

L.N. 324 of 2004

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT, 2002
(ACT NO. XXII OF 2002)**

European Works Council Regulations, 2004

IN exercise of the powers conferred by article 35 of the Employment And Industrial Relations Act, 2002, the Minister of Education, Youth and Employment has made the following regulations:—

Title and scope.

1. (1) The title of these regulations shall be the European Works Council Regulations 2004.

(2) The purpose of these regulations is to improve the right of employees in Community-scale undertakings and Community-scale groups of undertakings, to be informed and consulted through the establishment of a European Works Council or equivalent arrangements to cater for the information and consultation of employees in every such undertaking and group of undertakings and to implement the provisions of EU Council Directive 94/45/EC.

Definitions.

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

“central management” means the central management of the undertaking or, in the case of a Community-scale group of undertakings, of the controlling undertaking, or, as provided for in regulation 3(2), the representative agent or the management of the establishment;

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

- at least a total of 1000 employees employed in Member States;
- at least two group undertakings in different Member States, and
- at least one group undertaking with at least 150 employees in any one Member State and at least one other group undertaking with at least 150 employees in another Member State;

“Community-scale undertaking” means any undertaking with at least 1000 employees, within Member States and which also has at least 150 employees in each of at least two Member States;

“consultation” means the exchange of views and establishment of dialogue between employees’ representatives and central management or any more appropriate level of management;

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

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

“establishment”, in relation to an undertaking, means a division of the undertaking physically separated from other parts of the undertaking;

“European Works Council” means the council established in accordance with –

(a) the provisions of regulation 7 or regulation 8 and the Schedule to these regulations, with the purpose of informing and consulting employees;

(b) where appropriate, the provisions of the law or practice of a Member State other than Malta which are designed to give effect to article 6 of and article 7 of and the Annex to EU Council Directive 94/45/EC.

“group of undertakings” means a controlling undertaking and its controlled undertakings, and ‘group undertaking’ means any undertaking of a group of undertakings;

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

“Special Negotiating Body” means the body established in accordance with regulations 5 and 6 to negotiate with the central management regarding the establishment of a European Works

Council or other equivalent procedure for informing and consulting employees;

“undertaking” means any form of economic activity.

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

(3) The prescribed thresholds to determine whether an undertaking is a community-scale undertaking or a community scale group of undertakings, shall be based on the number of employees employed by the undertaking or group of undertakings which, for the purpose of these regulations, shall be calculated as follows:

(a) in the case of employees in Malta, on the average number of employees who were employed during the two year period ending on the last day of the month preceding the month in which a request pursuant to regulation 4 was made, whether such employees are on a definite or indefinite contract, and including part-time employees whose part-time employment is their principal employment in respect of which social security contributions are payable in respect of the Social Security Act;

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(b) in the case of employees in other member states, by the average number of employees employed in a two year period as referred to in the preceding paragraph calculated according to the laws in force and, or, practice in that state giving effect to EU Council Directive 94/45/EC.

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

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

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

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

(5) For the purposes of sub-regulation (4) of this regulation, a controlling undertaking’s rights as regards voting and appointment

shall include the rights of any of its controlled undertakings and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other of its controlled undertakings.

(6) Notwithstanding what is stated in these regulations, an undertaking shall not be regarded as a controlling undertaking of another undertaking in which it has holdings where the first-mentioned undertaking is a company referred to in Article 3 (5) (a) or (c) of Council Regulation (EEC) No. 4064/89 of 21 December 1989, on the control of concentrations between undertakings.

(7) A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising his functions, according to the law of the Member State in which the undertaking is situated, which relates to liquidation, winding up, insolvency, cessation of payments, composition of creditors or analogous proceedings.

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

(9) Where, in the case of a conflict of laws in the application of sub-regulation (4), two or more undertakings from a group, whether situated in Malta or in any member state, satisfy one or more of the criteria laid down in that subparagraph, the organisation which satisfies the criterion laid down in paragraph (c) of sub-regulation (4) of this regulation shall be regarded as the controlling undertaking, without prejudice to proof that another undertaking is able to exercise a dominant influence.

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

Responsibilities of
central
management.

(a) the central management is situated in Malta;

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

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

(i) in the case of a Community-scale undertaking, there are employed in an establishment, which is situated in Malta, more employees than are employed in any other establishment which is situated in a Member State, or

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

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

(2) Where the circumstances described in paragraph (b) or (c) of sub-regulation (1) apply, the central management shall be treated, for the purposes of these regulations, as being situated in Malta and –

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

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

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

(3) It shall be the duty of the management of establishments of a community-scale undertaking situated on Maltese territory or of the management of undertakings which form part of a community-scale group of undertakings situated on Maltese territory, as the case may be, to comply with the relevant provisions of these regulations, irrespective of whether or not the central management is situated in Malta.

4. (1) An employee or an employees' representative may present a written request for information from the management of an establishment, or of an undertaking in Malta for the purpose of determining whether, in the case of an establishment, it is part of a Community-scale undertaking or Community-scale group of undertakings or, in the case of an undertaking, it is a Community-scale undertaking or is part of a Community-scale group of undertakings.

Employees' requests for information.

(2) The management of an establishment or undertaking to which a request under sub-regulation (1) is made shall provide the employee or employees' representative who has made the request with information on the average number of employees employed by the undertaking, or as the case may be the group of undertakings, in Malta and in each of the other Member States calculated as specified in regulation 2 (3), within one month from the date of receipt of the request.

(3) Failure to provide the information as provided for in the previous sub-regulation or to provide false or incomplete information shall be deemed an offence against these regulations.

5. (1) It shall be the duty of the central management to establish a Special Negotiating Body to negotiate with the central management for the establishment of a European Works Council or an alternative information and consultation procedure.

Establishment of Special Negotiating body.

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

(a) on its own initiative, or

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

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

(4) Where the request is lodged with the local management pursuant to paragraph 2(b), the local management shall ensure that the request is passed on to the central management within a period of 15 working days from its receipt and any avoidable or unreasonable delay

after that period in the transmission of the request to the central management shall not of itself extend the six month period referred to in sub-regulation (3).

Functions and
procedures of the
Special
Negotiating Body.

6. (1) The function of the Special Negotiating Body shall be to negotiate with the central management, for a written agreement or agreements for the establishment of arrangements for the information and consultation of employees and for determining the scope, composition, functions, and term of office of the European Works Council or alternative arrangements for implementing a procedure for the information and consultation of employees.

(2) The Special Negotiating Body shall be composed of at least three members who shall be elected or appointed according to the following criteria:

(a) one member representing each member state in which the community-scale undertaking has one or more establishments, or in which the Community-scale group of undertakings has its controlling undertaking or one or more controlled undertakings; and

(b) one additional member from a Member State where at least 25% but less than 50% of the employees of the undertaking or group of undertakings who are employed in the Member States;

(c) two additional members from a Member State where at least 50% but less than 75% of the employees the undertaking or group of undertakings who are employed in the Member States are employed;

(d) three additional members from a Member State in which 75% or more of the employees of the undertaking or group of undertakings who are employed in the Member States are employed.

(3) Employees' representatives from countries that are not Member States may be permitted to participate in the meetings and activities of the European Works Council if there is agreement between the central management and the Special Negotiating Body to this effect, but shall not be entitled to vote.

(4) The method of selection of the members representing employees employed by the undertaking, or as the case may be the group of undertakings, situated in Malta to sit on the Special Negotiating Body shall be by means of an election from amongst eligible candidates

who satisfy the criteria laid down in regulation 2(3)(a) and who are in employment but not in their probationary period on the date of nomination, and the central management shall appoint a responsible person to act as ballot supervisor to oversee the whole process of nominations and election, and any expenses related to the process of appointing or electing the Special Negotiating Body shall be borne by the central management.

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

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

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

(8) Arrangements for the holding of such a ballot shall be finalised by the central management within one month from the date of nomination of candidates referred to in sub-regulation (5) and the central management shall ensure that the process of nominations and the ballot itself shall be overseen by the ballot supervisor. The ballot itself, if necessary, shall be held within two months from the date of nomination of candidates referred to in sub-regulation (5).

(9) Any employee who is in employment on the day or days of the election and satisfies the criteria referred to in regulation 2(3)(a) shall be entitled to vote in such an election.

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

(11) It shall be the duty of the ballot supervisor to give the formal results of the process of nomination or ballot held to appoint the Special Negotiating Body, as the case may be, to the central management and local management as soon as practicable, and in any case within one month, after the date of the election or appointment of its members.

(12) With a view to concluding an agreement referred to in regulation 7 the central management shall convene a meeting with the special negotiating body and shall inform local managements accordingly.

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

(14) The Special Negotiating Body may decide, by at least two-thirds of the votes, either not to open negotiations in accordance with sub-regulation (12) of this regulation, or to terminate the negotiations already opened, in which case the provisions of the Schedule to these regulations shall not apply.

(15) A new request to convene the Special Negotiating Body may be made at the earliest two years after the decision mentioned in sub-paragraph (14) of this regulation has been taken, unless the parties concerned agree on a shorter period.

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

(17) Any reasonable expenses relating to the negotiations referred to in this regulation shall be borne by the central management so as to enable the Special Negotiating Body to carry out its functions in an appropriate manner.

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

Content of the
agreement.

7. (1) The central management and the special negotiating body shall be obliged to negotiate in a spirit of cooperation with a view to reaching a written agreement on the detailed arrangements for the information and consultation of employees in a Community-scale undertaking or Community-scale group of undertakings.

(2) The central management and the special negotiating body may decide in writing to establish an alternative information and consultation procedure instead of a European Works Council.

(3) When the central management and the special negotiating body reach an agreement making arrangements for the information and consultation of employees, whether it involves the establishment of a European Works Council, or an alternative information and consultation procedure, the agreement shall determine:

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

(b) the duration of the agreement and the procedure for its re-negotiation, and

(c) the method by which the information conveyed to employees' representatives shall be conveyed to employees in the different Member States and the opinion of employees given on the information so conveyed shall be recorded, irrespective of the Member State in which the central management is located.

(4) Where an agreement requires the establishment of a European Works Council, it shall also determine:

(a) the composition of the European Works Council, the number of members, the allocation of seats and the term of office,

(b) the functions, and the procedure for information and consultation, of the Council,

(c) the venue, frequency and duration of meetings of the Council, and

(d) the financial and other resources to be allocated to the Council.

(5) Where an agreement requires the establishment of an alternative information and consultation procedure, it shall also determine:

(a) what that procedure shall be,

(b) the issues for information and consultation,

(c) the methods according to which the employees' representatives in the different Member States can meet for exchange of views regarding the information conveyed to them, and

(d) the financial and other resources to be allocated to ensure the operation of the procedure and the holding of the meetings referred to in paragraph (c).

(6) An agreement referred to in sub-regulation (3) or (4) shall not be subject to the provisions of the Schedule, except to the extent that the parties provide in the agreement that any of those requirements are to apply.

(7) Where a Community-scale group of undertakings comprises one or more undertakings or groups of undertakings which are themselves Community-scale undertakings or Community-scale groups of undertakings, the European Works Council shall be established at the level of the first-mentioned Community-scale group of undertakings, unless an agreement referred to in sub-regulation (3) provides otherwise.

(8) Unless a wider scope is provided for in an agreement referred to in sub-regulation (1), the powers and competence of a European Works Council and the scope of an information and consultation procedure shall, in the case of a Community-scale undertaking, cover all the establishments located within the Member States and, in the case of a Community-scale group of undertakings, all group undertakings located within the Member States.

(9) The Special Negotiating Body shall remain in existence only for as long as it continues to have the function of negotiating for an agreement leading to the establishment of a European Works Council, or an alternative information and consultation procedure and shall automatically dissolve on its ceasing to have that function.

Subsidiary
requirements.

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

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

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

(c) where, after three years from the date of this request, the parties are unable to conclude an agreement as laid down in regulation 7 and the Special Negotiating Body has not taken the decision provided for in regulation 6(14).

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

9. (1) Members of the Special Negotiating Body and of the European Works Council, or of any other body established under these regulations in order to facilitate informing and consulting employees, as well as any persons who assist them, shall not reveal any information which has been provided to them in confidence and this prohibition shall apply even after the expiry of the term of office of the persons concerned;

Confidential
information.

Provided that a person may, in accordance with his or her duties as a member, expert or employees' representative to the information and consultation procedure, disclose such information:

- (a) to the Body or Council of which he or she is or was then a member,
- (b) to another employees' representative to the procedure, or
- (c) to the member, body or person he or she is or was then employed to advise.

(2) Without prejudice to regulation 4, the central management shall not be obliged to transmit certain information to the Special Negotiating Body, European Works Council or in connection with an alternative information and consultation procedure –

- (a) where it can show that the disclosure would be likely to prejudice significantly and adversely the economic or financial position of an undertaking or group of undertakings or breach statutory or regulatory rules, or
- (b) where the information is of a kind that meets objective standards for determining that it should be withheld agreed between the central management and the Special Negotiating Body, European Works Council or the employees' representatives to an information and consultation procedure.

Protection of
Employees'
Representatives.

10. (1) Members of the Special Negotiating body or members of the European Works Council or any other body established to facilitate the process of information and consultation of employees by virtue of these regulations shall, in the exercise of their functions, enjoy the same protection as an employees' representatives in terms of article 36(14) (a) of the Act.

(2) Such members as referred to in the preceding sub-regulation, shall be allowed to attend any meetings of the Special negotiating Body, European Works Council or any other meeting within the framework of the agreement referred to in regulation 7 and shall be paid their wages during the periods of absence from their place of work as may be necessary to perform their duties pursuant to these Regulations.

Employees'
existing rights.

11. These regulations shall be without prejudice to any existing rights to information and consultation which employees may have as a result of existing legislation.

Enforcement.

12. 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 10 liri and not more than fifty liri for every employee of the Community-scale undertaking or Community-scale group of undertakings as the case may be in relation to a failure by central management to:

(i) provide information about the number of employees or the status of employees for the purpose of regulation 4, or to wilfully obstruct or delay the provision of such information, or

(ii) establish, or to fully establish, a Special Negotiating Body, a European Works Council or an alternative information and consultation procedure in accordance with any agreement reached pursuant to regulation 7, or

(iii) comply with the requirements referred to in regulation 8;

(b) in relation to any other offence, a fine (*multa*) of not less than five hundred liri and not more than five thousand liri.

Repeals L.N. 224
of 2003.

13. The European Works Council (Information and Consultation) Regulations, 2003, are hereby repealed.

SCHEDULE

(Regulation 8)

Subsidiary Requirements

1. The establishment, composition and competence of a European Works Council shall be governed by the following rules:

(1) The competence of the European Works Council shall be limited to information and consultation on the matters which concern the community-scale undertaking or community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States. This provision shall apply whether the central management is located in a member state or elsewhere.

(2) In the case of community-scale undertakings or community-scale groups of undertakings referred to in regulation 3(1) (b) and (c) of these regulations, the competence of the European Works Council shall be limited to those matters concerning all the establishments or group undertakings situated within the Member states or concerning at least two of the establishments or group organisations situated in different Member States.

(3) The European Works Council shall be composed of employees of the community-scale undertakings or community-scale groups of undertakings elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

(4) (a) The European Works Council shall be composed of a minimum of three and a maximum of 30 members.

(b) Where its size so warrants, the European Works Council shall elect a select committee from among its members, comprising at most three members, to act on behalf of the European works Council.

(c) Saving what is mentioned in these regulations, the European Works Council shall adopt its own rules of procedure.

(5) In the election or appointment of members on the European Works Council, it shall be ensured that:

(a) there shall be at least one member representing each member state in which the community-scale undertaking has one or more establishments or in which the community scale group of undertakings has the controlling undertaking or one or more controlled undertakings;

(b) additional members shall be elected to the European Works Council in accordance with the following criteria:

(i) where applicable, one additional seat for each Member State where at least 25% but less than 50% of the employees are employed;

(ii) two additional members from a Member State where at least 50% but less than 75 % of the employees are employed;

(iii) three additional seats from a Member State where 75% or more of the employees are employed

(6) The central management and any other more appropriate level of management shall be informed by the European Works Council of its composition.

(7) The members of the European Works Council representing employees employed by the undertaking, or as the case may be the group of undertakings, situated in Malta shall be elected or appointed according to the procedure outlined in regulation 6.

(8) (a) Four years after the date when the European Works Council has been established there shall be examined whether to open negotiations for the conclusion of the agreement referred to in regulation 7 of these Regulations or to continue to apply the subsidiary requirements adopted in accordance with this Schedule.

(b) Regulations 7 and 8 shall apply *mutatis mutandis* , if a decision has been taken to negotiate an agreement according to regulation 7, in which case the words ‘Special Negotiating Body’ shall be replaced by ‘European Works Council’.

2. (1) The European Works Council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the community-scale undertakings or community-scale group of undertakings and its prospects and the local managements shall be informed accordingly.

(2) The meeting referred to in the preceding paragraph shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organization, 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.

3. (1) Where there are exceptional circumstances affecting the employees’ interests to a considerable extent, particularly in the event of relocations, the closure of

establishments or undertakings or collective redundancies, the Select Committee, or when no such committee exists, the European Works Council shall have the right to be informed.

(2) The European Works Council shall have the right to meet, at its request, the central management, or any other more appropriate level of management within community-scale undertaking or community-scale group of undertakings having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

(3) Those members of the European Works Council who would have been elected or appointed by the establishments and, or undertakings which are directly concerned by the measures in question shall also have the right to participate in the meeting organised with the select committee.

(4) The information and consultation meeting mentioned in the preceding paragraphs shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of community-scale undertaking or community-scale group of undertakings on which an opinion may be delivered at the end of the meeting or within a reasonable time;

Provided that the prerogatives of the central management shall not be prejudiced by the holding of such a meeting.

4. The parties present at the meeting referred to in paragraph 2 of this Schedule 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.

5. Before any meeting with the central management, or other appropriate level of management referred to in paragraph 3(2), the European Works Council or the Select committee, where necessary enlarged in accordance with the provisions of paragraph 3(3), shall be entitled to meet without the management concerned being present.

6. Without prejudice to regulation 9 of these regulations, the members of the European Works Council shall inform the representatives of the employees of the establishments or of the, undertakings of a community scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with this Schedule.

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

8. (1) The operating expenses of the European Works Council shall be borne by the central management which shall provide the members of the European Works Council with such financial and material resources as to enable them to perform their duties in an appropriate manner.

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