex jgħinuhom jaqdu d-dmirijiet tagħhom b'mod xieraq.

B'mod partikolari, l-ispejjeż tal-organizzazzjoni tal-laqgħat u l-arranġamenti għall-facilitajiet tal-interpretazzjoni u l-ispejjeż tal-akkomodazzjoni u tal-ivvjagġar tal-membri tal-Kunsill tax-Xogħlijiet Ewropew u tal-kumitat ristrett tiegħu għandhom jithallsu mit-tmexxija ċentrali sakemm ma jġix diversament miftiehem.

L.N. 217 of 2011

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT
(CAP. 452)**

**European Works Council (Further Provisions) Regulations,
2011**

IN exercise of the powers conferred by article 48 of the Employment and Industrial Relations Act, the Prime Minister has made the following regulations:–

1. (1) The title of these regulations is the European Works Council (Further Provisions) Regulations, 2011. Title and scope.

(2) The purpose of these regulations is to improve the right to information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings by establishing a European Works Council or a procedure for informing and consulting employees in every such undertaking and group of undertakings where requested in the manner laid down in regulation 5 and to implement the provisions of EU Directive 2009/38/EC.

(3) These regulations shall apply to all arrangements aiming to set up a European Works Council or any procedure for the information and consultation of employees in Community-scale undertakings or Community-scale groups of undertakings, as provided for by these regulations, which are effected for the first time on the 6th of June, 2011 and after the 6th of June 2011.

(4) These regulations shall not apply to:

(a) Community-scale undertakings or Community-scale groups of undertakings in which, on the 22nd September 1996, there had already been an agreement covering the entire workforce, providing for the transnational information and consultation of employees, or where such agreements are adjusted because of changes in the structure of the undertakings or groups of undertakings; and

(b) agreements concluded pursuant to regulation 7 of the European Works Council Regulations, 2004, which have been signed or revised between the 5th of June 2009 and the 5th of June 2011; and

- (c) merchant navy crews;

Provided that in so far as paragraph (b) is concerned, the national law applicable when the agreement is signed or revised shall continue to apply to the undertakings or groups of undertakings concerned.

Provided further that in the case of the agreements mentioned in paragraphs (a) and (b), the applicable law shall be the European Works Council Regulations of 2004 and upon the expiry of the said agreements, the parties to those agreements may decide jointly to renew or revise such agreements, in which case the European Works Council Regulations of 2004 shall apply. In the case that these agreements are neither renewed or revised, the provisions of these regulations shall automatically apply.

L.N. 324 of 2004.

Definitions.

2. (1) For the purpose of these regulations:

“the Act” means the Employment and Industrial Relations Act;

“central management” means the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the controlling undertaking;

“Community-scale group of undertakings” means a group of undertakings with the following characteristics:

- (a) at least 1,000 employees within the Member States,
- (b) at least two group undertakings in different Member States, and
- (c) at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;

“Community-scale undertaking” means any undertaking with at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States;

“consultation” means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management, 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 within the Community-scale undertaking or Community-scale group of undertakings;

“controlling undertaking” means an undertaking which can exercise a dominant influence over another undertaking, hereinafter referred to as the “controlled undertaking” by virtue of, amongst others, ownership, financial participation or the rules which govern it.

“employees’ representatives” means either the recognized union representative or, in case of non-unionised employees, the representative or representatives duly elected from amongst the employees;

“European Works Council” means a council established in accordance with sub-regulation (2) of regulation 1 hereof or the provisions of the Schedule to these regulations with the purpose of informing and consulting employees;

“group of undertakings” means a controlling undertaking and its controlled undertakings;

“information” means transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it. Such information shall be given 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 possible impact and, where appropriate, prepare for consultations with the competent organ of the Community –scale undertaking or Community-scale group of undertakings;

“Member State” means a member state of the European Union, of the European Economic Area or any other state as the Minister may prescribe;

“Special Negotiating Body” means the body established in accordance with regulation 6 to negotiate with the central management regarding the establishment of a European Works Council or a procedure for informing and consulting employees in accordance with sub-regulation (2) of regulation 1 of these regulations.

(2) Subject to the provisions of sub-regulation (1) hereof, terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

(3) In the absence of a definition given in these regulations, words and expressions used in these regulations which are also used in Directive 2009/38/EC shall have the same meaning as they have in the Directive.

(4) For the purpose of these regulations, the prescribed thresholds to determine whether an undertaking is a Community-scale undertaking or a Community-scale group of undertakings, in the case of employees in Malta, shall be based on the average number of employees who were employed during the two year period ending on the last day of the month preceding the month in which a request pursuant to regulation 5 of these regulations was made, whether such employees are on an indefinite or definite contract, and including part time employees.

(5) The ability to exercise a dominant influence shall be presumed, unless the contrary is proven, when an undertaking, in relation to another undertaking directly or indirectly:

(a) holds a majority of that undertaking’s subscribed capital;

(b) controls a majority of the votes attached to that undertaking’s issued share capital; or

(c) can appoint more than half of the members of that undertaking’s administrative, management or supervisory body.

(6) For the purposes of sub-regulation (5) hereof, a controlling undertaking’s rights as regards voting and appointment shall include the rights of any other controlled undertaking and those of any person or body acting in his or its own name but on

behalf of the controlling undertaking or of any other controlled undertaking.

(7) Notwithstanding what is stated in these regulations, an undertaking shall not be deemed to be a “controlling undertaking” with respect to another undertaking in which it has holdings where the former undertaking 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.

(8) A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising his functions, according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings.

(9) The law applicable in order to determine whether an undertaking is a controlling undertaking shall be the law of the Member State which governs that undertaking. Where the law governing that undertaking is not that of a Member State, the law applicable shall be the law of the Member State within whose territory the representative of the undertaking or, in the absence of such a representative, the central management of the group undertaking which employs the greatest number of employees is situated.

(10) Where, in the case of a conflict of laws in the application of sub-regulation (5) hereof, two or more undertakings from a group, whether situated in Malta or in any Member State, satisfy one or more of the criteria laid down in that sub-regulation, the undertaking which satisfies the criterion laid down in paragraph (c) of sub-regulation (5) hereof shall be regarded as the controlling undertaking, without prejudice to proof that another undertaking is able to exercise a dominant influence.

3. (1) The arrangements for informing and consulting employees shall be defined and implemented in such a way as to ensure their effectiveness and to enable the undertaking or group of undertakings to take decisions effectively. Objectives.

(2) Information and consultation of employees must occur at the relevant level of management and representation, according to the subject under discussion. To achieve that, the competence of the European Works Council and the scope of the

information and consultation procedure for employees governed by these regulations shall be limited to transnational issues:

Provided that matters shall be considered to be transnational where they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States.

(3) Notwithstanding anything stated in these regulations, where a Community-scale group of undertakings comprises one or more undertakings or groups of undertakings which are Community-scale undertakings or Community-scale groups of undertakings, a European Works Council shall be established at the level of the group unless the agreements referred to in regulation 7 of these regulations provide otherwise.

(4) Unless a wider scope is provided for in the agreements referred to in regulation 7 of these regulations, the powers and competence of European Works Councils and the scope of information and consultation procedures established to achieve the purpose specified in sub-regulation (2) of regulation 1 shall, in the case of a Community-scale undertaking, cover all the establishments located within the Member States and, in the case of a Community-scale group of undertakings, all group undertakings located within the Member States.

Responsibilities of
central management.

4. (1) The central management shall be responsible for creating the conditions and means necessary for the setting up of a European Works Council or an information and consultation procedure in a Community-scale undertaking and a Community-scale group of undertakings where:

(a) the central management is situated in Malta;

(b) the central management is not situated in a Member State and the representative agent of the central management (to be designated if necessary) is situated in Malta; or

(c) neither the central management nor the representative agent (whether or not as a result of being designated) is situated in a Member State and –

(i) in the case of a Community-scale undertaking, there are employed in an establishment, which is situated in Malta,

more employees than are employed in any other establishment which is situated in a Member State, or

(ii) in the case of a Community-scale group of undertakings, there are employed in a group undertaking, which is situated in Malta, more employees than are employed in any other group undertaking which is situated in another Member State,

and the central management initiates, or is required to initiate, negotiations for a European Works Council or information and consultation procedure in terms of regulation 5 of these regulations.

(2) Where the circumstances described in paragraphs (b) or (c) of sub-regulation apply, the central management shall be treated, for the purposes of these regulations, as being situated in Malta and –

(a) the representative agent referred to in paragraph (b) of sub-regulation (1); or

(b) the management of the establishment referred to in item (i) of paragraph (c) of sub-regulation (1) hereof or of the group undertaking, referred to in item (ii) of paragraph (c) of sub-regulation hereof,

shall be treated, respectively, as being the central management.

(3) It shall be the duty of;

(a) the management of establishments of a Community-scale undertaking situated in Malta, and

(b) the management of undertakings which form part of a Community-scale group of undertakings situated in Malta, and

(c) employees' representatives or, as the case may be, of employees,

to comply with the relevant provisions of these regulations, irrespective of whether or not the central management is situated in Malta.

(4) The management of every undertaking belonging to the Community-scale group of undertakings and the central management or the deemed central management within the meaning of sub-regulation (2) of this regulation, of the Community-scale undertaking or group of undertakings shall be responsible for obtaining and transmitting to the parties concerned by the application of these regulations the information required for commencing the negotiations referred to in regulation 5 of these regulations, and in particular the information concerning the structure of the undertaking or the group and its workforce, including, in particular, information on the number of employees.

Establishment of
special negotiating
body.

5. (1) In order to achieve the objective set out in sub-regulation (2) of regulation 1 of these regulations, the central management shall have a duty to establish a Special Negotiating Body to negotiate with the central management for the establishment of a European Works Council or an information and consultation procedure.

(2) The central management shall initiate action to fulfil the obligations referred to in sub-regulation (1) hereof, either

(a) on its own initiative, or

(b) on receipt of a written request or requests by at least a total of 100 employees, or by employees' representatives representing at least that number, in at least two undertakings or establishments in at least two different Member States, addressed to either the central management or to local management, whether received as a single request or as a number of separate requests, on one or several dates.

(3) The central management shall commence negotiations on the establishment of a European Works Council within six months from the date of receipt of the written request.

(4) Where the request is lodged with the local management pursuant to paragraph (b) of sub-regulation (2) hereof, the local management shall ensure that the request is passed on to the central management within a period of 15 working days from its receipt and any avoidable or unreasonable delay after that period in the transmission of the request to the central management shall not of itself extend the six month period referred in sub-regulation (3) hereof.

6. (1) The Special Negotiating Body shall have the task of determining, with the central management, by written agreement, the scope, composition, functions, and term of office of the European Works Council or the arrangements for implementing a procedure for the information and consultation of employees.

Election, appointment, functions and procedures of the Special Negotiating Body.

(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 Community-scale undertaking or Community-scale group of undertaking, 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.

(3) The method of selection of the members representing employees employed by the undertaking, or as the case may be the group of undertakings, situated in Malta to sit on the Special Negotiating Body shall be by means of an election from amongst eligible candidates who satisfy the criteria laid down in sub-regulation (4) of regulation 2 of these regulations and who are in employment but not in their probationary period on the date of nomination, and the central management shall appoint a responsible person to act as ballot supervisor to oversee the whole process of nominations and election, and any expenses related to the process of appointing or electing the Special Negotiating Body shall be borne by the central management.

(4) The date for nomination of candidates, which shall be established by the ballot supervisor, shall be within two months from the date when the request to commence negotiations on an agreement to establish a European Works Council was made or when the decision was taken by central management to commence negotiations on its own initiatives, whichever was the earlier.

(5) Where the number of candidates on the day of nomination equals the number of representatives to be elected to the Special Negotiating Body, these shall be considered to have been automatically appointed to the Special Negotiating Body.

(6) Where the number of candidates on the day of nomination exceeds the number of representatives to be elected to the Special Negotiating Body, arrangements shall be made by management to hold a secret ballot to elect the required number of representatives.

(7) Arrangements for the holding of such a ballot shall be finalised by the central management within one month from the date of nomination of candidates referred to in sub-regulation (4) hereof, and the central management shall ensure that the process of nominations and the ballot itself shall be overseen by the ballot supervisor. The ballot itself, if necessary, shall be held within two months from the date of nomination of candidates referred to in sub-regulation (4) hereof.

(8) Any employee who is in employment on the day or days of the election and satisfies the criteria referred to in sub-regulation (4) of regulation 2 of these regulations shall be entitled to vote in such an election.

(9) Any person may make a written complaint in relation to any aspect relating to the election of the representatives to the Special Negotiating Body including the eligibility to stand for election, eligibility to vote or the organisation of such a ballot, to the Director responsible for Industrial and Employment Relations, who shall investigate whether such a complaint is well-founded and who may direct that appropriate measures be taken by any person involved to eliminate any grounds for well-founded complaints, and any decision taken by the Director on any matter relating to the organisation of the ballot shall be final.

(10) It shall be the duty of the ballot supervisor to give the formal results of the process of nomination or ballot held to appoint the Special Negotiating Body to the central management, the local management, and the competent European workers' and employers' organizations as soon as practicable, and in any case within one month after the date of the election or appointment of its members. Moreover, the central management, the local management and the competent European workers' and employers' organizations shall be informed of the start of negotiations between the special negotiating body and the management.

(11) With a view to the conclusion of an agreement in accordance with regulation 7 of these regulations, the central management shall convene a meeting with the Special Negotiating Body and shall inform local managements accordingly.

(12) Before and after any meeting with the central management, the Special Negotiating Body shall be entitled to meet without representatives of the central management being present, using any necessary means for communication.

(13) For the purpose of the negotiations, the Special Negotiating Body may request assistance from experts of its choice which can include representatives of competent recognized Community-level trade union organizations. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.

(14) Subject to sub-regulation (15) hereof, the Special Negotiating Body shall take decisions by a majority of the votes cast by its members and each member of the Special Negotiating Body shall have one vote.

(15) The Special Negotiating Body may decide, by at least two-thirds of the votes, not to open negotiations in accordance with sub-regulation (11) hereof, or to terminate the negotiations already opened, in which case the provisions of the Schedule to these regulations shall not apply.

(16) A new request to convene the Special Negotiating Body may be made at the earliest two years after the decision mentioned in sub-regulation (15) hereof has been taken, unless the parties concerned agree on a shorter period.

(17) Any expenses relating to the negotiations referred to in this regulation shall be borne by the central management so as to enable the special negotiating body to carry out its task in an appropriate manner.

(18) For the purposes of the preceding sub-regulation, reasonable expenses shall include the cost of meetings of the Special Negotiating Body, whether with the central management or otherwise, including the cost of materials, the venue, translations, travel and accommodation, and the equivalent cost of one expert per meeting.

7. (1) The central management and the Special Negotiating Body shall negotiate in a spirit of cooperation with a view to reaching a written agreement on the detailed arrangements for implementing the information and consultation of employees provided in sub-regulation (1) of regulation 1 of these regulations.

Content of the agreement.

(2) Without prejudice to the autonomy of the parties, the written agreement mentioned in sub-regulation (1) of regulation 1 of these regulations shall determine:

(a) the undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking which are covered by the agreement;

(b) the composition of the European Works Council, the number of members, the allocation of seats, taking into account where possible the need for balanced representation of employees with regard to their activities, category and gender, and the term of office;

(c) the functions and the procedure for information and consultation of the European Works Council and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies, in accordance with the principles set out in sub-regulation (2) of regulation 3 of these regulations;

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

(e) where necessary, the composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the European Works Council;

(f) the financial and material resources to be allocated to the European Works Council;

(g) the date of entry into force of the agreement and its duration, the arrangements for amending or terminating the agreement and the cases in which the agreement shall be renegotiated and the procedure for its renegotiation, including, where necessary, where the structure of the Community-scale undertaking or Community-scale group of undertakings changes.

(3) The central management and the Special Negotiating Body may decide, in writing, to establish one or more information and consultation procedures instead of a European Works Council, in which case, the agreement must stipulate by what method the employees' representatives shall have the right to meet to discuss the information conveyed to them:

Provided that this information shall relate in particular to transnational questions which significantly affect workers' interests.

(4) An agreement referred to in sub-regulations (2) and (3) of this regulation shall not be subject to the subsidiary requirements of the Schedule to these regulations, except to the extent that the parties provide in the agreement that any of those requirements are to apply.

(5) The Special Negotiating Body shall remain in existence until its function to negotiate for an agreement to establish a European Works Council or an alternative information and consultation procedure ceases.

8. (1) The subsidiary requirements as laid down in the Schedule to these regulations shall apply if any of the situations below subsist:

Subsidiary requirements.

(a) where the central management and the Special Negotiating Body so decide, or

(b) where the central management refuses to commence negotiations within six months of the request referred to in sub-regulation (2) of regulation 5 of these regulations, or

(c) where, after three years from the date of this request, the parties are unable to conclude an agreement as laid down in regulation 7 of these regulations and the Special Negotiating Body has not taken the decision provided for in sub-regulation (15) of regulation 6 of these regulations.

(2) Where the subsidiary requirements apply to an undertaking or group of undertakings, the central management shall as soon as practicable, but in any case not later than six months after they first become applicable, comply with the requirements.

9. (1) A person who is or at any time was –

Confidential information.

(a) a member of a Special Negotiating Body;

(b) a member of a European Works Council;

(c) an employees' representative in the framework of an information and consultation procedure; and

(d) an expert assisting a Special Negotiating Body or a European Works Council,

shall not disclose any information or document which is or has been in his possession by virtue of his position as described in paragraphs (a) to (d) of this sub-regulation, which has expressly been provided to him in confidence.

(2) In this regulation a person specified in paragraphs (a) to (d) of sub-regulation (1) of this regulation shall be referred to as a 'recipient'.

(3) Where a dispute arises as to the confidentiality of information or a document given to a recipient, the recipient whom the central or local management has entrusted with such information or document on terms requiring it to be held in confidence, may refer the dispute to the Industrial Tribunal for a decision as to whether it was reasonable for the management to require the recipient to hold the information or document in confidence.

(4) If the Industrial Tribunal considers that the disclosure of the information or the document by the recipient would not, or would not be likely to, prejudice or cause serious harm to the undertaking concerned, it shall make a declaration that it was not reasonable for the management to require the recipient to hold the information or document in confidence.

(5) If a declaration is made under sub-regulation (4) of this regulation, the information or document shall not at any time thereafter be regarded as having been entrusted to the recipient who made the application under sub-regulation (3) of this regulation, or to any other recipient, on terms requiring it to be held in confidence.

(6) The central or local management is not required to disclose any information or document to a recipient when the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to the undertaking concerned.

(7) Where there is a dispute between the central or local management and a recipient as to whether the nature of the information or document which the competent organ has failed to provide is such as is described in sub-regulation (6) of this regulation, the management or a recipient may refer the dispute to the Industrial Tribunal for a decision as to whether the information or document is of such a nature.

(8) If the Industrial Tribunal decides that the disclosure of the information or document in question would not, according to objective criteria, seriously harm the functioning of, or be prejudicial to, the undertaking concerned, the Industrial Tribunal shall order the management to disclose the information or document, and the order shall specify:

- (a) the information or document to be disclosed;
- (b) the recipient or recipients to whom the information or document is to be disclosed;
- (c) any terms on which the information or document is to be disclosed; and
- (d) the date before which the information or document is to be disclosed.

10. The central management and the European Works Council or the employees' representatives in the framework of an information and consultation procedure for workers, as the case may be, shall work in a spirit of cooperation with due regard to their reciprocal rights and obligations.

Operation of the European Works Council.

11. (1) The members of the European Works Council shall have the means required to apply the rights arising from these regulations, to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings

Role and protection of employees' representatives.

(2) Without prejudice to regulation 9 of these regulations, the members of the European Works Council shall inform the representatives of the employees of the establishments or of the 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 information and consultation procedure carried out in accordance with these regulations.

(3) Members of Special Negotiating Bodies, members of European Works Councils and employees' representatives exercising their functions under the procedure referred to in sub-regulation (3) of regulation 7 shall, in the exercise of their functions, enjoy the same protection as employees' representatives in terms of paragraph (a) of sub-article (14) of article 36 of the Act.

(4) Such members referred to sub-regulation (3) of this regulation shall be allowed to attend any meetings and shall be paid their wages during the periods of absence from their place of work as may be necessary to perform their duties pursuant to these regulations.

(5) In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the Special Negotiating Body and of the European Works Council shall be provided with training without loss of wages.

Relationship with other regulations.

12. (1) Information and consultation of the European Works Council shall be linked to those of the employee representation bodies at the workplace, if any, with due regard to the competences and areas of action of each and to the principles set out in sub-regulation (2) of regulation 3 of these regulations.

(2) Without prejudice to other regulations on information and consultation of employees, the arrangements for the links between the information and consultation of the European Works Council and the employee representation bodies at the workplace, if any, shall be established by the agreement referred to in regulation 7 of these regulations.

(3) Where no such arrangements have been defined by agreement, the processes of informing and consulting must be conducted in the European Works Council as well as in the employee representation bodies at the workplace, if any, in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged.

L.N. 10 of 2006.

L.N. 428 of 2002.

L.N. 433 of 2002.

(4) This Directive shall be without prejudice to the information and consultation procedures referred to in the Employee (Information and Consultation) Regulations, 2006, the Collective Redundancies (Protection of Employment) Regulations, 2002 and the Transfer of Business (Protection of Employment) Regulations, 2002.

Adaptation.

13. Where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, 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 regulation 5 of these regulations 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:

Provided that 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 regulation 6 of these regulations:

Provided further that during the negotiations, the existing European Works Council or Councils shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council or Councils and the central management.

14. Any person who fails to comply with any obligation imposed on such person under these regulations shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and not more than eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87). Offences.

SCHEDULE
(Regulation 8)

Subsidiary Requirements

1. In order to achieve the objective set out in sub-regulation (2) of regulation 1 of these regulations and in the cases provided for in sub-regulation (1) of regulation 8 of these regulations, the establishment, composition and competence of a European Works Council shall be governed by the following rules:

(a) the competence of the European Works Council shall be determined in accordance with sub-regulation (2) of regulation 3 of these regulations.

The information of the European Works Council shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

The consultation shall be conducted in such a way that the employees' representatives can meet with the central management and obtain a response, and the reasons for that response, to any opinion they might express;

(b) the European Works Council shall be composed of employees of the Community-scale undertaking or Community-scale group of undertakings elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

The election or appointment of members of the European Works Council shall be carried out in accordance with regulation 6;

(c) 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 Community-scale undertaking or Community-scale 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;

(d) to ensure that it can coordinate its activities, the European Works

Council shall elect a select committee from among its members, comprising at most five members, which must benefit from conditions enabling it to exercise its activities on a regular basis.

It shall adopt its own rules of procedure;

(e) the central management and any other more appropriate level of management shall be informed of the composition of the European Works Council;

(f) four years after the European Works Council is established it shall examine whether to open negotiations for the conclusion of the agreement referred to in regulation 7 of these regulations or to continue to apply the subsidiary requirements adopted in accordance with this Schedule.

Regulations 7 and 8 of these regulations shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to regulation 7 of these regulations, in which case 'Special Negotiating Body' shall be replaced by 'European Works Council'.

2. The European Works Council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of a 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 local managements shall be informed accordingly.

3. Where there are exceptional circumstances or decisions affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted.

Those members of the European Works Council who have been elected or appointed by the establishments and/or undertakings which are directly concerned by the circumstances or decisions in question shall also have the right to participate where a meeting is organised with the select committee.

This information and consultation meeting shall take place as soon as possible on the basis of a report drawn up by the central management 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 central management.

The information and consultation procedures provided for in the above circumstances shall be carried out without prejudice to regulation 1 (2) and regulation 9 of these regulations.

4. The Member States may lay down rules on the chairing of information and consultation meetings.

Before any meeting with the central management, the European Works Council or the select committee, where necessary enlarged in accordance with the second paragraph of point 3, shall be entitled to meet without the management concerned being present.

5. The European Works Council or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks.

6. The operating expenses of the European Works Council shall be borne by the central management.

The central management concerned shall provide the members of the European Works Council with such financial and material resources as enable them to perform their duties in an appropriate manner.

In particular, the cost of organising meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the European Works Council and its select committee shall be met by the central management unless otherwise agreed.

