

COUNCIL DIRECTIVE 2003/72/EC

of 22 July 2003

supplementing the Statute for a European Cooperative Society with regard to the involvement of employees

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽³⁾,

Whereas:

- (1) In order to attain the objectives of the Treaty, Council Regulation (EC) No 1435/2003 ⁽⁴⁾ establishes a Statute for a European Cooperative Society (SCE).
- (2) That Regulation aims at creating a uniform legal framework within which cooperatives and other entities and natural persons from different Member States should be able to plan and carry out the reorganisation of their business in cooperative form on a Community scale.
- (3) In order to promote the social objectives of the Community, special provisions have to be set, notably in the field of employee involvement, aimed at ensuring that the establishment of an SCE does not entail the disappearance or reduction of practices of employee involvement existing within the entities participating in the establishment of an SCE. This objective should be pursued through the establishment of a set of rules in this field, supplementing the provisions of Regulation (EC) No 1435/2003.
- (4) Since the objectives of the proposed action, as outlined above, cannot be sufficiently achieved by the Member States, in that the object is to establish a set of rules on employee-involvement applicable to the SCE, and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of

proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve these objectives.

- (5) The great diversity of rules and practices existing in the Member States as regards the manner in which employees' representatives are involved in decision-making within cooperatives makes it inadvisable to set up a single European model of employee involvement applicable to the SCE.
- (6) Information and consultation procedures at transnational level should be ensured in all cases of creation of an SCE, with the necessary adaptation for SCEs formed *ex novo* where this is justified by their size, as measured in terms of employment.
- (7) If participation rights exist within one or more entities establishing an SCE, they should in principle be preserved through their transfer to the SCE, once established, unless the parties decide otherwise.
- (8) The concrete procedures of employee transnational information and consultation, as well as, if applicable, participation, to apply to each SCE should be defined primarily by means of an agreement between the parties concerned or, in the absence thereof, through the application of a set of subsidiary rules.
- (9) Member States should still have the option of not applying the standard rules relating to participation in the case of a merger, given the diversity of national systems for employee involvement. Existing systems and practices of participation where appropriate at the level of participating entities must in that case be maintained by adapting registration rules.
- (10) The voting rules within the special body representing the employees for negotiation purposes, in particular when concluding agreements providing for a level of participation lower than the one existing within one or more of the participating entities, should be proportionate to the risk of disappearance or reduction of existing systems and practices of participation. That risk is greater in the case of an SCE established by way of transformation or merger than by way of creating an *ex novo* SCE.

⁽¹⁾ OJ C 236, 31.8.1993, p. 36.

⁽²⁾ OJ C 42, 15.2.1993, p. 75.

⁽³⁾ OJ C 223, 31.8.1992, p. 42.

⁽⁴⁾ See page 1 of this Official Journal.

- (11) In the absence of an agreement subsequent to the negotiation between employees' representatives and the competent organs of the participating entities, provision should be made for certain standard rules to apply to the SCE, once it is established. These standard rules should ensure effective practices of transnational information and consultation of employees, as well as their participation in the relevant organs of the SCE if such participation existed before its establishment within the participating entities.
- (12) When application of the abovementioned procedures to the entities participating in the *ex novo* SCE cannot be justified because of their small size as measured in terms of employment, the SCE should be subject to the national rules on the involvement of employees in force in the Member State where it establishes its registered office, or in the Member States where it has subsidiaries or establishments. This should be without prejudice to the obligation placed on an SCE already established to implement these procedures if a significant number of employees so requests.
- (13) Specific provisions should apply to employee participation in general meetings, in so far as national laws so allow. The application of these provisions does not preclude the application of other forms of participation, as provided for in this Directive.
- (14) Member States should ensure through appropriate provisions that, in the case of structural changes following the creation of an SCE, the arrangements for the involvement of employees can, where appropriate, be renegotiated.
- (15) Provision should be made for the employees' representatives acting within the framework of this Directive to enjoy, when exercising their functions, the same protection and guarantees as those provided for employees' representatives by the legislation and/or practice of the country of employment. They should not be subject to any discrimination, including harassment, as a result of the lawful exercise of their activities and should enjoy adequate protection as regards dismissal and other sanctions.
- (16) The confidentiality of sensitive information should be preserved even after the expiry of the terms of office of the employees' representatives, and provision should be made to allow the competent organ of the SCE to withhold information which would seriously harm, if subject to public disclosure, the functioning of the SCE.
- (17) Where an SCE and its subsidiaries and establishments are subject to Council Directive 94/45/EC of 22 September 1994 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⁽¹⁾, the provisions of that Directive and the provisions transposing it into national legislation should not apply to it nor to its subsidiaries and establishments, unless the special negotiating body decides not to open negotiations or to terminate negotiations already opened.
- (18) This Directive should not affect other existing rights regarding involvement and need not affect other existing representation structures, provided for by Community and national laws and practices.
- (19) Member States should take appropriate measures in the event of failure to comply with the obligations laid down in this Directive.
- (20) The Treaty has not provided the necessary powers for the Community to adopt this Directive, other than those provided for in Article 308.
- (21) It is a fundamental principle and stated aim of this Directive to secure employees' acquired rights as regards involvement in company decisions. Employee rights in force before the establishment of SCEs should provide the basis for employee rights of involvement in the SCE (the 'before and after' principle). Consequently, that approach should apply not only to the initial establishment of an SCE but also to structural changes in an existing SCE and to the entities affected by structural change processes. Therefore, where the registered office of an SCE is transferred from one Member State to another, at least the same level of employee involvement rights should continue to apply. Further, if the threshold concerning employee involvement is reached or exceeded after the registration of an SCE, these rights should apply in the same manner in which they would have applied, had the threshold been reached or exceeded before registration.

⁽¹⁾ OJ L 254, 30.9.1994, p. 64. Directive as amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p. 22).

- (22) Member States may provide that representatives of trade unions may be members of a special negotiating body regardless of whether they are employees of an entity participating in the establishment of an SCE. Member States should in this context in particular be able to introduce this right in cases where trade union representatives have the right to be members of, and to vote in, supervisory or administrative company organs in accordance with national legislation.
- (23) In several Member States, employee involvement and other areas of industrial relations are based on both national legislation and practice which in this context is understood also to cover collective agreements at various national, sectorial and/or company levels,
- (d) 'concerned subsidiary or establishment' means a subsidiary or establishment of a participating legal entity which is proposed to become a subsidiary or establishment of the SCE upon its formation;
- (e) 'employees' representatives' means the employees' representatives provided for by national law and/or practice;
- (f) 'representative body' means the body representative of the employees set up by the agreements referred to in Article 4 or in accordance with the provisions of the Annex, with the purpose of informing and consulting the employees of an SCE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SCE;

HAS ADOPTED THIS DIRECTIVE:

SECTION I

GENERAL

Article 1

Objective

1. This Directive governs the involvement of employees in the affairs of European Cooperative Societies (hereinafter referred to as SCEs), as referred to in Regulation (EC) No 1435/2003.

2. To this end, arrangements for the involvement of employees shall be established in every SCE in accordance with the negotiating procedure referred to in Articles 3 to 6 or, under the circumstances specified in Articles 7 and 8, in accordance with the Annex.

Article 2

Definitions

For the purposes of this Directive:

- (a) 'SCE' means any cooperative society established in accordance with Regulation (EC) No 1435/2003;
- (b) 'participating legal entities' means companies and firms within the meaning of the second paragraph of Article 48 of the Treaty, including cooperatives, as well as legal bodies formed under, and governed by, the law of a Member State, directly participating in the establishing of an SCE;
- (c) 'subsidiary' of a participating legal entity or of an SCE means an undertaking over which that legal entity or SCE exercises a dominant influence defined in accordance with Article 3(2) to (7) of Directive 94/45/EC;
- (g) 'special negotiating body' means the body established in accordance with Article 3 to negotiate with the competent organ of the participating legal entities regarding the establishment of arrangements for the involvement of employees within the SCE;
- (h) 'involvement of employees' means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within an undertaking;
- (i) 'information' means the informing of the body representative of the employees and/or the employees' representatives by the competent organ of the SCE on questions which concern the SCE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SCE;
- (j) 'consultation' means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the SCE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SCE;
- (k) 'participation' means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a legal entity by way of:
- the right to elect or appoint some of the members of the legal entity's supervisory or administrative organ, or

- the right to recommend and/or oppose the appointment of some or all of the members of the legal entity's supervisory or administrative organ.

- the composition of the special negotiating body does not entail a double representation of the employees concerned.

If the number of such cooperatives is higher than the number of additional seats available pursuant to the first subparagraph, these additional seats shall be allocated to cooperatives in different Member States by decreasing order of the number of employees they employ.

SECTION II

NEGOTIATING PROCEDURE APPLICABLE TO SCEs ESTABLISHED BY AT LEAST TWO LEGAL ENTITIES OR BY TRANSFORMATION

Article 3

Creation of a special negotiating body

1. Where the management or administrative organs of participating legal entities draw up a plan for the establishment of an SCE, they shall as soon as possible take the necessary steps, including providing information on the identity of the participating legal entities and subsidiaries or establishments, as well as the number of their employees, to start negotiations with the representatives of the legal entities' employees on arrangements for the involvement of employees in the SCE.

2. For this purpose, a special negotiating body representative of the employees of the participating legal entities and concerned subsidiaries or establishments shall be created in accordance with the following provisions:

(a) in electing or appointing members of the special negotiating body, it shall be ensured:

(i) that such members are elected or appointed in proportion to the number of employees employed in each Member State by the participating legal entities and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per each portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together;

(ii) that in the case of an SCE formed by way of merger, there are such further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating cooperative which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SCE, insofar as:

- the number of such additional members does not exceed 20 % of the number of members designated by virtue of point (i); and

(b) Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories. They shall take the necessary measures to ensure that, as far as possible, such members shall include at least one member representing each participating legal entity which has employees in the Member State concerned. Such measures must not increase the overall number of members. The methods used to nominate, appoint or elect employee representatives should seek to promote gender balance.

Member States may provide that such members may include representatives of trade unions whether or not they are employees of a participating legal entity or concerned subsidiary or establishment.

Without prejudice to national legislation and/or practice laying down thresholds for the establishing of a representative body, Member States shall provide that employees in undertakings or establishments in which there are no employees' representatives through no fault of their own have the right to elect or appoint members of the special negotiating body.

3. The special negotiating body and the competent organs of the participating legal entities shall determine, by written agreement, arrangements for the involvement of employees within the SCE.

To this end, the competent organs of the participating legal entities shall inform the special negotiating body of the plan and the actual process of establishing the SCE, up to its registration.

4. Subject to paragraph 6, 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. Each member shall have one vote. However, should the result of the negotiations lead to a reduction of participation rights, the majority required for a decision to approve such an agreement shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States,

- in the case of an SCE to be established by way of merger, if participation covers at least 25 % of the overall number of employees of the participating cooperatives, or
- in the case of an SCE to be established by any other way, if participation covers at least 50 % of the overall number of employees of the participating legal entities.

Reduction of participation rights means a proportion of members of the organs of the SCE within the meaning of Article 2(k), which is lower than the highest proportion existing within the participating legal entities.

5. For the purpose of the negotiations, the special negotiating body may request experts of its choice, for example representatives of appropriate Community level trade union organisations, to assist it with its work. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at Community level. The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions, of the start of the negotiations.

6. The special negotiating body may decide by the majority set out in the second subparagraph not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the SCE has employees. Such a decision shall stop the procedure to conclude the agreement referred to in Article 4. Where such a decision has been taken, none of the provisions of the Annex shall apply.

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.

In the case of an SCE established by way of transformation, this paragraph shall not apply if there is participation in the cooperative to be transformed.

The special negotiating body shall be reconvened at the written request of at least 10 % of the employees of the SCE, its subsidiaries and establishments, or their representatives, at the earliest two years after the abovementioned decision, unless the parties agree to negotiations being reopened sooner. If the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, none of the provisions of the Annex shall apply.

7. Any expenses relating to the functioning of the special negotiating body and, in general, to negotiations shall be borne by the participating legal entities so as to enable the special negotiating body to carry out its task in an appropriate manner.

In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.

Article 4

Content of the agreement

1. The competent organs of the participating legal entities and the special negotiating body shall negotiate in a spirit of cooperation with a view to reaching an agreement on arrangements for the involvement of the employees within the SCE.

2. Without prejudice to the autonomy of the parties, and subject to paragraph 4, the agreement referred to in paragraph 1 between the competent organs of the participating legal entities and the special negotiating body shall specify:

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

(h) the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation, including, where appropriate, in the event of structural changes in the SCE and its subsidiaries and establishments which occur after the creation of the SCE.

3. The agreement shall not, unless provision is made otherwise therein, be subject to the standard rules referred to in the Annex.

4. Without prejudice to Article 15(3)(a), in the case of an SCE established by means of transformation, the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the cooperative to be transformed into an SCE.

5. The agreement may specify the arrangements for the entitlement of employees to participate in the general meetings or in the section or sectorial meetings in accordance with Article 9 of this Directive and Article 59(4) of Regulation (EC) No 1435/2003.

Article 5

Duration of negotiations

1. Negotiations shall commence as soon as the special negotiating body is established and may continue for six months thereafter.

2. The parties may decide, by joint agreement, to extend negotiations beyond the period referred to in paragraph 1, up to a total of one year from the establishment of the special negotiating body.

Article 6

Legislation applicable to the negotiation procedure

Except where otherwise provided in this Directive, the legislation applicable to the negotiation procedure provided for in Articles 3, 4 and 5 shall be the legislation of the Member State in which the registered office of the SCE is to be situated.

Article 7

Standard rules

1. In order to achieve the objective described in Article 1, Member States shall lay down standard rules on employee involvement which must satisfy the provisions set out in the Annex.

The standard rules as laid down by the legislation of the Member State in which the registered office of the SCE is to be situated shall apply from the date of the registration of the SCE where either:

- (a) the parties so agree; or
- (b) by the deadline laid down in Article 5, no agreement has been concluded, and:
 - the competent organ of each of the participating legal entities decides to accept the application of the standard rules in relation to the SCE and so to continue with its registration of the SCE, and
 - the special negotiating body has not taken the decision provided in Article 3(6).

2. Moreover, the standard rules fixed by the national legislation of the Member State of registration in accordance with part 3 of the Annex shall apply only:

- (a) in the case of an SCE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied to a cooperative transformed into an SCE;
- (b) in the case of an SCE established by merger:
 - if, before registration of the SCE, one or more forms of participation applied in one or more of the participating cooperatives covering at least 25 % of the total number of employees employed by them, or
 - if, before registration of the SCE, one or more forms of participation applied in one or more of the participating cooperatives covering less than 25 % of the total number of employees employed by them and if the special negotiating body so decides;
- (c) in the case of an SCE established by any other way:
 - if, before registration of the SCE, one or more forms of participation applied in one or more of the participating legal entities covering at least 50 % of the total number of employees employed by them; or
 - if, before registration of the SCE, one or more forms of participation applied in one or more of the participating legal entities covering less than 50 % of the total number of employees employed by them and if the special negotiating body so decides.

If there was more than one form of participation within the various participating legal entities, the special negotiating body shall decide which of those forms must be established in the SCE. Member States may fix the rules which are applicable in the absence of any decision on the matter for an SCE registered in their territory. The special negotiating body shall inform the competent organs of the participating legal entities of any decisions taken pursuant to this paragraph.

3. Member States may lay down that the standard rules referred to in Part 3 of the Annex shall not apply in the case provided for in paragraph 2(b).

SECTION III

RULES APPLICABLE TO SCEs ESTABLISHED EXCLUSIVELY BY NATURAL PERSONS OR BY A SINGLE LEGAL ENTITY AND NATURAL PERSONS

Article 8

1. In the case of an SCE established exclusively by natural persons or by a single legal entity and natural persons, which together employ at least 50 employees in at least two Member States, the provisions of Articles 3 to 7 shall apply.

2. In the case of an SCE established exclusively by natural persons or by a single legal entity and natural persons, which together employ fewer than 50 employees, or employ 50 or more employees in only one Member State, employee involvement shall be governed by the following:

- in the SCE itself, the provisions of the Member State of the SCE's registered office, which are applicable to other entities of the same type, shall apply,
- in its subsidiaries and establishments, the provisions of the Member State where they are situated, and which are applicable to other entities of the same type, shall apply.

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

3. If, after the registration of an SCE referred to in paragraph 2, at least one third of the total number of employees of the SCE and its subsidiaries and establishments in at least two different Member States so requests, or if the total number of employees reaches or exceeds 50 employees in at least two Member States, the provisions of Articles 3 to 7 shall be applied, *mutatis mutandis*. In this case, the words 'participating legal entities' and 'concerned subsidiaries or establishments' shall be replaced by the words 'SCE' and 'subsidiaries or establishments of the SCE' respectively.

SECTION IV

PARTICIPATION IN THE GENERAL MEETING OR SECTION OR SECTORIAL MEETING

Article 9

Subject to the limits laid down in Article 59(4) of Regulation (EC) No 1435/2003, the employees of the SCE and/or their representatives will be entitled to participate in the general meeting or, if it exists, in the section or sectorial meeting, with the right to vote, in the following circumstances:

1. when the parties so decide in the agreement referred to in Article 4, or
2. when a cooperative governed by such a system transforms itself into an SCE, or
3. when, in the case of an SCE established by means other than transformation, a participating cooperative was governed by such a system and:
 - (i) the parties cannot reach agreement, as referred to in Article 4, by the deadline laid down in Article 5; and
 - (ii) Article 7(1)(b) and Part 3 of the Annex apply; and
 - (iii) the participating cooperative governed by such a system has the highest proportion of participation, within the meaning of Article 2(k), in force in the participating cooperatives concerned before registration of the SCE.

SECTION V

MISCELLANEOUS PROVISIONS

Article 10

Reservation and confidentiality

1. Member States shall provide that members of the special negotiating body or the representative body, and experts who assist them, are not authorised to reveal any information which as been given to them in confidence.

The same shall apply to employees' representatives in the context of an information and consultation procedure.

This obligation shall continue to apply, wherever the persons referred to may be, even after the expiry of their terms of office.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the supervisory or administrative organ of an SCE or of a participating legal entity established in its territory is not obliged to transmit information where its nature is such that, according to objective criteria, to do so would seriously harm the functioning of the SCE (or, as the case may be, a participating legal entity) or its subsidiaries and establishments or would be prejudicial to them.

A Member State may make such dispensation subject to prior administrative or judicial authorisation.

3. Each Member State may lay down particular provisions for SCEs in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, on the date of adoption of this Directive, such provisions already exist in the national legislation.

4. In applying paragraphs 1, 2 and 3, Member States shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the supervisory or administrative organ of an SCE or of a participating legal entity demands confidentiality or does not give information.

Such procedures may include arrangements designed to protect the confidentiality of the information in question.

Article 11

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

The competent organ of the SCE and the representative body shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations.

The same shall apply to cooperation between the supervisory or administrative organ of the SCE and the employees' representatives in conjunction with a procedure for the information and consultation of employees.

Article 12

Protection of employees' representatives

The members of the special negotiating body, the members of the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative organ of an SCE who are employees of the SCE, its subsidiaries or establishments or of a participating legal entity shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment.

This 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 Article 4(2)(f) or any meeting of the administrative or supervisory organ, and to the payment of wages for members employed by a participating legal entity or the SCE or its subsidiaries or establishments during a period of absence necessary for the performance of their duties.

Article 13

Misuse of procedures

Member States shall take appropriate measures in conformity with Community law with a view to preventing the misuse of an SCE for the purpose of depriving employees of rights to employee involvement or withholding such rights.

Article 14

Compliance with this Directive

1. Each Member State shall ensure that the management of establishments of an SCE and the supervisory or administrative organs of subsidiaries and of participating legal entities which are situated within its territory and the employees' representatives or, as the case may be, the employees themselves abide by the obligations laid down by this Directive, regardless of whether or not the SCE has its registered office within its territory.

2. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular they shall ensure that administrative or legal procedures are available to enable the obligations deriving from this Directive to be enforced.

Article 15

Link between this Directive and other provisions

1. Where an SCE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of Directive 94/45/EC or of Council Directive 97/74/EC of 15 December 1997 extending the said Directive to the United Kingdom ⁽¹⁾, the provisions of these Directives and the provisions transposing them into national legislation shall not apply to them or to their subsidiaries.

However, where the special negotiating body decides in accordance with Article 3(6) not to open negotiations or to terminate negotiations already opened, Directive 94/45/EC or Directive 97/74/EC and the provisions transposing them into national legislation shall apply.

⁽¹⁾ OJ L 10, 16.1.1998, p. 22.

2. Provisions on the participation of employees in company bodies provided for by national legislation and/or practice, other than those implementing this Directive, shall not apply to the SCEs to which Articles 3 to 7 apply.

3. This Directive shall not prejudice:

(a) the existing rights to involvement of employees provided for by national legislation and/or practice in the Member States as enjoyed by employees of the SCE and its subsidiaries and establishments, other than participation in the bodies of the SCE;

(b) the provisions on participation in the bodies laid down by national legislation and/or practice applicable to the subsidiaries of the SCE or to SCEs to which Articles 3 to 7 do not apply.

4. In order to preserve the rights referred to in paragraph 3, Member States may take the necessary measures to guarantee that the structures of employee representation in participating legal entities which will cease to exist as separate legal entities are maintained after the registration of the SCE.

Article 16

Final provisions

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 18 August 2006, or shall ensure by that date at the latest that management and labour introduce the required provisions by way of agreement, the Member States

being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 17

Review by the Commission

Not later than 18 August 2009, the Commission shall, in consultation with the Member States and with management and labour at Community level, review the application of applying this Directive, with a view to proposing suitable amendments to the Council where necessary.

Article 18

Entry into force

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Union*.

Article 19

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 22 July 2003.

For the Council
The President
G. ALEMANNIO

ANNEX

STANDARD RULES

(referred to in Articles 7 and 8)

Part 1: Composition of the body representative of the employees

In order to achieve the objective described in Article 1, and in the cases referred to in Article 7, a representative body shall be set up in accordance with the following rules:

- (a) The representative body shall be composed of employees of the SCE and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.
- (b) The election or appointment of members of the representative body shall be carried out in accordance with national legislation and/or practice.

Member States shall lay down rules to ensure that the number of members of, and allocation of seats on, the representative body shall be adapted to take account of changes occurring within the SCE and its subsidiaries and establishments. The methods used to nominate, appoint or elect employee representatives should seek to promote gender balance.

- (c) Where its size so warrants, the representative body shall elect a select committee from among its members, comprising at most three members.
- (d) The representative body shall adopt its rules of procedure.
- (e) The members of the representative body are elected or appointed in proportion to the number of employees employed in each Member State by the SCE and its subsidiaries or establishments, by allocating in respect of a Member State one seat per each portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by them in all the Member States taken together.
- (f) The competent organ of the SCE shall be informed of the composition of the representative body.
- (g) Not later than four years after its establishment, the representative body shall examine whether to open negotiations for the conclusion of the agreement referred to in Articles 4 and 7 or to continue to apply the standard rules adopted in accordance with this Annex.

Article 3(4) to (7) and Articles 4, 5 and 6 shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to Article 4, 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

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

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

The competent organ of the SCE shall provide the representative body with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its members.

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, initiatives with regard to corporate social responsibility, the situation and probable trend of employment, investments, and substantial changes concerning organisation, the introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

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

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

- (e) Without prejudice to Article 10, the members of the representative body shall inform the representatives of the employees of the SCE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.
- (f) The representative body or the select committee may be assisted by experts of its choice.
- (g) In so far as this is necessary for the 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 SCE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner.

In particular, the SCE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities and the accommodation and travelling expenses of members of the representative body and the select committee.

In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the representative body. They may in particular limit funding to cover one expert only.

Part 3: Standard rules for participation

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

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

- (c) If none of the participating legal entities was governed by participation rules before registration of the SCE, the latter shall not be required to establish provisions for employee participation.
 - (d) The representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States or on the way in which the SCE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SCE's employees in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SCE's registered office where that is appropriate. Each Member State may determine the allocation of the seats it is given within the administrative or supervisory body.
 - (e) Every member of the administrative body or, where appropriate, the supervisory body of the SCE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the members of the cooperative, including the right to vote.
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