



STATUTORY INSTRUMENTS.

S.I. No. 380 of 2011

EUROPEAN COMMUNITIES (TRANSNATIONAL INFORMATION
AND CONSULTATION OF EMPLOYEES ACT 1996) (AMENDMENT)
REGULATIONS 2011

(Prn. A11/1238)

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I, RICHARD BRUTON, Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Transnational Information and Consultation of Employees Act 1996) (Amendment) Regulations 2011.

Interpretation

2. (1) In these Regulations—

“Act of 1996” means the Transnational Information and Consultation of Employees Act 1996;

“Directive” means Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

(2) Any reference in any enactment or an instrument made under an enactment to Council Directive 94/45/EC of 22 September 1994², Council Directive 97/74/EC of 15 December 1997³ or Council Directive 2006/109/EC of 20 November 2006⁴, or to any provision of those Directives shall be construed as a reference to the Directive or to the corresponding provision thereof in accordance with the correlation table set out in Annex III to the Directive.

(3) A word or expression used in these Regulations that is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations that it has in the Directive.

¹O.J. No. L. 122, 16.5.2009, p. 28.

²O.J. No. L. 254, 30.9.1994, p. 64.

³O.J. No. L. 10, 16.1.1998, p. 22.

⁴O.J. No. L. 363, 20.12.2006, p. 416.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 19th July, 2011.*

Amendment of section 3 of Act of 1996

3. Section 3 of the Act of 1996 is amended in subsection (1)—

- (a) by substituting the following definition for the definition of “the Directive”:

“ ‘Directive’ means Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees;”,

- (b) in the definition of “Community”, by deleting the words “excluding the United Kingdom”,

- (c) by substituting the following for the definition of “consultation”:

“ ‘consultation’ means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees’ representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings;”,

- (d) by inserting the following definition:

“ ‘information’ has the meaning assigned to it by subsection (1A)(a) and shall be construed in accordance with subsection (1A)(b);”,

and

- (e) by inserting the following subsection:

“(1A) For the purposes of this Act—

- (a) ‘information’ means transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it, and

- (b) information shall be given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to—

- (i) undertake an in-depth assessment of the possible impact, and

- (ii) where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings.”.

New section inserted into Act of 1996

4. The Act of 1996 is amended by inserting the following section after section 3:

“References to repealed directives.

3A. (1) Notwithstanding the repeal of Council Directive 94/45/EC of 22 September 1994, Council Directive 97/74/EC of 15 December 1997 and Council Directive 2006/109/EC of 20 November 2006, any reference in an enactment to any of those Directives, or to any provision of those Directives, shall be construed as a reference to the Directive or to the corresponding provision thereof in accordance with the correlation table set out in Annex III to the Directive.

(2) In this section ‘enactment’ has the meaning assigned to it by section 2(1) of the Interpretation Act 2005.”.

Amendment of section 4 of Act of 1996

5. Section 4 of the Act of 1996 is amended—

(a) by substituting the following subsection for subsection (2):

“(2) The management of every undertaking belonging to the Community-scale group of undertakings and the central management or, having regard to section 9(4), the central management referred to in section 9(3), shall be responsible for obtaining and transmitting to the parties concerned by the application of the Directive the information required for commencing the negotiations referred to in section 10, and without prejudice to the generality of the foregoing such information shall include—

- (a) the information concerning the structure of the undertaking or the group and its workforce, and
- (b) the information on the number of employees referred to in the definition of Community-scale undertaking and Community-scale group of undertakings in section 3(1).”.

and

(b) in subsection (3), by deleting the definition of “employees’ representatives”.

Amendment of section 5 of Act of 1996

6. Section 5 of the Act of 1996 is amended in subsection (7) by substituting “Council Regulation (EC) No. 139/2004 of 20 January 2004⁵” for “Council Regulation (EEC) No. 4064/89 of 21 December 1989⁶”.

⁵O.J. L24, 29.1.2004, p.1.

⁶O.J. No. L395, 30.12.1989, p.1.

Amendment of section 6 of Act of 1996

7. (1) Section 6 of the Act of 1996 is amended—

(a) in subsection (1), by inserting “and section 12A” after “subsections (3), (4) and (5)”,

(b) by inserting the following subsections after subsection (1):

“(1A) Subject to subsections (3), (4) and (5) and section 12A, the obligations under this Act shall not apply to Community-scale undertakings or Community-scale groups of undertakings in the United Kingdom brought within the scope of this Act by virtue of the application of Council Directive 97/74/EC of 15 December 1997 and in which there was in force within the same Community-scale undertaking or Community-scale group of undertakings on 15 December 1999 an agreement covering the entire workforce providing for the transnational information and consultation of employees, and while the agreement remains in force.

(1B) For the purposes of an agreement referred to in subsection (1) or (1A), the obligations under this Act, referred to in subsection (1), or, as the case may be, (1A), shall not apply to an agreement referred to in subsection (1) or, as the case may be, (1A), where such agreements are adjusted because of changes in the structure of the Community-scale undertaking or Community-scale group of undertakings.

(1C) Subject to subsections (3), (4) and (5) and section 12A, the obligations arising from the European Communities (Transnational Information and Consultation of Employees Act 1996) (Amendment) Regulations 2011 shall not apply to Community-scale undertakings or Community-scale groups of undertakings in respect of which—

(a) there is in force, within the same Community-scale undertaking or Community-scale group of undertakings, an agreement concluded pursuant to section 12 of this Act, and

(b) such agreement was signed or revised between 5 June 2009 and 5 June 2011,

while that agreement remains in force.”,

(c) in subsection (2), by substituting “subsection (1), (1A) or (1C)” for “subsection (1)”,

(d) in subsection (3) by—

(i) substituting “subsection (1), (1A) or (1C)” for “subsection (1)”,
and

(ii) inserting “or revise” after “jointly renew”,

- (e) in subsection (4) by inserting “or revised” after “An agreement renewed”,
- (f) in subsection (5) by inserting “or revised” after “not renewed”,
- (g) in subsection (6)—
 - (i) by substituting “subsection (1), (1A) or (1C)” for “subsection (1)”, and
 - (ii) in paragraph (a) by inserting “or revised” after “renewed”, and
- (h) in subsection (7) by substituting “subsection (1) or (1A)” for “subsection (1)”.

Amendment of section 8 of Act of 1996

8. Section 8 of the Act of 1996 is amended by inserting the following subsections after subsection (3):

“(4) The arrangements for informing and consulting employees shall be defined and implemented in such a way as to ensure their effectiveness and to enable the undertaking or group of undertakings to take decisions effectively.

(5) Information to, and consultation with, employees must occur at the relevant level of management and representation, according to the subject under discussion and for that purpose, the competence of the European Works Council or European Employees’ Forum and the scope of the information and consultation procedure for employees governed by this Act shall be limited to transnational issues.

(6) For the purposes of this Act, matters shall be considered transnational where they concern—

- (a) the Community-scale undertaking or Community-scale group of undertakings as a whole, or
- (b) at least two undertakings or establishments of the undertaking or group situated in two different Member States.”.

Amendment of section 10 of Act of 1996

9. Section 10 of the Act of 1996 is amended in subsection (4)—

- (a) by substituting the following paragraph for paragraph (a):

“(a) the members of the Special Negotiating Body shall be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or Community-scale group of undertakings concerned, by allocating in respect of each Member State, one seat per portion of employees employed

in that Member State amounting to 10 per cent, or a fraction thereof, of the number of employees employed in all the Member States taken together;”,

(b) by inserting the following paragraph after paragraph (a):

“(aa) employees in undertakings or establishments (or both) in which, through no fault of the employees, there are no employees’ representatives, shall have the right to elect or appoint members of the Special Negotiating Body;”,

(c) by deleting paragraphs (b) and (c), and

(d) by substituting the following subsection for subsection (5):

“(5) The Special Negotiating Body shall, by notice in writing, as soon as practicable after the election or appointment of its members, inform the central management and local management of its composition and of the start of the negotiations.

(6) The Special Negotiating Body shall, by notice in writing, as soon as practicable after the election or appointment of its members, inform the competent European employees’ and employers’ organisations of its composition and of the start of the negotiations, unless an alternative procedure is agreed with the central management.”.

Amendment of section 11 of Act of 1996

10. Section 11 of the Act of 1996 is amended—

(a) by inserting the following subsection after subsection (2):

“(2A) Before and after any meeting with the central management, the Special Negotiating Body shall be entitled to meet without representatives of the central management being present, using any necessary means for communication.”, and

(b) by substituting the following subsection for subsection (3)—

“(3) (a) For the purpose of the negotiations, the Special Negotiating Body may request assistance from experts of its choice who can include representatives of competent recognised Community-level trade union organisations.

(b) Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the Special Negotiating Body.”.

Amendment of section 12 of Act of 1996

11. Section 12 of the Act of 1996 is amended—

(a) in subsection (3)—

(i) by inserting “effected in writing” after “an agreement”, and

(ii) by substituting the following subparagraph for subparagraph (b):

“(b) the date of entry into force of the agreement and its duration, the arrangements for amending or terminating the agreement and the cases in which the agreement shall be renegotiated and the procedure for its renegotiation, including, where necessary, where the structure of the Community-scale undertaking or Community-scale group of undertakings changes, and”,

(b) in subsection (4)—

(i) by substituting the following subparagraph for subparagraph (a):

“(a) the composition of the Forum, the number of members, the allocation of seats, and the term of office, taking into account where possible the need for balanced representation of employees with regard to their activities, category and gender,”,

(ii) by substituting the following subparagraph for subparagraph (b):

“(b) the functions and the procedure for information and consultation of the Forum and the arrangements for linking information and consultation of the Forum and national employee representation bodies, in accordance with the principles set out in section 8(5),”,

and

(iii) by inserting the following subparagraph after subparagraph (b):

“(ba) where necessary, the composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the Forum,”,

and

(c) by inserting the following subsection after subsection (5):

“(5A) The information referred to in paragraph (c) of subsection (5) shall relate in particular to information relating to transnational questions which significantly affect employees’ interests.”.

New section inserted into Act of 1996

12. The Act of 1996 is amended by inserting the following section after section 12:

“Adaptation of agreements in event of significant structural changes.

12A. (1) Where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, and—

- (a) in the absence of provisions established by any agreement in force, or
- (b) in the event of conflicts between the relevant provisions of 2 or more applicable agreements,

the central management shall initiate the negotiations referred to in section 10 on its own initiative or at the written request of at least 100 employees or their representatives in at least 2 undertakings or establishments in at least 2 different Member States.

(2) At least 3 members of the existing European Employees' Forum or European Works Council or, where there is more than one such Forum or Council, at least 3 members of each Forum or Council, shall, in addition to the members elected or appointed pursuant to section 10, be members of the Special Negotiating Body.

(3) During the negotiations, the existing European Employees' Forum or European Works Council or, where there is more than one such Forum or Council, each Forum or Council, shall continue to operate in accordance with any arrangements adapted by agreement between the members of the Forum or Council and the central management.”.

Amendment of section 17 of Act of 1996

13. Section 17 of the Act of 1996 is amended—

- (a) by inserting the following subsection after subsection (1):

“(1A) Without prejudice to the competence of other bodies or organisations in this respect, central management shall provide the members of the European Employees' Forum or European Works Council, as the case may be, with the means required to apply the rights arising from the Directive, to represent the collective interests of employees of the Community-scale undertaking or Community-scale group of undertakings concerned.”,

and

(b) by inserting the following subsections after subsection (4):

“(5) Without prejudice to section 15, the members of the European Employees’ Forum or European Works Council, as the case may be, shall inform—

(a) the representatives of the employees of—

(i) the establishments of a Community-scale group of undertakings, or

(ii) the undertakings of a Community-scale group of undertakings,

or

(b) in the absence of such representatives, the workforce as a whole,

of the content and outcome of the information and consultation procedure carried out in accordance with this Act.

(6) In so far as it is necessary for the exercise of their representative duties in a transnational setting, the members of the Special Negotiating Body, the European Employees’ Forum or European Works Council, as the case may be, shall be provided with appropriate training by their employers without loss of wages.”.

Amendment of section 18 of Act of 1996

14. Section 18 of the Act of 1996 is amended by inserting the following subsection after subsection (3):

“(3A) An undertaking or group of undertakings the central management of which does not comply with the requirements referred to in section 12A(1) applicable to it shall be guilty of an offence.”.

Amendment of section 19 of Act of 1996

15. Section 19 of the Act of 1996 is amended—

(a) in subsection (1) by substituting “section 18(1), (2) or (3A)” for “section 18(1) or (2)”; and

(b) in subsection (2) by substituting “section 18(1), (2) or (3A)” for “section 18(1) or (2)”.

Amendment of section 21 of Act of 1996

16. Section 21 of the Act of 1996 is amended by substituting the following subsection for subsection (1):

“(1) Disputes between the central management and employees or their representatives concerning—

- (a) the interpretation or operation of an agreement referred to in section 11(1), or
- (b) matters provided for in section 17,

may be referred by either the central management or employees' representatives to an independent arbitrator, appointed on such terms as to remuneration or otherwise as agreed between the parties.”.

Amendment of section 22 of Act of 1996

17. The Act of 1996 is amended by substituting the following section for section 22:

“Application.

22. This Act shall apply without prejudice to—

- (a) the Employees (Provision of Information and Consultation) Act 2006,
- (b) Part II of the Protection of Employment Act 1977, and
- (e) Regulation 8 of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003).”.

New section inserted into Act of 1996

18. The Act of 1996 is amended by inserting the following section after section 22:

“Relationship with other Community and national provisions.

22A. (1) Information and consultation in relation to the European Employees' Forum or European Works Council, as the case may be, shall be linked to those of the national employee representation bodies, with due regard to the competences and areas of action of each and to the principles set out in section 8(5).

(2) The arrangements for the links between the information and consultation of the European Works Council or European Employees' Forum, as the case may be, and national employee representation bodies shall be established by the agreement referred to in section 11(1).

(3) The agreement referred to in section 11(1) shall be without prejudice to any enactment providing for information and consultation of employees.

(4) Where no such arrangements have been provided for by agreement, the processes of informing and consulting shall be conducted in the European Works Council or European Employees' Forum, as the case may be, as well as in the national employee representation bodies in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged.

(5) In this section ‘enactment’ has the meaning assigned to it by section 2(1) of the Interpretation Act 2005.”.

Amendment of Second Schedule to Act of 1996

19. The Second Schedule to the Act of 1996 is amended—

(a) in paragraph 1—

(i) by substituting the following subparagraph for subparagraph (1):

“(1) The competence of the European Works Council (in this Schedule referred to as ‘the Council’) shall be determined in accordance with section 8(5), whether the central management is located within the Community or elsewhere.”,

and

(ii) by substituting the following subparagraphs for subparagraph (2):

“(2) The information to the Council shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings.

(3) The information to and consultation with the Council shall relate in particular to—

(a) the situation and probable trend of employment,

(b) investments, and

(c) 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.

(4) The consultation shall be conducted in such a way that the employees’ representatives can meet with the central management and obtain a response, and the reasons for that response, to any opinion they might express.”,

(b) by substituting the following paragraphs for paragraph 2(4):

“(4) The members of the Council shall be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or Community-scale group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 per cent, or a fraction thereof, of the number of employees employed in all the Member States taken together.

(5) To ensure that it can coordinate its activities, the Council shall elect a select committee from among its members, comprising at most five members, which must benefit from conditions enabling it to exercise its activities on a regular basis.

(6) The Council shall, as soon as practicable after the election or appointment of its members, inform central management, or such other level of management as the central management thinks more appropriate, of the composition of the Council.”,

(c) by deleting paragraph 3(d),

(d) by deleting paragraph 4,

(e) by deleting paragraph 5(2),

(f) in paragraph 5(3)—

(i) by inserting “or decisions” after “exceptional circumstances”, and

(ii) by deleting “on measures significantly affecting employees' interests”,

(g) in paragraph 5(5)—

(i) by substituting “circumstances or decisions” for “measures”, and

(ii) by substituting “where a meeting is organised” for “in the meeting organised”,

(h) in paragraph 5(6), by inserting “or any other appropriate level of management of the Community-scale undertaking or group of undertakings” after “prepared by the central management”, and

(i) by inserting the following paragraph after paragraph 5(7):

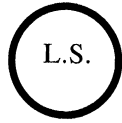
“(8) The information and consultation procedures provided for in the above circumstances shall be carried out without prejudice to sections 8(1) and (4) and section 15.”.

Revocation

20. The following are revoked—

(a) the European Communities (Transnational Information and Consultation of Employees Act 1996) (Amendment) Regulations 1999 (S.I. No. 386 of 1999), and

(b) the European Communities (Transnational Information and Consultation of Employees Act 1996) (Amendment) Regulations 2007 (S.I. No. 599 of 2007).



GIVEN under my Official Seal,
13 July 2011.

RICHARD BRUTON,
Minister for Jobs, Enterprise and Innovation.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of these Regulations is to transpose into Irish law the (recast) Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, which is intended to improve the right to information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.

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