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

Employee Involvement (European Company) Regulations, 2004

IN exercise of the powers conferred by article 48 of the Employment and Industrial Relations Act, 2002, the Minister of Education, Youth and Employment has made the following regulations –

Title, scope and coming into force.

1. (1) The title of these regulations is the Employee Involvement (European Company) Regulations, 2004.

(2) These regulations establish the arrangements for the involvement of employees in the affairs of European public limited liability companies (known as Societas Europaea, hereinafter referred to as "SE"), as referred to in Regulation (EC) No 2157/2001, thereby giving effect to the relevant provisions of Council Directive 2001/86/EC of the 8th October 2001 supplementing the Statute for a European Company with regard to the involvement of employees.

Definitions.

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

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"Act'" means the Employment and Industrial Relations Act, 2002;

"concerned subsidiary or establishment" means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the SE 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 SE, 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 SE;

"information" means the informing of the body representative of the employees or employees' representatives, or both, by the competent organ of the SE on questions which concern the SE 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 SE;

"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 the company;

"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 companies" means the companies directly participating in the establishing of an SE;

"participation" means the influence of the body representative of the employees or the employees' representatives, or both, in the affairs of a company by way of the right to:

(a) elect or appoint some of the members of the company's supervisory or administrative organ, or

(b) recommend or oppose, or both, the appointment of some or all of the members of the company's supervisory or administrative organ;

"representative body" means the persons elected or appointed under the employee involvement agreement referred to in regulation 8 or under the standard rules of employee involvement in accordance with the provisions of the Schedule, with the purpose of informing and consulting the employees of an SE and its subsidiaries and establishments

situated in the Community and, where applicable, of exercising participation rights in relation to the SE;

"SE" means any company established in accordance with Council Regulation (EC) No 2157/2001 of the 8th October 2001 on the Statute for a European Company (SE);

"special negotiating body " means the body established in accordance with regulation 3 to negotiate with the competent body of the participating companies regarding the establishment of arrangements for the involvement of employees within the SE;

"subsidiary" of a company means an undertaking over which that company exercises a dominant influence defined in accordance with regulation 2(4) to (9) of the European Works Council Regulations, 2004.

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(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) 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 2157/2001 or in Council Directive 2001/86/EC have the same meaning as they have in the EC Regulation or Council Directive.

Creation and function of special negotiating body.

3. (1) When the management of the participating companies draw up a plan for the establishment of an SE whose registered office shall be in Malta, they shall as soon as possible after:

(a) the date of publication of the draft terms of merger; or

(b) the creation of a holding company; or

(c) after agreement has been reached on a plan to form a subsidiary or to transform into an SE, take the necessary measures to start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE.

(2) The competent organs of the participating companies shall make arrangements for the establishment of a special negotiating body, representative of the employees of the participating companies and concerned subsidiaries and establishments, which shall be constituted in accordance with regulation 4.

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

(4) In order to facilitate the negotiation procedures, the measures referred to in sub-regulation (1) which the management of the participating companies is obliged to take shall include the provision of all the relevant information about the identity of the participating companies, concerned subsidiaries or establishments, the number of their employees and any matters related thereto, to the employees' representatives of the participating company, 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 sub-regulation (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 part-time employment is their principal employment in respect of which social security contributions are payable under the Social Security Act.

Election of members of special negotiating body.

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

(a) the employees of the participating companies 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 by the participating companies and concerned subsidiaries or establishments in all the Member States taken together;

(b) if, in the case of an SE 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 company 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 SE, the employees of that company 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 companies is higher than the number of additional seats, such additional seats shall be allocated to participating companies in different Member States having the highest number of employees by decreasing order.

(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 companies, 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.

5. (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 regulation 5 (2)(d).

(2) The management of the participating companies 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 4(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 companies which have employees in Malta, there shall be separate ballots for the Maltese employees in each participating company;

(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 companies which have employees in Malta, there shall be separate ballots for the Maltese employees in each participating company and the management shall ensure, as far as practicable, that at least one member representing each such participating company is elected to the special negotiating body and that the number of members representing each company is proportionate to the number of employees in that company;

(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 companies which have employees in Malta, a single ballot shall be held in which all the employees of the participating companies shall be entitled to vote;

(b) in relation to the ballot of additional members under regulation 4 (1) (b), the management shall hold a separate ballot in respect of each participating company entitled to elect an additional member.

(c) in a ballot in respect of a participating company, a Maltese employee employed in that participating company 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 company, any person who on the date of nomination of candidates was:

(i) a Maltese employee employed in that participating company or in its concerned subsidiaries and establishments who satisfied the criteria laid down in regulation 3 (5) and who is in employment but not in their probationary period on the date of nomination; or

(ii) if the management of that participating company so permits, a representative of a trade union who is not an employee of that participating company 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;

(e) the management 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 may appoint more than one independent ballot supervisor each of whom shall supervise such of the separate ballots as the management 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;

(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 has formulated proposals as to the arrangements for the ballot of Maltese employees and before it has published the final arrangements under paragraph (g) it shall, so far as reasonably practicable, consult with the employees' representatives on the proposed arrangements for the ballot of Maltese employees; and

(g) the management 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 regulation (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 sub-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 of the participating company, 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 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 regulation 4(4)(a) provided that if the ballot supervisor also issues a report in accordance with regulation 4(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 companies 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 published the final arrangements in terms of sub-regulation (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 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.

(8) Notwithstanding any requirement in these regulations to hold a ballot, where the number of candidates on the day of nomination 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 regulation 5(4).

(9) Any costs relating to the whole process of nominations and election in one or more companies, including payments made to a ballot supervisor for supervising the conduct of the ballot, (whether or not a report in accordance with sub-regulation (4) (b) has been made), shall be borne by the participating companies operating in Malta.

Decisions of the special negotiating body.

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

(2) Subject to sub-regulation (3) and to regulation 7, 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, when:

(a) an SE is to be established by a merger and at least 25% of the employees employed in the Member States by the participating companies which are due to merge have participation rights; or

(b) an SE is to be established by formation of a holding company or of a subsidiary company and at least 50% of the total number of employees employed in the Member States by the participating companies have participation rights.

(4) For the purposes of sub-regulation (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 SE than the highest proportion already existing within any of the participating companies which gave participation rights to its employees.

(4) The special negotiating body shall publish the details of any decision taken under this regulation or under regulation 7 in such 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 14 days, after the decision has been taken.

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

(6) The participating company or companies 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.

Decision not to open or to terminate negotiations.

7. (1) Subject to sub-regulation (2) and (3) , the special negotiating body may decide not to open negotiations with the competent organs of the participating companies 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 SE has employees.

(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 sub-regulation (1) in relation to an SE to be established by transformation if any employees of the company 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 companies, concerned subsidiaries and establishments, or

(ii) where the SE has been registered, the SE, its subsidiaries and establishments; and

(c) at the earliest, two years after the decision made under sub-regulation (1) was or should have been published in accordance with regulation 6(4) unless the special negotiating body and the competent organs of the participating companies, concerned subsidiaries and establishments or, where the SE has been registered, the SE agrees to the special negotiating body being reconvened earlier.

Negotiations on and content of employee involvement agreement.

8. (1) The competent organs of the participating companies 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.

(2) The duty referred to in sub-regulation (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 the 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 that six month period that it is to be extended, for the period of twelve months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within the twelve month period, until the completion of the negotiations.

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

(4) Without prejudice to the autonomy of the competent organs of the participating companies and the special negotiating body, and subject to sub-regulation (6), the agreement referred to in sub-regulation (1) between the competent organs of the participating companies 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 SE in connection with arrangements for the information and consultation of the employees of the SE 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 SE'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, including the duty to renegotiate on changes in worker involvement whenever a substantial change in the structure of the SE is foreseen, and the procedure for its renegotiation.

(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 SE 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 company to be transformed into an SE.

Legislation applicable to the negotiation procedure.

9. Except where otherwise provided in these regulations, the legislation applicable to the negotiation procedure provided for in regulations 3 to 8 shall be the legislation of the Member State in which the registered office of the SE is to be situated.

Standard rules on employee involvement.

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

(a) the parties agree that the standard rules shall apply; or

(b) the period specified in regulation 8(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 companies agree that the standard rules shall apply and so continue with the registration of the SE; and

(ii) the special negotiating body has not taken any decision under regulation 7(1) either not to open or to terminate the negotiations referred to in that regulation.

(2) The standard rules set out in the Schedule to these regulations (standard rules on participation) only apply:

(a) in the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied to a company transformed into an SE;

(b) in the case of an SE established by merger if, before registration of the SE, one or more forms of participation existed in at least one of the participating companies and:

(i) either that participation applied to at least 25% of the total number of employees of the participating companies employed in the Member States,

(ii) or that participation applied to less than 25% of the total number of employees of the participating companies employed in the Member States but the special negotiating body has decided that the standard rules of participation will apply to the employees of the SE;

(c) in the case of an SE established by formation of a holding company or subsidiary company if, before registration of the SE, one or more forms of participation existed in at least one of the participating companies and :

(i) either that participation applied to at least 50% of the total number of employees of the participating companies employed in the Member States;

(ii) or that participation applied to less than 50% of the total number of employees of the participating companies employed in the Member States but the special negotiating body has decided that the standard rules of participation will apply to the employees of the SE.

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

Reservation and confidentiality.

11. (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) of this sub-regulation, which the competent organ of an SE, a participating company or its concerned

subsidiaries or establishments has entrusted to him on termsrequiring it to be held in confidence.

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

(3) The obligation to comply with sub-regulation (1) is a duty owed to the competent organ of a participating company or the SE 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 under regulation 11(1) (a) (b) (c) the recipient whom the competent organ of a participating company or the SE 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 sub-regulation (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 sub-regulation (4), or to any other recipient, on terms requiring it to be held in confidence.

(7) The competent organ of an SE registered in Malta or a participating company, 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 SE, participating company or any subsidiaries or establishments concerned.

(8) Where there is a dispute between the competent organ of a participating company, concerned subsidiary or establishment or an SE and a recipient as to whether the nature of the information or

document which the competent organ has failed to provide is such as is described in sub-regulation (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 SE, participating company 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.

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

12. The competent organ of the SE 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 SE and the employees' representatives in conjunction with a procedure for the information and consultation of employees.

Protection of employees' representatives.

13. (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 SE who are employees of the SE, its subsidiaries or establishments or of a participating company shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives in the Act.

(2) The protection and guarantees referred to in sub-regulation (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 8(4)(f) or any meeting of the administrative or supervisory organ, and to the payment of wages for members employed by a participating company or the SE or its

subsidiaries or establishments during a period of absence necessary for the performance of their duties.

Misuse of procedures.

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

Compliance with these regulations.

15. It shall be the duty of:

(a) the management of establishments of an SE and the supervisory or administrative organs of subsidiaries and of participating companies which are situated in Malta, and

(b) the employees' representatives or, as the case may be, the employees themselves,to abide by the obligations laid down by these regulations, regardless of whether or not the SE has its registered office in Malta.

Link between these regulations and other provisions.

16. (1) Notwithstanding any provision to the contrary in the European Works Council Regulations, 2004, and subject to sub-regulation (2), where an SE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of those regulations, the provisions of European Works Council Regulations, 2004 shall not apply to them or to their subsidiaries.

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(2) Where the special negotiating body decides in accordance with regulation 6 not to open negotiations or to terminate negotiations already opened, the provisions of the European Works Council Regulations, 2004 shall apply.

(3) Provisions on the participation of employees in company bodies provided for in any relevant collective agreement shall not apply to companies established in accordance with Regulation (EC) No 2157/2001 and covered by these regulations.

(4) These regulations shall not prejudice:

(a) the existing rights to involvement of employees provided for by existing collective agreements as enjoyed by employees of the SE and its subsidiaries and establishments, other than participation in the bodies of the SE;

(b) the provisions on participation in the bodies agreed through a relevant collective agreement applicable to the subsidiaries of the SE.

17. 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: Penalties.

(a) to a fine (*multa)* of not less than 10 liri and not more than fifty liri for every employee of all the participating companies, concerned subsidiaries or establishments in relation to a failure by the competent organ of the SE, of the participating company 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 five hundred liri and not more than five thousand liri.

SCHEDULE

(Regulation 10)

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 10, a representative body shall be set up in accordance with the following rules.

(a) The representative body shall be composed of employees of the SE 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 participating companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together.

(f) The competent organ of the SE shall be informed of the composition of the representative body.

(g) Four years after the representative body is established, it shall examine whether to open negotiations for the conclusion of the agreement referred to in regulations 8 and 10 or to continue to apply the standard rules adopted in accordance with this Schedule.

2. Regulations 6 to 9 shall apply, mutatis mutandis, if a decision has been taken to negotiate an agreement according to regulation 8, 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 SE shall be governed by the following rules:-

(a) The competence of the representative body shall be limited to questions which concern the SE 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 SE 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 SE and its prospects. The local managements shall be informed accordingly.

The competent organ of the SE 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 shareholders.The meeting 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 organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

(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 SE or any more appropriate level of management within the SE having its own powers of decision, so as to be informed and 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 SE with a view to seeking agreement.

In the case of a meeting organised 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 SE, 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 11, the members of the representative body shall inform the representatives of the employees of the SE 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 fulfilment 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 SE, 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 SE shall, unless otherwise agreed, bear the cost of organising 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 SE 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 SE shall be governed by the following provisions:

(a) In the case of an SE 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 SE. Paragraph (b) shall apply mutatis mutandis to that end.

(b) In other cases of the establishing of an SE, the employees of the SE, 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 SE equal to the highest proportion in force in the participating companies concerned before registration of the SE.

If none of the participating companies was governed by participation rules before registration of the SE, 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 SE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SE's employees in each Member State. If the employees of one or more 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 SE's registered office where that is appropriate.

Every member of the administrative body or, where appropriate, of the supervisory body of the SE 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 shareholders, including the right to vote.

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