

NATIONAL ASSEMBLY

2352. European Works Councils Act (ZESD-1)

Pursuant to the second indent of the first paragraph of Article 107 and the first paragraph of Article 91 of the Constitution of the Republic of Slovenia, I hereby issue an

ORDER

on the promulgation of the European Works Councils Act (ZESD-1)

I hereby promulgate the European Works Councils Act (ZESD-1), adopted by the National Assembly of the Republic of Slovenia at its session of 14 June 2011.

No 003-02-6/2011-3

Ljubljana, 22 June 2011

Dr Danilo Türk (signed)

President

of the Republic of Slovenia

EUROPEAN WORKS COUNCILS ACT (ZESD-1)

I. GENERAL PROVISIONS

Article 1

(Content and purpose of the Act)

(1) This Act transposes 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 (OJ L 122, 16.5.2009, p. 28) into the national law of the Republic of Slovenia and regulates the establishment of European Works Councils comprising workers' representatives and the procedures for informing and consulting employees in undertakings or groups of undertakings that are established in the Member States of the European Union or the European Economic Area (hereinafter referred to as 'Member State') and that operate in at least two Member States (hereinafter: undertakings or groups of undertakings located in the Member States).

(2) The purpose of this Act is to improve the right of employees to information and consultation in undertakings and groups of undertakings that are established in the

Member States. To this end, European Works Councils shall be set up or a procedure shall be agreed for informing and consulting employees in undertakings or groups of undertakings on transnational matters under the conditions laid down by this Act in such a way as to ensure the effectiveness of this procedure and of decision-making.

(3) The competence and tasks of European Works Councils and the procedures for informing and consulting employees that are adopted to achieve the objective of the previous paragraph shall, in the case of an undertaking, apply to all establishments in a particular Member State and, in the case of a group of undertakings, to all undertakings with head offices in the Member States, unless a wider scope is agreed.

Article 2

(Application of the Act)

(1) This Act shall apply to undertakings in the Member States with head offices in the Republic of Slovenia and to groups of undertakings in the Member States for which the controlling undertaking has its head office in the Republic of Slovenia.

(2) If an undertaking or the controlling undertaking of a group of undertakings does not have its head office in a Member State, the provisions of this Act shall apply to any establishment or controlled undertaking in the Republic of Slovenia if the undertaking or the controlling undertaking has authorised that establishment or controlled undertaking as its representative. If there is no authorised representative, this Act shall apply if the establishment or undertaking with the greatest number of employees in comparison with other establishments or undertakings in groups of undertakings in the Member States is located in the Republic of Slovenia.

(3) The provisions of this Act that relate to the calculation of the number of workers, the obligation to transmit data, the controlling undertaking, the transmission of a request to central management, the joint and several liability of the employer, the elections of workers' representatives from the Republic of Slovenia, the provision of information to workers' representatives and the protection of workers' representatives shall also apply if the central management is located in another Member State.

Article 3

(Definitions)

For the purposes of this Act the following definitions shall apply:

- 'undertaking in the Member States' means an undertaking that operates in the Member States with at least 1 000 employees and at least 150 employees in each of at least two Member States;
- 'group of undertakings' means undertakings that comprise a controlling undertaking and one or more controlled undertakings;
- 'group of undertakings on the territory of the Member States' means undertakings that operate in the Member States with at least 1 000 employees in at least two Member States and that include at least two undertakings which are established in different Member States in each of which at least 150 employees are employed;
- 'controlling undertaking' means an undertaking that can exercise a dominant influence over another controlled undertaking in accordance with Article 6 of this Act;
- 'central management' means the management of the undertaking that operates in the Member States or the management of the controlling undertaking in a group of

undertakings on the territory of the Member States. The management of an establishment or undertaking as referred to in Article 2(2) of this Act shall also be considered to be central management;

- 'information' means transmission of data by central management or any more appropriate level of management to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it. 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 management of the undertaking or group of undertakings in the Member States;
- 'consultation' means the establishment of dialogue and exchange of opinions between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enable 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 undertaking or group of undertakings in the Member States;
- 'European Works Council' means a council established in accordance with the provisions of this Act, with the purpose of informing and consulting employees;
- 'special negotiating body' means the body established in accordance with the provisions of this Act to negotiate with the central management regarding the establishment of a European Works Council or a procedure for informing and consulting employees pursuant to the provisions of this Act;
- 'transnational matters' mean matters that relate to the undertaking or group of undertakings in the Member States as a whole or at least two undertakings or establishments of the undertaking or group situated in two different Member States.

Article 4

(Calculation of the number of employees)

The number of employees in undertakings and establishments in the Republic of Slovenia shall be calculated on the basis of the average number of employees over the previous two years of operation.

Article 5

(Obligation to obtain and transmit information)

The management of every undertaking belonging to the group of undertakings in the Member States and the central management of the undertaking or group of undertakings in the Member States shall be responsible for obtaining and transmitting to the workers concerned or their representatives the information required for commencing negotiations. This shall apply in particular to the information on the total number of employees and their distribution across the Member States, undertakings and their establishments and on the structure of the undertakings or groups of undertakings.

Article 6

(Controlling undertaking)

- (1) An undertaking within a group of undertakings located in the Member States shall be considered the controlling undertaking if it directly or indirectly controls the other undertakings in the group of undertakings (controlled undertakings).
- (2) An undertaking shall be considered as directly or indirectly controlling another undertaking if it:
 - can appoint more than half of the members of the administrative, management or supervisory bodies of the controlled undertakings; or
 - controls a majority of votes deriving from the controlled undertakings' issued share capital; or
 - holds a majority of the subscribed capital of the controlled undertakings.
- (3) If more than one undertaking satisfies the criteria set out in the first to third indents of the previous paragraph, the controlling undertaking shall be determined by applying the criteria in the order in which they are set out.
- (4) In defining the controlling undertaking under paragraph (2) of this Article, a controlling undertaking's voting and appointment rights shall include the rights of all its controlled undertakings and all natural and legal persons that act on its behalf, whether on behalf of the controlling undertaking or its controlled undertakings.

II. SPECIAL NEGOTIATING BODY

Article 7

(Establishment)

- (1) A special negotiating body shall be established to negotiate an agreement on informing and consulting employees with the central management of an undertaking. It shall be established on the basis of a written request made to the central management by the employees or their representatives or on the initiative of the central management.
- (2) A request shall be deemed to have been properly submitted if it has been signed by at least 100 employees or their representatives from at least two establishments or undertakings in different Member States and has been received by the central management. If more than one request has been submitted, the signatures shall be added together.
- (3) If a request is submitted to the management of an establishment or an undertaking in the Republic of Slovenia, the request shall be immediately sent to the central management and those submitting the request shall be informed thereof.
- (4) The central management shall provide the special negotiating body with the information and documentation that it requires to perform its tasks.
- (5) Cooperation between the central management and the special negotiating body shall be founded on mutual trust.
- (6) The central management and the special negotiating body shall agree the time, frequency and venue of negotiations.

Article 8

(Number of members of the special negotiating body)

- (1) The number of members of the special negotiating body from a given Member State shall be proportionate to the number of workers employed in the undertakings or groups of undertakings in that Member State.
- (2) Workers from a given Member State shall be granted one seat on the special negotiating body for each 10 %, or fraction thereof, of the total number of employees employed in the undertakings and group of undertakings in all the Member States, taken as a whole.

Article 9

(Election of representatives of the special negotiating body from the Republic of Slovenia)

- (1) An assembly of employees shall elect employees' representatives from the Republic of Slovenia to the special negotiating body by secret ballot.
- (2) Works councils, representative trade unions within the undertaking or establishment and groups of at least 50 employees within the undertaking or establishment shall have the right to propose candidates for membership of the special negotiating body.

Article 10

(Notification of the members of the special negotiating body)

The special negotiating body shall immediately inform the central management of the names of its members, their addresses and the undertaking or establishment from which they come and shall inform it of the start of negotiations. The central management shall send this information to the managements and works councils in the establishments or undertakings and to representative trade unions that are represented within the establishments or undertakings in the Republic of Slovenia and to the responsible European employers' and employees' organisations.

Article 11

(Sessions, rules of procedure, experts)

- (1) Immediately after the election of the members of the special negotiating body, the central management shall convene the inaugural session of that body and inform the managements of the establishments and undertakings thereof. The special negotiating body shall elect a chairperson from among its members and shall adopt its rules of procedure.
- (2) The special negotiating body shall be entitled to meet in the absence of representatives of central management before and after negotiating with central management. The central management shall provide the necessary means of communication to this end.
- (3) The special negotiating body shall adopt decisions by a majority of the votes of its members, save as otherwise provided by this Act.

(4) In order to perform its tasks the special negotiating body may ask for assistance from experts of its own choice, including representatives of trade unions at Member-State level. 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.

Article 12

(Inclusion of employees' representatives from other countries)

If the central management and the special negotiating body agree that the agreement to be concluded pursuant to Article 15 of this Act shall also apply to establishments or undertakings in states that are not Member States, they may agree that representatives from these states be included in the special negotiating body and they shall determine their number and define their legal status.

Article 13

(Decision to terminate negotiations)

(1) The special negotiating body may decide, by at least a two-thirds majority of the votes of its members, not to start negotiations or to terminate them. That decision shall halt the procedure of agreement on informing and consulting employees. A report on the decision and the result of the vote shall be compiled and signed by the chairperson. A copy of the report shall be sent to the central management.

(2) A new request to form a special negotiating body may be submitted at the earliest two years after the date of the adoption of the decision referred to in the previous paragraph unless the special negotiating body and central management agree on a shorter period in writing.

Article 14

(Expenses)

(1) Expenses for establishing and operating the special negotiating body shall be met by the central management. If the experts referred to in Article 11(4) of this Act are included in the special negotiating body, the central management shall meet the expenses of one expert only. The central management shall provide the venue, material resources, translators and administrative staff required by the meetings and meet the travelling and accommodation expenses, including board and lodging, incurred by the members of the special negotiating body.

(2) The employer, jointly with the central management, shall guarantee the right to reimbursement of expenses of members of the special negotiating body from the Republic of Slovenia.

III. AGREEMENT ON THE ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL

Article 15

(Freedom of organisation)

The central management and the special negotiating body shall decide how to organise the process of informing and consulting employees and in doing so they shall not be

bound by the provisions of Chapter IV of this Act. The agreement shall apply to all employees in the Member States in which the undertaking or group of undertakings operates. The parties shall agree whether to establish a European Works Council to inform and consult employees pursuant to Article 16 of this Act or to introduce an information and consultation procedure for employees pursuant to Article 18 of this Act.

Article 16

(Agreement on the establishment and functions of a European Works Council)

(1) The European Works Council shall be established by written agreement that shall specifically determine in particular:

- which establishments and undertakings the agreement covers, including the establishments or undertakings outside the territory of the Member States which are also covered;
- the composition of the European Works Council, the number of members, the term of office and the allocation of seats, so as to ensure, where possible, balanced representation of employees with regard to their activities, category and gender;
- the functions and tasks of the European Works Council, the information and consultation procedure and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies;
- the venue, frequency and duration of sessions;
- the composition, the appointment procedure, the functions and the procedural rules of the select committee within the European Works Council, where such a committee has been set up;
- the financial and material resources required by the European Works Council;
- 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 the structure of the undertaking or group of undertakings in the Member States changes.

(2) Unless otherwise agreed, Article 21 of this Act shall apply to determining members of the European Works Council from the Republic of Slovenia.

Article 17

(Adaptation)

(1) Where the structure of the undertaking or group of undertakings in the Member States 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 the applicable agreements, the central management shall initiate the negotiations referred to in Article 7 on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

(2) 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 on the basis of Article 8 of this Act.

(3) The existing European Works Councils shall continue their work during the negotiations in accordance with the agreement concluded between the members of the European Works Councils and the central management.

Article 18

(Agreement on an information and consultation procedure)

To regulate an information and consultation procedure for employees, a written agreement shall be concluded that stipulates the conditions under which employees' representatives shall have the right to be consulted on information received and the procedure for considering their proposals or problems together with the central management or any more appropriate level of management. This information shall largely concern matters that significantly affect the interests of employees in all undertakings to which the agreement applies.

IV. ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL ACCORDING TO THIS ACT

Article 19

(Conditions)

(1) A European Works Council shall be established pursuant to Articles 20 and 21 of this Act, if:

- the central management refuses to start negotiations within six months of the date on which the request is submitted;
- within three years of the date on which the request is submitted, an agreement as laid down in Articles 16 or 18 of this Act has not been concluded; or
- the central management and the special negotiating body announce the failure of negotiations.

(2) It shall not be necessary to establish a European Works Council if the special negotiating body has adopted a decision on the termination of negotiations as referred to in Article 13(1) of this Act before the expiry of the period referred to in the second indent of the previous paragraph.

Article 20

(Composition of the European Works Council)

(1) The European Works Council shall comprise employees of undertakings and the group of undertakings in the Member States.

(2) Workers from a given Member State shall be granted one seat on the European Works Council for each 10 %, or a fraction thereof, of the total number of employees employed in the undertakings and group of undertakings in all the Member States when the information referred to in Article 5 of this Act was provided.

Article 21

(Election of members of the European Works Council from the Republic of Slovenia)

(1) An assembly of employees shall elect the members of the European Works Council from the Republic of Slovenia by secret ballot.

(2) Works councils, representative trade unions within the undertaking or establishment and groups of at least 50 employees within the undertaking or

establishment shall have the right to propose candidates for membership of the European Works Council.

Article 22

(Notification of the members of the European Works Council)

The European Works Council shall inform the central management immediately of the names of its members, their addresses and the undertaking or establishment from which they come. The central management shall send this information to the managements and works councils in the establishments or undertakings and to representative trade unions that are represented within the establishments or undertakings in the Republic of Slovenia.

Article 23

(Inaugural session)

The central management shall convene the inaugural session of the European Works Council after its members have been elected. The European Works Council shall elect a chairperson and vice-chairperson from among its members.

Article 24

(Chairperson)

- (1) The chairperson shall represent the European Works Council.
- (2) The vice-chairperson shall represent the European Works Council in the chairperson's absence.

Article 25

(Committee)

- (1) To ensure that the European Works Council can coordinate its activities, it may elect a select committee from among its members, comprising at most five members. This committee shall benefit from conditions enabling it to exercise its activities on a regular basis.
- (2) The committee shall adopt rules of procedure governing its working methods.

Article 26

(Decisions, rules of procedure, experts)

- (1) The European Works Council shall adopt decisions by a majority of the votes of the members present, save as otherwise provided by this Act.
- (2) The European Works Council or its select committee, expanded if necessary in accordance with Article 30(3) of this Act, shall be entitled to meet in the absence of representatives of central management before a meeting with the central management.
- (3) The European Works Council's working methods shall be governed by the rules of procedure.

(4) The rules of procedure may provide for experts selected by the European Works Council and its committee to assist them in their work, if that is required for the proper performance of their tasks.

Article 27

(Expenses)

(1) The expenses incurred in establishing and operating the European Works Council and its committee shall be met by the central management. If the experts referred to in the previous article are included, the central management shall meet the expenses of one expert only. The central management shall provide the venue, material resources and administrative staff required by meetings and the performance of ongoing work and in addition provide translators for the meetings. It shall meet the travelling and accommodation expenses, including board and lodging, incurred by the members of the European Works Council and its committee.

(2) The employer, jointly with the central management, shall guarantee the right to reimbursement of expenses of members of the European Works Council from the Republic of Slovenia.

Article 28

(Responsibilities)

(1) The responsibilities of the European Works Council shall relate to transnational matters.

(2) The central management or any more appropriate level of management shall, in particular, inform the European Works Council of the structure of the undertaking or group of undertakings, its economic and financial situation, probable development and production and sales.

(3) The central management or any more appropriate level of management shall, in particular, inform the European Works Council of, and consult it on, the situation and probable trend of employment, investments, substantial changes concerning organisation, the 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.

(4) 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.

Article 29

(Annual information and consultation)

The central management shall inform and consult the European Works Council at least once per calendar year with regard to the business success and the prospects of the undertaking or group of undertakings in the Member States and shall provide it with the necessary documentation. The central management shall also inform the managements of all the undertakings in the group of undertakings thereof.

Article 30

(Information and consultation in exceptional circumstances)

- (1) In the event of exceptional circumstances or decisions affecting the employees' interests to a considerable extent, the central management or any more appropriate level of management shall inform the select committee or, where no such committee exists, the European Works Council and provide it with the necessary material. The select committee of the European Works Council or the European Works Council shall be entitled to request a meeting with the central management, or any other more appropriate level of management within the undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted.
- (2) Exceptional circumstances shall be, above all:
 - changes in the location of the undertaking or establishments, or important parts thereof;
 - closure of the undertaking, an establishment, or important parts thereof;
 - collective redundancies.
- (3) Those members of the European Works Council of the establishments or undertakings which are directly concerned by the circumstances or decisions in question shall also be entitled to participate where a meeting is organised with the select committee.
- (4) 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 more appropriate level of management of the undertaking or group of undertakings in the Member States. The European Works Council may deliver its opinion on the report at the end of the meeting or within a specified period of time.
- (5) This meeting shall not affect the rights of the central management.
- (6) Information and consultation in exceptional circumstances shall be carried out in accordance with the principles of effectiveness and respect for confidentiality.

Article 31

(Term of office and determining new members)

- (1) The term of office of members of the European Works Council shall be four years if not terminated earlier by removal or for other reasons. The term of office shall start on election or appointment.
- (2) Every two years calculated from the date of the inaugural session of the European Works Council the central management shall check whether the number of employees in individual Member States has changed to an extent sufficient to alter the calculation of the composition of the European Works Council referred to in Article 20(2) of this Act. It shall inform the European Works Council of the results. If the results require the composition of the European Works Council to be altered, the European Works Council shall require that the competent bodies again determine the members of the European Works Council for those Member States that require a different number of employees' representatives in comparison with the preceding period. This shall terminate the membership of those employees' representatives that have until that time represented those Member States on the European Works Council.

(3) The previous paragraph shall be applied *mutatis mutandis* to Member States that have not previously been represented on the European Works Council.

Article 32

(Start of negotiations)

A European Works Council that has been set up by operation of law shall adopt a decision by a majority of the votes of all its members, at least six months before the end of its term of office, as to whether it will start negotiations with a view to concluding an agreement with the central management in accordance with Article 15 of this Act. If the European Works Council decides to start negotiations, it shall have the same rights and obligations as the special negotiating body. The provisions of Articles 7, 11, 12, 13(1), 14, 15, 16 and 18 of this Act shall apply *mutatis mutandis* thereto. If an agreement is concluded on informing and consulting employees pursuant to Article 15 of this Act, the term of office of the European Works Council shall terminate when it is concluded.

V. ROLE AND PROTECTION OF EMPLOYEES' REPRESENTATIVES

Article 33

(Role)

The members of the European Works Council shall have the means required to apply the rights arising from this Act and shall represent collectively the interests of the employees of the undertaking or group of undertakings in the Member States.

Article 34

(Informing employees' representatives)

The members of the European Works Council shall inform employees' representatives (the works council and the representative trade unions) or, where there are no such representatives, all employees in undertakings or establishments in the Member States of the information and consultation procedure.

Article 35

(Training)

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 have access to training without loss of pay.

Article 36

(Cooperation on the basis of mutual trust)

The central management and the European Works Council shall cooperate on the basis of mutual trust to the benefit of the employees and the undertaking or group of undertakings in the Member States. The same shall apply to cooperation between the central management and the employees' representatives within the framework of the information and consultation procedure.

Article 37

(Respect for confidentiality)

(1) The central management shall provide the European Works Council with information on matters agreed in accordance with Articles 16 and 18 of this Act or on matters referred to in Article 30(1) and (2) of this Act.

(2) Members of the European Works Council shall respect the confidentiality of all business information that they are provided with as members of that Council that the central management expressly designates as confidential, and they shall not be permitted to publish or make use thereof. This provision shall also apply to former members of the European Works Council.

(3) The previous paragraph shall not apply to contacts with other members of the European Works Council and to contacts with employees' representatives in establishments or undertakings in the Member States, if these persons must be informed of the content of information and the results of consultations pursuant to the agreement referred to in Article 16 or 34 of this Act, or to contacts with employees' representatives on the supervisory committee, or with translators or experts who assist the European Works Council.

(4) The obligation to respect confidentiality set out in the previous paragraphs shall apply *mutatis mutandis* to:

- members of the special negotiating body;
- employees' representatives in the information and consultation procedure;
- experts and translators;
- employees' representatives in establishments and undertakings in the Republic of Slovenia.

(5) Exceptions to the obligation to respect confidentiality referred to in paragraph 3 of this Article shall apply *mutatis mutandis* to:

- the special negotiating body with regard to experts and translators;
- employees' representatives in the information and consultation procedure with regard to experts and translators who assist them under the agreement, and in contacts with employees' representatives in establishments and undertakings in the Republic of Slovenia, if these persons must be informed of the content of information and the results of consultations under the agreement.

Article 38

(Protection of employees' representatives in the Republic of Slovenia)

(1) The part of the provisions governing employment relationships that relates to protection against dismissal for employees' representatives and the provision of the law governing the participation of employees in management shall apply *mutatis mutandis* to members of the European Works Council employed in the Republic of Slovenia.

(2) In accordance with the previous paragraph, protection shall also be afforded to the alternate members of the European Works Council, the members of the special negotiating body and the employees' representatives in the information and consultation procedure.

VI. SUPERVISION AND SETTLEMENT OF CONFLICTS

Article 39

(Supervision by the Labour Inspectorate)

Supervision of the implementation of the provisions of this Act shall be exercised by the Labour Inspectorate of the Republic of Slovenia.

Article 40

(Disputes)

A labour court shall be responsible for resolving any disputes relating to the application of this Act.

VII. PENAL PROVISIONS

Article 41

(Violations of this Act)

(1) A fine of between €20 000 and €100 000 shall be imposed on a legal person for an offence, if:

1. it fails to provide data, or provides incorrect or incomplete data, in violation of Article 5 of this Act;

2. in violation of Articles 29 and 30(1) of this Act, it fails to carry out annual information and consultation and information and consultation in exceptional circumstances or if it provides incorrect or incomplete data.

(2) A fine of between €2 000 and €5 000 shall also be imposed on the responsible person of a legal person who commits an offence referred to in the previous paragraph.

VIII. FINAL PROVISIONS

Article 42

(Expiry)

On the day this Act enters into force, the European Works Councils Act (Official Gazette of the Republic of Slovenia Nos 59/02 and 103/07) shall cease to apply.

Article 43

(Entry into force)

This Act shall enter into force on the day following that of its publication in the Official Gazette of the Republic of Slovenia.

No 300-01/11-8/10
Ljubljana,

14 June 2011

EPA 1798-V

National Assembly
of the Republic of Slovenia

Dr Pavel Gantar (signed)

President