

SUBSIDIARY LEGISLATION 452.98

**EMPLOYEE INVOLVEMENT (EUROPEAN
CO-OPERATIVE SOCIETY) REGULATIONS**

9th March, 2007

LEGAL NOTICE 48 of 2007, as amended by Legal Notice 427 of 2007.

1. (1) The title of these regulations is the Employee Involvement (European Co-operative Society) Regulations. Title and scope.

(2) These regulations establish the arrangements for the involvement of employees in the affairs of European Co-operative Societies (hereinafter referred to as SCEs), as referred to in Regulation (EC) No 1435/2003, thereby giving effect to the relevant provisions of Council Directive 2003/72/EC of the 22nd July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

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

"the Act" means the Employment and Industrial Relations Act; Cap. 452.

"concerned subsidiary or establishment" means a subsidiary or establishment of a participating legal entity which is proposed to become a subsidiary or establishment of the SCE upon its formation;

"consultation" means the establishment of dialogue and exchange of views between the body representative of the employees or the employees' representatives, or both, and the competent organ of the SCE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SCE;

"information" means the informing of the body representative of the employees or employees' representatives, or both, by the competent organ of the SCE on questions which concern the SCE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SCE;

"involvement of employees" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within an undertaking;

"Maltese employee" means an employee employed by an undertaking established in Malta;

"Maltese member of the special negotiating body" means a member of the special negotiating body elected or appointed by Maltese employees;

"Member States" means a member state of the European Union or the European Economic Area;

"participating legal entities" means companies and firms within the meaning of the second paragraph of Article 48 of the Treaty establishing the European Community, including cooperatives, as well as legal bodies formed under Maltese law directly participating in the establishment of an SCE;

"participation" means the influence of the body representative of the employees or the employees' representatives, or both, in the affairs of a legal entity by way of -

- (a) the right to elect or appoint some of the members of the legal entity's supervisory or administrative organ, or
- (b) the right to recommend or oppose, or both, the appointment of some or all of the members of the legal entity's supervisory or administrative organ;

"representative body" means the body representative of the employees set up by the agreements referred to in regulation 9 or in accordance with the provisions of the Schedule, with the purpose of informing and consulting the employees of an SCE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SCE;

"SCE" means any cooperative society established in accordance with Council Regulation (EC) No 1435/2003 of the 22nd July 2003;

"special negotiating body" means the body established in accordance with regulation 4 to negotiate with the competent organ of the participating legal entities regarding the establishment of arrangements for the involvement of employees within the SCE;

"subsidiary" of a participating legal entity or of an SCE means an undertaking over which that legal entity or SCE exercises a dominant influence defined in accordance with regulation 2(4) to (9) of the European Works Council Regulations.

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(2) Subject to the provisions of subregulation (1), 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 Regulation (EC) No 1435/2003 or in Council Directive 2003/72/EC shall have the same meaning as they have in the EC Regulation or Council Directive.

SCEs established by at least two legal entities or by transformation.

3. Regulations 4 to 11 are applicable to SCEs established by at least two legal entities or by transformation.

4. (1) When the management or administrative organs of participating legal entities draw up a plan for the establishment of an SCE in Malta, they shall as soon as possible take the necessary measures to start negotiations with the representatives of the legal entities' employees on arrangements for the involvement of employees in the SCE.

Creation and function of special negotiating body.

(2) The competent organs of the participating legal entities shall make arrangements for the establishment of a special negotiating body, representative of the employees of the participating legal entities and concerned subsidiaries or establishments, which shall be constituted in accordance with regulation 5.

(3) The special negotiating body and the competent organs of the participating legal entities shall have the task of reaching an employee involvement agreement.

(4) In order to facilitate the negotiation procedures, the measures referred to in subregulation (1) which the management or administrative organs of the participating legal entities are obliged to take shall include the provision of all the relevant information about the identity of the participating legal entities, concerned subsidiaries or establishments and the number of their employees as well as any matters related thereto, to the employees' representatives of the participating legal entity, its concerned subsidiaries and establishments, or if no such representatives exist, to the employees themselves. Such measures shall be taken within three weeks from the date referred to in subregulation (1).

(5) For the purpose of these regulations, in order to calculate the number of employees employed in subsidiaries and establishments operating in Malta, account shall be taken of all employees, whether such employees are on a definite or indefinite contract, and including part-time employees whose employment is their principal employment as defined by the Part-Time Employees Regulations.

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5. (1) The special negotiating body shall be set up in accordance with the following criteria:

Election of members of special negotiating body.

- (a) the employees of the participating legal entities and concerned subsidiaries or establishments in each Member State in which employees are employed shall be entitled to elect or appoint one member of the special negotiating body for each 10%, or a fraction thereof, of the number of employees employed in all the Member States taken together;
- (b) if, in the case of an SCE to be established by merger, following the election or appointment referred to in paragraph (a), the members elected or appointed to the special negotiating body do not include at least one member representing each participating cooperative which is registered and has employees in that Member State and which will cease to exist as a separate legal entity on or following the registration of the SCE, the employees of that cooperative in respect of which

there is no member shall be entitled to elect or appoint an additional member to the special negotiating body, provided that:

- (i) the number of additional members which the employees are entitled to elect or appoint shall not exceed 20% of the number of ordinary members elected or appointed by virtue of paragraph (a);
- (ii) the composition of the special negotiating body shall not entail a double representation of the employees concerned; and
- (iii) if the number of such cooperatives is higher than the number of additional seats, such additional seats shall be allocated by decreasing order to cooperatives in different Member States having the highest number of employees.

(2) If, following the appointment or election of members to the special negotiating body in accordance with this regulation,

- (a) changes are made to the participating legal entities, concerned subsidiaries or establishments which result in the number of ordinary or additional members which employees would be entitled to elect or appoint under this regulation either increasing or decreasing, the original appointment or election of members of the special negotiating body shall cease to have effect and those employees shall be entitled to elect or appoint the new number of members in accordance with the provisions of these regulations; and
- (b) a member of the special negotiating body is no longer willing or able to continue serving as such a member, the employees whom he represents shall be entitled to elect or appoint a new member in his place.

Conduct of ballot.

6. (1) The method of selection of the Maltese members of the special negotiating body shall be by means of a ballot from amongst eligible persons who satisfy the criteria laid down in subregulation (2)(d).

(2) The management or administrative organs of the participating legal entities to which these regulations apply shall be responsible for arrangements relating to the holding of the ballot of members to serve on the special negotiating body according to the following criteria:

- (a) in relation to the election of ordinary members under regulation 5(1)(a) -
 - (i) if the number of members which Maltese employees are entitled to elect to the special negotiating body is equal to the number of participating legal entities which have employees in Malta, there shall be separate ballots for the Maltese employees in each

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- participating legal entity;
- (ii) if the number of members which the Maltese employees are entitled to elect to the special negotiating body is greater than the number of participating legal entities which have employees in Malta, there shall be separate ballots for the Maltese employees in each participating legal entity and the management or administrative organs shall ensure, as far as practicable, that at least one member representing each such participating legal entity is elected to the special negotiating body and that the number of members representing each legal entity is proportionate to the number of employees in that legal entity;
 - (iii) if the number of members which the Maltese employees are entitled to elect to the special negotiating body is smaller than the number of participating legal entities which have employees in Malta, a single ballot shall be held in which all the employees of the participating legal entities shall be entitled to vote;
- (b) in relation to the ballot of additional members under regulation 5(1)(b), the management or administrative organs shall hold a separate ballot in respect of each participating legal entity entitled to elect an additional member;
- (c) in a ballot in respect of a participating legal entity, a Maltese employee employed in that participating legal entity or in its concerned subsidiaries and establishments on the date or dates of the election shall be entitled to vote;
- (d) in a ballot in respect of a participating legal entity, any person who on the date of nomination of candidates was -
- (i) a Maltese employee employed in that participating legal entity or in its concerned subsidiaries and establishments who satisfied the criteria laid down in regulation 4(5) and who is in employment but not in his probationary period on the date of nomination; or
 - (ii) a representative of a trade union, even if he is not an employee of that participating legal entity or its concerned subsidiaries or establishments,
- is entitled to stand as a candidate for election as a member of the special negotiating body in that ballot so long as the management or administrative organs of that participating legal entity so permit;
- (e) the management or administrative organs shall:
- (i) appoint an independent ballot supervisor to supervise the conduct of the ballot of Maltese

employees;

in the case where there is to be more than one ballot, the management or administrative organs may appoint more than one independent ballot supervisor each of whom shall supervise such of the separate ballots as the management or administrative organs may determine, provided that each separate ballot is supervised by a supervisor;

- (ii) ensure that there is no interference with the carrying out of his functions from the management or administrative organs;
 - (iii) comply with all reasonable requests made by a ballot supervisor for the purposes of, or in connection with, the carrying out of those functions;
- (f) after the management or administrative organs have formulated proposals as to the arrangements for the ballot of Maltese employees and before they have published the final arrangements under paragraph (g) they shall, as far as reasonably practicable, consult with the employees' representatives on the proposed arrangements for the ballot of Maltese employees; and
- (g) the management or administrative organs must publish the final arrangements for the ballot of Maltese employees in such manner as to bring them to the attention of, so far as reasonably practicable, the Maltese employees and of the employees' representatives.
- (3) The ballot supervisor shall establish the date:
- (a) for nomination of candidates, which shall be on a date within the second and third week from the date when the final arrangements for the ballot of Maltese employees referred to in subregulation (2)(g) were finalized, and
 - (b) of the ballot itself which shall be held within two months from the date of nomination of candidates referred to in paragraph (a).
- (4) It shall be the duty of the ballot supervisor -
- (a) to formally publish, as the case may be, the names of the persons standing for election, and the results of the ballot held to appoint the special negotiating body, in such a manner as to make them available to the management or administrative organs of the participating legal entity, to the Maltese employees entitled to vote in the ballot and the persons who stood as candidates, as soon as practicable, and in any case within one week after the date of nomination of candidates or the election or appointment of the members of the special negotiating body;

- (b) if the circumstances so warrant, to publish a report concurrently with the results of the election of the special negotiating body referred to in paragraph (a) stating -
- (i) that any of the requirements for holding a fair election were not met with the result that the outcome of the ballot could have been different; or
 - (ii) that there was an interference with the carrying out of his functions or a failure by management or administrative organs to comply with all reasonable requests made by him with the result that he was unable to form a proper judgement as to whether the requirements for holding a fair election were met.

(5) The special negotiating body shall be considered to have been established on the date of publication of the results of the ballot in accordance with subregulation (4)(a) provided that if the ballot supervisor also issues a report in accordance with subregulation (4)(b), the process of election or appointment of the special negotiating body shall be considered null and without effect and would have to be carried out anew.

(6) The competent organs of the participating legal entities shall, as soon as reasonably practicable and in any event by no later than one month after the establishment of the special negotiating body, inform their employees and those of their concerned subsidiaries and establishments of the identity of the members of the special negotiating body.

(7) Any Maltese employee or Maltese employees' representative may within a period of one week beginning on the date on which the management or administrative organs published the final arrangements in terms of subregulation (2)(g), 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 organization 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 organization of the ballot shall be final.

(8) Notwithstanding any requirement in these regulations to hold a ballot, where the number of candidates at the end of the period allocated for nominations equals the number of members to be elected to the special negotiating body, these shall be considered to have been automatically appointed to the special negotiating body, and this will obviate any requirement to hold a ballot and the ballot supervisor shall publish this result in accordance with subregulation (4).

(9) Any costs relating to the whole process of nominations and

election in one or more legal entities, including payments made to a ballot supervisor for supervising the conduct of the ballot, (whether or not a report in accordance with subregulation (4)(b) has been made), shall be borne by the participating legal entities operating in Malta.

Decisions of the special negotiating body.

7. (1) Each member of the special negotiating body shall have one vote.

(2) Subject to subregulation (3) and to regulation 8, the special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees.

(3) Any decision which would result in a reduction of participation rights must be taken by two thirds of the members of the special negotiating body, representing at least two thirds of the employees and including the votes of members representing employees in at least two Member States if -

- (i) in the case of an SCE to be established by a merger, at least 25% of the employees employed in the Member States by the participating cooperatives which are due to merge have participation rights; or
- (ii) in the case of an SCE to be established by any other way, at least 50% of the total number of employees employed in the Member States by the participating legal entities have participation rights.

(4) For the purposes of subregulation (3), reduction of participation rights means that the body representative of the employees has a smaller proportion of members of the supervisory or administrative organs of the SCE than the highest proportion already existing within any of the participating legal entities which gave participation rights to its employees.

(5) The special negotiating body shall publish the details of any decision taken under this regulation or under regulation 8 in such a manner as to bring the decision to the attention, so far as reasonably practicable, of the employees whom they represent and such publication shall take place as soon as reasonably practicable and, in any event no later than fourteen days, after the decision has been taken.

(6) For the purposes of negotiations, the special negotiating body may be assisted by experts of its choice.

(7) The participating legal entity or entities shall pay for any reasonable expenses of the functioning of the special negotiating body and any reasonable expenses relating to the negotiations that are necessary to enable the special negotiating body to carry out its functions in an appropriate manner; and this shall include the expenses of one expert where the special negotiating body is assisted by experts of its own choice.

8. (1) Subject to subregulations (2) and (3), the special negotiating body may decide not to open negotiations with the competent organs of the participating legal entities or to terminate any negotiations already opened, and to rely on the rules of information and consultation in force in the Member States where the SCE has employees.

Decision not to open or to terminate negotiations.

(2) The majority required to decide not to open or to terminate negotiations shall be the votes of two thirds of the members representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States.

(3) The special negotiating body cannot take the decision referred to in subregulation (1) in relation to an SCE to be established by transformation if any employees of the cooperative to be transformed have participation rights.

(4) The special negotiating body shall be reconvened only if the employees or employees' representatives make a valid request, which request shall be:

- (a) in writing
- (b) made by at least 10% of the employees of, or by employees' representatives representing at least 10% of the employees of -
 - (i) the participating legal entities, concerned subsidiaries and establishments, or
 - (ii) where the SCE has been registered, the SCE, its subsidiaries and establishments; and
- (c) at the earliest, two years after the decision made under subregulation (1) was or should have been published in accordance with regulation 7(5) unless the special negotiating body and the competent organs of the participating legal entities, concerned subsidiaries and establishments or, where the SCE has been registered, the SCE agrees to the special negotiating body being reconvened earlier:

Provided that if the special negotiating body decides to reopen negotiations with the management or administrative organs but no agreement is reached as a result of those negotiations, none of the provisions of the Schedule shall apply.

9. (1) The competent organs of the participating legal entities and the special negotiating body are under a duty to negotiate in a spirit of cooperation with a view to reaching an employee involvement agreement.

Negotiations on and content of employee involvement agreement.

(2) The duty referred to in subregulation (1) commences one month after the date on which all the members of the special negotiating body were elected or appointed and applies -

- (a) for a period of six months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within that period, until the completion of the

negotiations;

- (b) where the parties agree before the end of the six month period referred to in paragraph (a) that it is to be extended, for a period of twelve months starting from the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within this twelve month period, until the completion of the negotiations.

(3) The competent organs of the participating legal entity or entities shall provide the special negotiating body with such information as is necessary to keep it informed of the plan and progress of establishing the SCE up to the time the SCE has been registered.

(4) Without prejudice to the autonomy of the competent organs of the participating legal entities and the special negotiating body, and subject to subregulation (6), the agreement referred to in subregulation (1) between the competent organs of the participating legal entities and the special negotiating body, shall specify:

- (a) the scope of the agreement;
- (b) the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SCE in connection with arrangements for the information and consultation of the employees of the SCE and its subsidiaries and establishments;
- (c) the functions and the procedure for the information and consultation of the representative body;
- (d) the frequency of meetings of the representative body;
- (e) the financial and material resources to be allocated to the representative body;
- (f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;
- (g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SCE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights;
- (h) the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation, including, where appropriate, the duty to renegotiate on changes in worker involvement in the event of structural changes in the SCE and its subsidiaries and

establishments which occur after the creation of the SCE.

(5) The agreement shall not, unless provision is made otherwise therein, be subject to the standard rules referred to in the Schedule to these regulations.

(6) In the case of an SCE established by means of transformation, the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the cooperative to be transformed into an SCE.

(7) The agreement may specify the arrangements for the entitlement of employees to participate in the general meetings or in the section or sectorial meetings in accordance with regulation 13 and any other arrangement emanating from Article 59(4) of Regulation (EC) No 1435/2003 on the Statute of the European Co-operative Society.

10. Except where otherwise provided in these regulations, the legislation applicable to the negotiation procedure provided for in regulations 4 to 9 shall be the legislation of the Member State in which the registered office of the SCE is to be situated.

Legislation applicable to the negotiation procedure.

11. (1) Without prejudice to subregulation (2), where this regulation applies, the competent organ of the SCE and its subsidiaries and establishments shall make arrangements for the involvement of employees of the SCE and its subsidiaries and establishments in accordance with the standard rules on employee involvement set out in the Schedule to these regulations when:

Standard rules on employee involvement.

- (a) the parties agree that the standard rules shall apply; or
- (b) the period specified in regulation 9(2)(a) or, where applicable, paragraph (b) has expired without the parties reaching an employee involvement agreement and -
 - (i) the competent organs of each of the participating legal entities decide to accept that the standard rules shall apply and so continue with the registration of the SCE, and
 - (ii) the special negotiating body has not taken any decision under regulation 8(1) either not to open or to terminate the negotiations referred to in that regulation:

Provided that the standard rules shall apply from the date of registration of the SCE.

(2) The standard rules on participation as set out in Part 3 of the Schedule only apply:

- (a) in the case of an SCE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied to a cooperative transformed into an SCE;
- (b) in the case of an SCE established by merger if, before registration of the SCE, one or more forms of participation existed in at least one of the participating

cooperatives and:

- (i) either that participation applied to at least 25% of the total number of employees of the participating cooperatives employed in the Member States, or
 - (ii) that participation applied to less than 25% of the total number of employees of the participating cooperatives employed in the Member States and the special negotiating body decides that the standard rules of participation will apply to the employees of the SCE;
- (c) in the case of an SCE established by any other way if, before registration of the SCE, one or more forms of participation existed in at least one of the participating legal entities and:
- (i) either that participation applied to at least 50% of the total number of employees of the participating legal entities employed in the Member States; or
 - (ii) that participation applied to less than 50% of the total number of employees of the participating legal entities employed in the Member States and the special negotiating body decides that the standard rules of participation will apply to the employees of the SCE.

(3) Where the standard rules on participation apply and, if more than one form of participation existed in the participating legal entity, the special negotiating body shall decide which of the existing forms of participation shall exist in the SCE and shall inform the competent organs of the participating legal entities accordingly.

SCEs established exclusively by natural persons or by a single legal entity and natural persons.

12. (1) This regulation is applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons.

(2) The provisions of regulations 4 to 11 apply in the case of an SCE established exclusively by natural persons or by a single legal entity and natural persons, which together employ at least fifty employees in at least two Member States.

(3) In the case of an SCE established exclusively by natural persons or by a single legal entity and natural persons, which together employ fewer than fifty employees, or employ fifty or more employees in only one Member State -

- (i) employee involvement in the SCE itself shall be governed by the law, applicable to other entities of the same type, of the Member State where the SCE has its registered office;
- (ii) employee involvement in its subsidiaries and establishments shall be governed by the law, applicable to other entities of the same type, of

the Member State where they are situated.

(4) In the case of transfer of the registered office of an SCE governed by participation from one Member State to another, at least the same level of employee participation rights shall continue to apply.

(5) If, after the registration of an SCE referred to in subregulation (3), at least one third of the total number of employees of the SCE and its subsidiaries and establishments in at least two different Member States so requests, or if the total number of employees reaches or exceeds fifty employees in at least two Member States, regulations 4 to 11 shall *mutatis mutandis* apply. In this case, the terms 'participating legal entities' and 'concerned subsidiaries or establishments' shall be replaced by the words 'SCE' and 'subsidiaries or establishments of the SCE' respectively.

13. (1) Subject to the limits laid down in Article 59(4) of Regulation (EC) No 1435/2003, the employees of the SCE or their representatives or both are entitled to participate in the general meeting or, if it exists, in the section or sectorial meeting, with the right to vote:

Participation in general or sectorial meetings.

- (a) when the parties so decide in the agreement referred to in regulation 9, or
- (b) when a cooperative governed by such a system transforms itself into an SCE, or
- (c) when, in the case of an SCE established by means other than transformation, a participating cooperative was governed by such a system, and:
 - (i) the parties cannot reach agreement, as referred to in regulation 9, by the deadline laid down in the same regulation; and
 - (ii) regulation 11(1)(b) and Part 3 of the Schedule apply; and
 - (iii) the participating cooperative governed by such a system has the highest proportion of participation, within the meaning of regulation 2, in force in the participating cooperatives concerned before registration of the SCE.

14. (1) A person who is or at any time was -

- (a) a member of a special negotiating body;
- (b) a member of a representative body;
- (c) an employee member on a supervisory or administrative organ; or
- (d) an expert assisting a special negotiating body or a representative body, 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), which the competent organ of an SCE, a participating legal entity or its concerned subsidiaries

Reservation and confidentiality.

or establishments has entrusted to him on terms requiring it to be held in confidence.

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

(3) The obligation to comply with subregulation (1) is a duty owed to the competent organ of a participating legal entity or the SCE and a breach of such duty is actionable in damages accordingly.

(4) Where a dispute arises as to the confidentiality of information or a document given to a recipient, the recipient whom the competent organ of a participating legal entity or the SCE 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 competent organ to require the recipient to hold the information or document in confidence.

(5) 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, it shall make a declaration that it was not reasonable for the competent organ to require the recipient to hold the information or document in confidence.

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

(7) The competent organ of an SCE registered in Malta or a participating legal entity, or a concerned subsidiary registered in Malta 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 SCE, participating legal entity or any subsidiaries or establishments concerned.

(8) Where there is a dispute between the competent organ of a participating legal entity, concerned subsidiary or establishment or an SCE 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 subregulation (7), the competent organ 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.

(9) 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 SCE, participating legal entity or any subsidiary or establishment concerned, as the case may be, the Industrial Tribunal shall order the competent organ 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.

15. The competent organ of the SCE and the representative body shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations, and this shall also apply to the cooperation between the supervisory or administrative organ of the SCE and the employees' representatives in conjunction with a procedure for the information and consultation of employees.

Operation of the representative body and procedure for the information and consultation of employees.

16. (1) The members of the special negotiating body, the members of the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative organ of an SCE who are employees of the SCE, its subsidiaries or establishments or of a participating legal entity shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives in the Act.

Protection of employees' representatives.

(2) The protection and guarantees referred to in subregulation (1) shall apply in particular to attendance at meetings of the special negotiating body or representative body, any other meeting under the agreement referred to in regulation 9(4)(f) or any meeting of the administrative or supervisory organ, and to the payment of wages for members employed by a participating legal entity or the SCE or its subsidiaries or establishments during a period of absence necessary for the performance of their duties.

17. No person shall use an SCE for the purpose of depriving employees of rights to employee involvement or withholding any such rights.

Misuse of procedures.

18. It shall be the duty of -

- (a) the management or administrative organs of establishments of an SCE and the supervisory or administrative organs of subsidiaries and of participating legal entities which are situated in Malta, and
- (b) the employees' representatives or, as the case may be, the employees themselves,

Compliance with these regulations.

to abide by the obligations laid down by these regulations, regardless of whether or not the SCE has its registered office in Malta.

19. (1) Notwithstanding any provision to the contrary in the European Works Council Regulations, and subject to subregulation (2), where an SCE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of

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undertakings within the meaning of those regulations, the provisions of European Works Council Regulations shall not apply to them or to their subsidiaries.

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(2) Where the special negotiating body decides in accordance with regulation 8 not to open negotiations or to terminate negotiations already opened, the provisions of the European Works Council Regulations shall apply.

(3) Provisions on the participation of employees in legal entity bodies provided for in any relevant collective agreement shall not apply to the SCEs to which regulations 4 to 11 apply.

(4) These regulations shall not prejudice:

- (a) the existing rights to involvement of employees provided for by laws or applicable collective agreements as enjoyed by employees of the SCE and its subsidiaries and establishments, other than participation in the bodies of the SCE;
- (b) the provisions on participation in the bodies in any relevant law or as agreed through any collective agreement applicable to the subsidiaries of the SCE or to SCEs to which regulations 4 to 11 do not apply.

Penalties.
Amended by:
L.N. 427 of 2007.

20. 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:

- (a) to a fine (*multa*) of not less than twenty-three euro and twenty-nine cents (23.29) and not more than one hundred and sixteen euro and forty-seven cents (116.47) for every employee of all the participating legal entities, concerned subsidiaries or establishments in relation to a failure by the competent organ of the SCE, of the participating legal entity or concerned subsidiary as the case may be, to comply with any requirements provided for in these regulations;
 - (b) in relation to any other offence, 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).
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SCHEDULE

(Regulations 11 and 12)

STANDARD RULES

Part 1: Composition of the body representative of the employees

1. In order to achieve the objective described in regulation 1, and in the cases referred to in regulation 11, a representative body shall be set up in accordance with the following rules.

- (a) The representative body shall be composed of employees of the SCE and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.
- (b) The election or appointment of members of the representative body shall be carried out by the special negotiating body, in accordance with any method it adopts.
- (c) Where its size so warrants, the representative body shall elect a select committee from among its members, comprising at most three members.
- (d) The representative body shall adopt its rules of procedure.
- (e) The members of the representative body are elected or appointed in proportion to the number of employees employed in each Member State by the SCE and its subsidiaries or establishments, by allocating in respect of a Member State one seat per each portion of employees employed in that Member State which equals 10%, or a fraction thereof, of the number of employees employed by them in all the Member States taken together.
- (f) The competent organ of the SCE shall be informed of the composition of the representative body.
- (g) Not later than four years after its establishment, the representative body shall examine whether to open negotiations for the conclusion of the agreement referred to in regulations 9 and 11 or to continue to apply the standard rules adopted in accordance with this Schedule.

2. Regulations 7 to 10 shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to regulation 9, in which case the term 'special negotiating body' shall be replaced by 'representative body'. Where, by the deadline by which the negotiations come to an end, no agreement has been concluded, the arrangements initially adopted in accordance with the standard rules shall continue to apply.

Part 2: Standard Rules for Information and Consultation

3. The competence and powers of the representative body set up in an SCE shall be governed by the following rules:

- (a) The competence of the representative body shall be limited to questions which concern the SCE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State.
- (b) Without prejudice to meetings held pursuant to paragraph (c), the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SCE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SCE and its

prospects. The local management or administrative organs shall be informed accordingly.

The competent organ of the SCE shall provide the representative body with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its members. The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, initiatives with regard to corporate social responsibility, the situation and probable trend of employment, investments, and substantial changes concerning organization, 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.

- (c) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall have the right to be informed. The representative body or, where it so decides, in particular for reasons of urgency, the select committee, shall have the right to meet at its request, the competent organ of the SCE or any more appropriate level of management within the SCE having its own powers of decision, so as to be informed or consulted on measures significantly affecting employees' interests.

Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent organ of the SCE with a view to seeking agreement.

In the case of a meeting organized with the select committee, those members of the representative body who represent employees who are directly concerned by the measures in question shall also have the right to participate.

The meetings referred to above shall not affect the prerogatives of the competent organ.

- (d) The parties present at the information and consultation meetings are to agree as to how to conduct the procedure during the said meeting and in case of disagreement then the parties should conduct the meeting alternately and establish the procedure thereof.

Before any meeting with the competent organ of the SCE, the representative body or the select committee, where necessary enlarged in accordance with the third subparagraph of paragraph (c), shall be entitled to meet without the representatives of the competent organ being present.

- (e) Without prejudice to regulation 14, the members of the representative body shall inform the representatives of the employees of the SCE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.
- (f) The representative body or the select committee may be assisted by experts of its choice.
- (g) In so far as this is necessary for the fulfillment of their tasks, the members of the representative body shall be entitled to time off for training without loss of wages.
- (h) The costs of the representative body shall be borne by the SCE, which shall provide the body's members with the financial and material

resources needed to enable them to perform their duties in an appropriate manner.

In particular, the SCE shall, unless otherwise agreed, bear the cost of organizing meetings and providing interpretation facilities and the accommodation and travelling expenses of members of the representative body and the select committee. However the obligation of the SCE to cover the expenses of any experts engaged by the special negotiating body or the representative body is limited to those of one expert only.

Part 3: Standard Rules for Participation

4. Employee participation in an SCE shall be governed by the following provisions:

- (a) In the case of an SCE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SCE. Paragraph (b) shall apply *mutatis mutandis* to that end.
- (b) In other cases where an SCE is established, the employees of the SCE, its subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SCE equal to the highest proportion in force in the participating legal entities concerned before registration of the SCE.

If none of the participating legal entities was governed by participation rules before registration of the SCE, the latter shall not be required to establish provisions for employee participation.

The representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States or on the way in which the SCE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SCE's employees in each Member State. If the employees of one or more of the Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SCE's registered office where that is appropriate.

Every member of the administrative body or, where appropriate, the supervisory body of the SCE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the members of the cooperative, including the right to vote.
