

ACT
of 31 August 2011
amending the Law on European Works Councils¹

Article 1.

The Law of 5 April 2002 on European Works Councils (Journal of Laws No 62, item 556, as amended) shall be amended² as follows:

1) In Article 1:

a) paragraph 1 shall be replaced by the following:

“1. The Law defines the rules governing the establishment and operation of the European Works Councils and the procedures for informing and consulting employees in Community-scale undertakings and groups of undertakings. The purpose of the law is to implement the employees’ right to transnational information and consultations. The Law shall be without prejudice to the right to information and consultations under existing regulations.”;

b) the following paragraph 3a shall be inserted after paragraph 3:

“3a. The obligation to consult employees’ representatives should be without prejudice to the competence of the central management or any other appropriate level of management”;

2) In Article 2:

a) the following point 5a shall be inserted after point 5:

“5a) ‘information’ means transmission of data by the employer to the employees’ representatives; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to acquaint themselves with the subject matter, examine it, undertake an in-depth assessment of the possible impact on the employees’ rights and obligations and, where appropriate, prepare for

¹ This Law, within the scope of its regulations, 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).

² The amendments were published in Journal of Laws 2004 No 96, item 959, 2005 No 62, item 551, 2006 No 149, item 1077 and 2007 No 176, item 1238.

consultations with the competent body of the Community-scale undertaking or Community-scale group of undertakings.”;

b) point 6 shall be replaced by the following:

“6. ‘consultation’ means the establishment of a dialogue and an exchange of views between employees’ representatives and central management or any other appropriate level of management, at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, so as to allow the measures be taken into account within a reasonable time by Community-scale undertakings or Community-scale groups of undertakings.”;

c) the following point 6a shall be inserted after point 6:

“6a. ‘transnational matters’ mean matters which 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 of undertakings situated in two different Member States.”;

d) point 8 shall be replaced by the following:

“8. ‘European Works Council’ means a council established in accordance with Chapter 3 or Chapter 4, with the purpose of informing and consulting employees.”.

3) In Article 5, the following paragraph 1a shall be inserted after paragraph 1:

“1a. The central management or any other appropriate level of management of every undertaking belonging to the Community-scale group of undertakings shall be responsible for obtaining and transmitting to the special negotiating body in particular the information concerning the structure of the undertaking or the group and its workforce.”.

4. In Article 7:

a) paragraph 1 shall be repealed;

b) paragraph 2 shall be replaced by the following:

“2. The members of the special negotiating body shall be elected or appointed in proportion to the number of employees employed in each Member State by the 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.”;

c) paragraph 3 shall be repealed.

5) The following Article 7a shall be inserted after Article 7:

“Article 7a.

1. 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 Article 6(2) on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

2. In the cases referred to in paragraph 1, at least three members of the existing European Works Council or of each of the existing European Works Councils shall be members of the special negotiating body, in addition to the members elected or appointed pursuant to Article 7(2).

3. During the negotiations referred to in paragraph 1, the existing European Works Council(s) shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council(s) and the central management.”.

6) In Article 9:

a) paragraph 5 shall be replaced by the following:

“5.

Representatives shall elect from their number members of the special negotiating body. The number of such members is specified in Article 7(2).”;

b) the following paragraph 6 shall be inserted:

“6. Representatives shall notify the central management of the elected members of the special negotiating body.”.

7) Article 13 shall be replaced by the following:

“Art. 13. 1. Representative trade union organisations shall promptly notify the central management of the members of the special negotiating body appointed under Article 8(1).

2. The special negotiating body shall notify the central management of the members of the special negotiating body appointed under Article 8(4).

3. The central management shall transmit the information on the composition of the special negotiating body to the appropriate:

1) European workers’ and employers’ organisations which the European Commission consults under Article 154 of the Treaty on the Functioning of the European Union,

2) management of the undertakings and establishments and their employees.”.

8) In Article 14:

a) paragraph 1 shall be replaced by the following:

“1. The central management shall convene, within the period of 30 days from the day when the composition of the special negotiating body is established, a meeting with the special negotiating body in order to conclude an agreement regarding the setting up of the European Works Council or a procedure for informing and consulting employees. The central management shall inform the appropriate management of undertakings and establishments as well as the appropriate European workers’ and employers’ organisations, referred to in Article 13(3)(1), of the date of the meeting of the special negotiating body.”;

b) paragraphs 3 and 4 shall be replaced by the following:

“3. The members of the special negotiating body shall have the right to convene and hold a meeting prior to and after any meeting with the central management.

4. While carrying out its tasks the special negotiating body may be assisted by the experts of its choice, including representatives of Community-level trade union organisations.”;

c) the following paragraph 5 shall be inserted:

“5. Such experts, including trade union representatives, may be present at meetings with central management in an advisory capacity at the request of the special negotiating body.”.

9) In Article 15, the following paragraph 4 shall be inserted:

“4. 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 shall be provided with training, with the right to remuneration calculated in accordance with the rules concerning leave for the members of the management of a trade union organisation in the establishment.”.

10) In Article 19:a) in paragraph 1:

— point 2 shall be replaced by the following:

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

— the following point 3a shall be inserted after point 3:

“3a) the arrangements for linking information and consultation of the European Works Council and national employee representatives, which are given powers to information and consultation under national provisions.”;

— point 6 shall be replaced by the following:

“6) the duration of the agreement and the procedure for its amendment, the cases in which the agreement shall be amended, as well as the arrangements for amending or

terminating the agreement, including where the structure of the Community-scale undertaking or Community-scale group of undertakings changes.”;

b) the following paragraphs 1a and 1b shall be inserted after paragraph 1:

”1a. The parties to the agreement may specify in the agreement the composition, the appointment procedure, the functions and the procedural rules of the Presidium set up within the European Works Council.

1b. The agreement referred to in paragraph 1 shall be concluded in writing.”.

11) The following Article 19a shall be inserted after Article 19:

“Article 19a 1. Where the agreement referred to in Article 19 does not specify the arrangements for linking the information and consultation of the European Works Council and national employee representatives, and the central management envisages to take decisions likely to lead to substantial changes in work organisation or contractual relations, the central management shall be required to:

- 1) inform and consult the European Works Council concerning the envisaged decision.
- 2) transmit information concerning the envisaged decision to the appropriate: management of the undertakings and establishments in the Member States in order to exercise the employees’ right to information and consultation.

2. For the purposes of information and consultation referred to in paragraph 1(2), to employees:

1) employed in Poland, the Act of 7 April 2006 on informing and consulting employees (Journal of Laws No 79, item 550, 2008 No 93, item 584 and No 120, item 778 and 2009 No 97, item 805) shall apply and, where the employer has not appointed an employee council, employees shall be informed and consulted under the procedure adopted by the employer.

2) employed in another Member State, the rules specified in the legislation or practice of a given Member State shall apply.”.

12) In Article 21, paragraph 2 shall be replaced by the following:

“2. 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.”.

13) In Article 22:

a) paragraphs 1 and 2 shall be repealed;

b) paragraph 3 shall be replaced by the following:

“3. The central management shall verify once every two years whether the number of employees which determines the composition of the European Works Council has changed. Where such a change is established, the central management shall organise elections as prescribed by law or shall request the eligible bodies to appoint members. On the date of appointment or election of the new members, the mandates of the members of the European Works Council from the Member State to which the change applies shall expire.”.

14) In Article 23, paragraph 2 shall be replaced by the following:

“2. The term of office of the European Works Council shall be four years.”.

15) In Article 25:

a) paragraph 1 shall be replaced by the following:

“1. As soon as the composition of the European Works Council has been determined, the central management shall promptly convene an organisational meeting where the European Works Council shall be established. At the meeting, the members of the European Works Council shall elect the Chairman from their number, appoint the Presidium and adopt the internal rules of procedure.”;

b) paragraph 2 shall be repealed;

c) paragraph 3 shall be replaced by the following:

“3. The Presidium shall be composed of the Chairman and no more than four members. The members of the Presidium should be employed in different Member States.”.

16) Article 26 shall be repealed.

17) In Article 29, the following paragraph 3a shall be inserted after paragraph 3:

“3a. The consultation shall be conducted in such a way that the European Works Council can meet with the central management and obtain a response, and the reasons for that response, to any opinion submitted by the European Works Council.”.

18) In Article 30, paragraphs 1 and 2 shall be replaced by the following:

“1. Where there are exceptional circumstances which have a significant effect on employees’ interests, particularly in the event of collective redundancies, relocation of the undertaking or establishment or a substantial part thereof, the closure of the undertaking or establishment or a substantial part thereof, the central management shall be responsible for informing the Presidium or the European Works Council of such circumstances.

2. At the request of the Presidium or the European Works Council, the central management or management of a different level identified by the requesting party and authorised to take autonomous decisions shall be obliged to meet the Presidium or the European Works Council for the purpose of information or consultations on the measures

that significantly affect the employees' interests. The central management or management of a different level shall prepare a report for the meeting.”.

19) The following Article 32a shall be inserted after Article 32:

“Article 32a 1. Where a decision envisaged is likely to lead to substantial changes in work organisation or contractual relations, the central management shall:

- 1) inform and consult the European Works Council concerning the envisaged decision.
- 2) transmit information concerning the envisaged decision to the local management in order to exercise the employees' right to information and consultation in the countries affected by the decision.

2. For the purposes of information and consultation referred to in paragraph 1(2), to employees:

- 1) employed in Poland, the Act of 7 April 2006 on informing and consulting employees shall apply and, where the employer has not appointed an employee council, employees shall be informed and consulted under the procedure adopted by the employer.

- 2) employed in another Member State, the rules specified in the legislation or practice of a given Member State shall apply.”.

20) In Article 34, paragraph 1 shall be replaced by the following:

“1. The operating expenses of the European Works Council, and in particular the costs of organising meetings, board and accommodation, travel expenses of members, costs of interpretation and necessary training with retention of the right to remuneration, shall be borne by the central management, unless the central management and European Works Council decide otherwise.”.

Article 2.

1. The existing provisions shall apply to the Community-scale undertakings or Community-scale group of undertakings in which new agreements were concluded or existing agreements amended between 5 June 2009 and the date of entry into force of this Act, in accordance with Article 18 or 19 of the Law amended in Article 1 in the wording applicable prior to the date of entry into force of this Law.

2. The existing provisions shall apply to the Community-scale undertakings or Community-scale group of undertakings in which the agreement, referred to in Article 38 of the Law amended in Article 1, was amended due to structural changes in the undertakings or group of undertakings prior to the date of entry into force of this Act.

3. The existing provisions shall apply to the agreements referred to in paragraph 1 concluded or amended between 5 June 2009 and 5 June 2011, and to the agreements,

referred to in paragraph 2, which are amended or whose duration is extended before their expiry.

4. The parties to the agreements, referred to in paragraph 1, concluded or amended between 6 June 2011 and the date of entry into force of this Act, shall adjust the content of the agreements to the provisions of this Act within 6 months of the date of its entry into force.

Article 3.

A special negotiating body established prior to the entry into force of the Law shall operate until the agreement on setting up a European Works Council or a procedure for informing and consulting employees is concluded, but no longer than for three years from the date of the central management's initiative or request filed by employees in accordance with Article 6(2) of the Law amended in Article 1.

Article 4.

A European Works Council set up prior to the date of entry into force of the Law shall operate until the end of its term of office.

Article 5.

This Act shall enter into force on the 15th day following the date of its publication.

The President of the Republic of Poland: B Komorowski