

SUBSIDIARY LEGISLATION 452.107**EUROPEAN WORKS COUNCIL
(FURTHER PROVISIONS) REGULATIONS**

10th June, 2011

LEGAL NOTICE 217 of 2011, and by Legal Notices 282 of 2017.

1. (1) The title of these regulations is the European Works Council (Further Provisions) Regulations.

Citation and scope.
Amended by:
L.N. 282 of 2017.

(2) The purpose of these regulations is to improve the right to information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings by establishing a European Works Council or a procedure for informing and consulting employees in every such undertaking and group of undertakings where requested in the manner laid down in regulation 5 and to implement the provisions of EU Directive 2009/38/EC.

(3) These regulations shall apply to all arrangements aiming to set up a European Works Council or any procedure for the information and consultation of employees in Community-scale undertakings or Community-scale groups of undertakings, as provided for by these regulations, which are effected for the first time on the 6th of June, 2011 and after the 6th of June 2011.

(4) These regulations shall not apply to:

(a) Community-scale undertakings or Community-scale groups of undertakings in which, on the 22nd September 1996, there had already been an agreement covering the entire workforce, providing for the transnational information and consultation of employees, or where such agreements are adjusted because of changes in the structure of the undertakings or groups of undertakings; and

(b) agreements concluded pursuant to regulation 7 of the European Works Council Regulations, which have been signed or revised between the 5th of June 2009 and the 5th of June 2011.

S.L. 452.86

Provided that in so far as paragraph (b) is concerned, the national law applicable when the agreement is signed or revised shall continue to apply to the undertakings or groups of undertakings concerned:

Provided further that in the case of the agreements mentioned in paragraphs (a) and (b), the applicable law shall be the European Works Council Regulations and upon the expiry of the said agreements, the parties to those agreements may decide jointly to renew or revise such agreements, in which case the European Works Council Regulations shall apply. In the case that these agreements are neither renewed or revised, the provisions of these regulations shall automatically apply.

S.L. 452.86

Definitions.

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

Cap. 452.

"the Act" means the Employment and Industrial Relations Act;

"central management" means the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the controlling undertaking;

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

- (a) at least one thousand employees within the Member States,
- (b) at least two group undertakings in different Member States, and
- (c) at least one group undertaking with at least one hundred and fifty employees in one Member State and at least one other group undertaking with at least one hundred and fifty employees in another Member State;

"Community-scale undertaking" means any undertaking with at least one thousand employees within the Member States and at least one hundred and fifty employees in each of at least two Member States;

"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;

"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 others, ownership, financial participation or the rules which govern it;

"employees' representatives" means either the recognized union representative or, in case of non-unionised employees, the representative or representatives duly elected from amongst the employees;

"European Works Council" means a council established in accordance with regulation 1(2) or the provisions of the Schedule with the purpose of informing and consulting employees;

"group of undertakings" means a controlling undertaking and its controlled undertakings;

"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. Such information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible

impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale 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 regulation 6 to negotiate with the central management regarding the establishment of a European Works Council or a procedure for informing and consulting employees in accordance with regulation 1(2).

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

(3) In the absence of a definition given in these regulations, words and expressions used in these regulations which are also used in Directive 2009/38/EC shall have the same meaning as they have in the Directive.

(4) For the purpose of these regulations, the prescribed thresholds to determine whether an undertaking is a Community-scale undertaking or a Community-scale group of undertakings, in the case of employees in Malta, shall be based 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 5 was made, whether such employees are on an indefinite or definite contract, and including part time employees.

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

- (a) holds a majority of that undertaking's subscribed capital;
- (b) controls a majority of the votes attached to that undertaking's issued share capital; or
- (c) can appoint more than half of the members of that undertaking's administrative, management or supervisory body.

(6) For the purposes of sub-regulation (5), a controlling undertaking's rights as regards voting and appointment shall include the rights of any other controlled undertaking 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 controlled undertaking.

(7) Notwithstanding what is stated in these regulations, an undertaking shall not be deemed to be a "controlling undertaking" with respect to another undertaking in which it has holdings where the former undertaking is a company referred to in Article 3(5)(a) or (c) of Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

(8) 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 a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings.

(9) 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 that 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 greatest number of employees is situated.

(10) Where, in the case of a conflict of laws in the application of sub-regulation (5), 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 sub-regulation, the undertaking which satisfies the criterion laid down in sub-regulation (5)(c) shall be regarded as the controlling undertaking, without prejudice to proof that another undertaking is able to exercise a dominant influence.

Objectives.

3. (1) 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.

(2) Information and consultation of employees must occur at the relevant level of management and representation, according to the subject under discussion. To achieve that, the competence of the European Works Council and the scope of the information and consultation procedure for employees governed by these regulations shall be limited to transnational issues:

Provided that matters shall be considered to be transnational where they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States.

(3) Notwithstanding anything stated in these regulations, where a Community-scale group of undertakings comprises one or more undertakings or groups of undertakings which are Community-scale undertakings or Community-scale groups of undertakings, a European Works Council shall be established at the level of the group unless the agreements referred to in regulation 7 provide otherwise.

(4) Unless a wider scope is provided for in the agreements referred to in regulation 7, the powers and competence of European Works Councils and the scope of information and consultation procedures established to achieve the purpose specified in regulation 1(2) 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.

4. (1) The central management shall be responsible for creating the conditions and means necessary for the setting up of a European Works Council or an information and consultation procedure in a Community-scale undertaking and a 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 sub-regulation(1)(b) or (c) 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 sub-regulation (1)(b); or
- (b) the management of the establishment referred to in sub-regulation (1)(c)(i) or of the group undertaking, referred to in sub-regulation (1)(c)(ii),

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

(3) It shall be the duty of -

- (a) the management of establishments of a Community-scale undertaking situated in Malta, and
- (b) the management of undertakings which form part of a Community-scale group of undertakings situated in Malta, and
- (c) employees' representatives or, as the case may be, of employees,

to comply with the relevant provisions of these regulations, irrespective of whether or not the central management is situated in Malta.

(4) The management of every undertaking belonging to the Community-scale group of undertakings and the central management or the deemed central management within the meaning of sub-regulation (2), of the Community-scale undertaking or group of undertakings shall be responsible for obtaining and transmitting to the parties concerned by the application of these regulations the information required for commencing the negotiations referred to in regulation 5, and in particular the information concerning the structure of the undertaking or the group and its workforce, including, in particular, information on the number of employees.

Establishment of special negotiating body.

5. (1) In order to achieve the objective set out in regulation 1(2), the central management shall have a duty to establish a Special Negotiating Body to negotiate with the central management for the establishment of a European Works Council or an information and consultation procedure.

(2) The central management shall initiate action to fulfil the obligations referred to in sub-regulation (1), either -

- (a) on its own initiative, or
- (b) on receipt of a written request or requests by at least a total of one hundred 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 sub-regulation (2)(b), the local management shall ensure that the request is passed on to the central management within a period of fifteen 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 in sub-regulation (3).

Election, appointment, functions and procedures of the Special Negotiating Body.

6. (1) The Special Negotiating Body shall have the task of determining, with the central management, by written agreement, the scope, composition, functions, and term of office of the European Works Council or the arrangements for implementing a procedure for the information and consultation of employees.

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

(3) 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(4) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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 (4), 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 (4).

(8) Any employee who is in employment on the day or days of the election and satisfies the criteria referred to in regulation 2(4) shall be entitled to vote in such an election.

(9) 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.

(10) 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 to the central management, the local management, and the competent European workers' and employers' organizations as soon as practicable, and in any case

within one month after the date of the election or appointment of its members. Moreover, the central management, the local management and the competent European workers' and employers' organizations shall be informed of the start of negotiations between the special negotiating body and the management.

(11) With a view to the conclusion of an agreement in accordance with regulation 7, the central management shall convene a meeting with the Special Negotiating Body and shall inform local managements accordingly.

(12) 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.

(13) For the purpose of the negotiations, the Special Negotiating Body may request assistance from experts of its choice which can include representatives of competent recognized Community-level trade union organizations. 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.

(14) Subject to sub-regulation (15), 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.

(15) The Special Negotiating Body may decide, by at least two-thirds of the votes, not to open negotiations in accordance with sub-regulation (11), or to terminate the negotiations already opened, in which case the provisions of the Schedule shall not apply.

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

(17) Any 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 task 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 negotiate in a spirit of cooperation with a view to reaching a written agreement on the detailed arrangements for implementing the information and consultation of employees provided in regulation 1(2).

(2) Without prejudice to the autonomy of the parties, the written agreement mentioned in regulation 1(2) shall determine:

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

undertakings or the establishments of the Community-scale undertaking which are covered by the agreement;

- (b) the composition of the European Works Council, the number of members, the allocation of seats, taking into account where possible the need for balanced representation of employees with regard to their activities, category and gender, and the term of office;
- (c) the functions and the procedure for information and consultation of the European Works Council and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies, in accordance with the principles set out in regulation 3(2);
- (d) the venue, frequency and duration of meetings of the European Works Council;
- (e) where necessary, the composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the European Works Council;
- (f) the financial and material resources to be allocated to the European Works Council;
- (g) 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.

(3) The central management and the Special Negotiating Body may decide, in writing, to establish one or more information and consultation procedures instead of a European Works Council, in which case, the agreement must stipulate by what method the employees' representatives shall have the right to meet to discuss the information conveyed to them:

Provided that this information shall relate in particular to transnational questions which significantly affect workers' interests.

(4) An agreement referred to in sub-regulations (2) and (3) shall not be subject to the subsidiary requirements of the Schedule, except to the extent that the parties provide in the agreement that any of those requirements are to apply.

(5) The Special Negotiating Body shall remain in existence until its function to negotiate for an agreement to establish a European Works Council or an alternative information and consultation procedure ceases.

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

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

Subsidiary requirements.

- (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 of these regulations and the Special Negotiating Body has not taken the decision provided for in regulation 6(15).

(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.

Confidential information.

9. (1) A person who is or at any time was -
- (a) a member of a Special Negotiating Body;
 - (b) a member of a European Works Council;
 - (c) an employees' representative in the framework of an information and consultation procedure; and
 - (d) an expert assisting a Special Negotiating Body or a European Works Council,

shall not disclose any information or document which is or has been in his possession by virtue of his position as described in paragraphs (a) to (d), which has expressly been provided to him in confidence.

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

(3) Where a dispute arises as to the confidentiality of information or a document given to a recipient, the recipient whom the central or local management 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 management to require the recipient to hold the information or document in confidence.

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

(5) If a declaration is made under sub-regulation (4), 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 (3), or to any other recipient, on terms requiring it to be held in confidence.

(6) The central or local management 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 undertaking concerned.

(7) Where there is a dispute between the central or local management 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 (6), the management 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.

(8) 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 undertaking concerned, the Industrial Tribunal shall order the management 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.

10. The central management and the European Works Council or the employees' representatives in the framework of an information and consultation procedure for workers, as the case may be, shall work in a spirit of cooperation with due regard to their reciprocal rights and obligations.

Operation of the European Works Council.

11. (1) The members of the European Works Council shall have the means required to apply the rights arising from these regulations, to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings

Role and protection of employees' representatives.
Amended by:
L.N. 282 of 2017.

(2) Without prejudice to regulation 9, 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 these regulations.

(3) Members of Special Negotiating Bodies, members of European Works Councils and employees' representatives exercising their functions under the procedure referred to in regulation 7(3) shall, in the exercise of their functions, enjoy the same protection as employees' representatives in terms of article 36(14)(a) of the Act.

(4) Such members referred to sub-regulation (3) shall be allowed to attend any meetings 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.

A member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a seagoing ship, shall be entitled to participate in a meeting of the special negotiating body or of the European Works Council, or in any other meeting under any procedures established pursuant to regulation 7(3), where that member or alternate is not at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting takes place.

Meetings shall, where practicable, be scheduled to facilitate the participation of members or alternates, who are members of the crews of seagoing ships. In cases where a member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a seagoing ship, is unable to attend a meeting, the possibility of using, where possible, new information and communication technologies shall be considered.

(5) In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the Special Negotiating Body and of the European Works Council shall be provided with training without loss of wages.

Relationship with other regulations.

12. (1) Information and consultation of the European Works Council shall be linked to those of the employee representation bodies at the workplace, if any, with due regard to the competences and areas of action of each and to the principles set out in regulation 3(2).

(2) Without prejudice to other regulations on information and consultation of employees, the arrangements for the links between the information and consultation of the European Works Council and the employee representation bodies at the workplace, if any, shall be established by the agreement referred to in regulation 7.

(3) Where no such arrangements have been defined by agreement, the processes of informing and consulting must be conducted in the European Works Council as well as in the employee representation bodies at the workplace, if any, in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged.

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(4) This Directive shall be without prejudice to the information and consultation procedures referred to in the Employee (Information and Consultation) Regulations, the Collective Redundancies (Protection of Employment) Regulations, and the Transfer of Business (Protection of Employment) Regulations.

Adaptation.

13. Where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, and either in the absence of provisions established by the agreements in force or in the event of conflicts between the relevant provisions of two or more applicable agreements, the central management shall initiate the negotiations referred to in regulation 5 on its own initiative or at the written request of at least one hundred employees or their representatives in at least two undertakings or establishments in at least two different Member

States:

Provided that at least three members of the existing European Works Council or of each of the existing European Works Councils shall be members of the special negotiating body, in addition to the members elected or appointed pursuant to regulation 6:

Provided further that during the negotiations, the existing European Works Council or Councils shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council or Councils and the central management.

14. 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 to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) and not more than eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87). Offences.

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SCHEDULE

(Regulation 8)

Subsidiary Requirements

1. In order to achieve the objective set out in regulation 1(2) and in the cases provided for in regulation 8(1), the establishment, composition and competence of a European Works Council shall be governed by the following rules:

- (a) the competence of the European Works Council shall be determined in accordance with regulation 3(2).

The information of the European Works 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. The information and consultation of the European Works Council shall relate in particular to 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.

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) the European Works Council shall be composed of employees of the Community-scale undertaking or Community-scale group of undertakings elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

The election or appointment of members of the European Works Council shall be carried out in accordance with regulation 6;

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

- (d) to ensure that it can coordinate its activities, the European Works 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.

It shall adopt its own rules of procedure;

- (e) the central management and any other more appropriate level of management shall be informed of the composition of the European Works Council;

- (f) four years after the European Works Council is established it shall examine whether to open negotiations for the conclusion of the agreement referred to in regulation 7 or to continue to apply the subsidiary requirements adopted in accordance with this Schedule.

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 'Special Negotiating Body' shall be replaced by 'European Works Council'.

2. 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 undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly.

3. Where there are exceptional circumstances or decisions 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, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted.

Those members of the European Works Council who have been elected or appointed by the establishments and/or undertakings which are directly concerned by the circumstances or decisions in question shall also have the right to participate where a meeting is organised with the select committee.

This information and consultation meeting 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 the Community-scale undertaking or group of undertakings, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

This meeting shall not affect the prerogatives of the central management.

The information and consultation procedures provided for in the above circumstances shall be carried out without prejudice to regulations 1(2) and 9.

4. The Member States may lay down rules on the chairing of information and consultation meetings.

Before any meeting with the central management, the European Works Council or the select committee, where necessary enlarged in accordance with the second paragraph of point 3, shall be entitled to meet without the management concerned being present.

5. 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.

6. The operating expenses of the European Works Council shall be borne by the central management.

The central management concerned shall provide the members of the European Works Council with such financial and material resources as enable them to perform their duties in an appropriate manner.

In particular, the cost of organising 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.
