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National Labour Council (*Conseil National du Travail*)

COLLECTIVE AGREEMENT No 101

Meeting of Tuesday 21 December 2010

COLLECTIVE AGREEMENT ON THE INFORMATION AND CONSULTATION
OF EMPLOYEES IN COMMUNITY-SCALE UNDERTAKINGS AND
COMMUNITY-SCALE GROUPS OF UNDERTAKINGS

**COLLECTIVE AGREEMENT No 101 OF 21 DECEMBER 2010
ON THE INFORMATION AND CONSULTATION
OF EMPLOYEES IN COMMUNITY-SCALE UNDERTAKINGS AND
COMMUNITY-SCALE GROUPS OF UNDERTAKINGS**

Having regard to the Act of 5 December 1968 on collective agreements and joint committees (*loi du 5 décembre 1968 sur les conventions collectives de travail et les commissions paritaires*),

Having regard to Directive 2009/38/EC of the European Parliament and of the Council of the European Union 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 (recast),

Whereas the European authorities decided that a number of substantive changes should be made 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 and that in the interests of clarity that Directive should be recast,

Whereas this recasting is necessary to modernise Community legislation on transnational information and consultation of employees, to ensure the effectiveness of employees' transnational information and consultation rights, to increase the proportion of European Works Councils established while enabling the continuous functioning of existing agreements, resolving the problems encountered in the practical application of Directive 94/45/EC and remedying the lack of legal certainty resulting from some of its provisions or the absence of certain provisions, and ensuring that Community legislative instruments on information and consultation of employees are better linked,

Whereas, in the interests of readability, a new collective agreement should be concluded to transpose Directive 2009/38/EC and to maintain Collective Agreement No 62 of 6 February 1996 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, amended by Collective Agreements No 62a of 6 October 1998, No 62b of 6 October 2004, No 62c of 30 January 2007 and No 62d of 21 December 2010, with the necessary amendments, in particular for the appropriate regulation of the situation of agreements not covered by Directive 2009/38/EC,

The following interprofessional organisations of employers and employees:

- the Federation of Enterprises of Belgium
- the national organisations of middle classes, recognised in accordance with the laws on the organisation of the middle classes, as consolidated on 28 May 1979
- "De Boerenbond"
- the Wallonian Agriculture Federation
- the Union of For-Profit Social Enterprises

- the Belgian Confederation of Christian Trade Unions
- the General Federation of Belgian Labour
- the General Confederation of Liberal Trade Unions of Belgium

concluded the following Collective Agreement on 21 December 2010, within the National Labour Council (*Conseil National du Travail*).

CHAPTER I – SCOPE

Article 1

The object of this Agreement is to implement Directive 2009/38/EC of the European Parliament and of the Council of the European Union 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 (recast).

CHAPTER II – OBJECT

Article 2

§ 1 The purpose of this Agreement is to improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.

§ 2 To that end, a European Works Council or an information and consultation procedure shall be established, in accordance with the procedure provided for under this Agreement, in Community-scale undertakings and Community-scale groups of undertakings which meet the conditions laid down in Article 3.

- § 3. 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 Community-scale undertaking or Community-scale group of undertakings to take decisions effectively.
- § 4. 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 this Agreement shall be limited to transnational issues.
- § 5. 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.
- § 6. Notwithstanding § 2, where a Community-scale group of undertakings comprises one or more undertakings or groups of undertakings which are also Community-scale, a European Works Council shall be established at the level of the group, unless otherwise agreed.
- § 7. The Council or Councils or the information and consultation procedure or procedures shall cover the entire Community-scale undertaking or Community-scale group of undertakings. This shall be confined to the undertakings and establishments located within the Member States, unless covering States other than the Member States provided for in the agreement referred to in Chapter VII, Section III.

Comments

1. The arrangements for informing and consulting employees need to be defined and implemented in such a way as to ensure their effectiveness with regard to the provisions of this Agreement. To that end, informing and consulting the European Works Council should make it possible for it to give an opinion to the undertaking in a timely fashion, without calling into question the ability of undertakings to adapt. Only dialogue at the level where directions are prepared and effective involvement of employees' representatives make it possible to anticipate and manage change.

2. The transnational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves. For this purpose, matters which concern the entire undertaking or group or at least two Member States are considered to be transnational. These include matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States.

CHAPTER III - DEFINITIONS AND SCOPE

Article 3

For the purposes of this Agreement:

§ 1. "Community-scale undertaking" means any undertaking with at least 1000 employees within the Member States and at least 150 employees in each of at least two Member States;

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

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

- * at least 1000 employees within the Member States,
- * at least two group undertakings in different Member States

and

- * at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;

- § 4. "central management" means the management of the Community-scale undertaking or the management of the controlling undertaking, as defined in Article 9, within a Community-scale group of undertakings;
- § 5. "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. 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;
- § 6. "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;
- § 7. "European Works Council" means a council established in accordance with either Article 25 or the subsidiary requirements contained in Chapter IX, with the purpose of informing and consulting employees;
- § 8. "special negotiating body" means the body established in accordance with Article 12 to negotiate with the central management regarding the establishment of a European Works Council or a procedure for informing and consulting employees;
- § 9. "Member States" means the Member States of the European Union and the other Member States of the European Economic Area covered by the Directive.

Article 4

Where a European company is concerned which meets the conditions laid down by Collective Agreement No 84 of 6 October 2004 on the involvement of employees in a European company and is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of this Agreement, the provisions of this Agreement shall not be applicable to this European company or its subsidiaries.

Article 5

Where a European cooperative company is concerned which meets the conditions laid down by Collective Agreement No 88 of 30 January 2007 on the involvement of employees in a European cooperative company and is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of this Agreement, the provisions of this Agreement shall not be applicable to this cooperative company or its subsidiaries.

CHAPTER IV – AGREEMENTS IN FORCE

Article 6

§ 1. Without prejudice to Article 28, the obligations arising from this Agreement shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which, either:

1. an agreement or agreements covering the entire workforce, providing for the transnational information and consultation of employees, have been concluded pursuant to Article 4, first to fifth subparagraphs, of Collective Agreement No 62 of 6 February 1996 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, or such agreements are adjusted following changes in the structure of the Community-scale undertakings or Community-scale groups of undertakings;

or

2. an agreement concluded pursuant to Articles 16 and 22 to 25 of Collective Agreement No 62 of 6 February 1996 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, is signed or revised between 5 June 2009 and 5 June 2011.

The collective agreement applicable when the agreement is signed or revised shall continue to apply to the undertakings or groups of undertakings referred to in point 2 of the first subparagraph.

§ 2. Upon expiry of the agreements referred to in paragraph 1, the parties to those agreements may decide jointly to renew or revise them.

Where this is not the case, the provisions of this Agreement shall apply.

Comments

1. The European social partners, supported by the Belgian social partners, state the following in a letter of 14 June 2010 addressed to the European Commission.

"A special period of two years has been established in the recast Directive in response to the request they made in their joint opinion of 29 August 2008. Its implications were discussed during the European Council Working Party in autumn 2008.

Following this, Article 14(1)(b) of the recast Directive authorises the social partners at undertaking level to negotiate new agreements or to renegotiate existing agreements concluded pursuant to Article 6 of Directive 94/45/EC, between 2009 and 2011, on the basis of existing national laws transposing Directive 94/45/EC, without being subject to the new provisions of the recast Directive.

Article 14(1)(a) specifies that the obligations arising from the recast Directive do not apply to European Works Councils established pursuant to the "old" Article 13 (of Directive 94/45/EC) while they remain in force and are supported by the social partners at the level of the undertaking. These agreements may be adjusted because of "changes in the structure of the undertakings or groups of undertakings" without leading to full negotiation in accordance with Articles 5 to 7 of the recast Directive, provided that these changes do not lead to the applicability of Article 13 of the recast Directive.

In addition, Article 14(2) stipulates that on expiry, and if the two parties agree, the agreements concluded pursuant to Article 14 – as defined in Articles 14(1)(a) and 14(1)(b) – may be renewed or revised where the parties to these agreements so decide jointly. Where this is not the case, the provisions of the recast Directive apply. This is in line with recital 41 of the recast Directive, which provides that: "Unless this adaptation clause (Article 13 of the recast Directive) is applied, the agreements in force should be allowed to continue in order to avoid their obligatory renegotiation when this would be unnecessary."

Furthermore, this Agreement does not establish a general obligation to renegotiate agreements concluded pursuant to Article 6 of Directive 94/45/EC (Articles 16 and 22 to 25 of Collective Agreement No 62 of 6 February 1996 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) between 22 September 1996 and 5 June 2011.

2. As regards the "agreements in force" concluded pursuant to Article 13 of Directive 94/45/EC (Article 4, first to fifth subparagraphs of Collective Agreement No 62 of 6 February 1996 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), neither the above-mentioned Collective Agreement No 62 nor the present Collective Agreement apply to them, although without prejudice to Article 28 of this Agreement. This Article concerns significant changes in the structure of the Community-scale undertaking or Community-scale group of undertakings.

CHAPTER V - DETERMINATION OF THE NUMBER OF EMPLOYEES

Article 7

For the purposes of this Agreement, the prescribed thresholds for the size of the workforce shall be based on the average number of employees in the establishments or undertakings located in Belgium, including part-time employees, employed during the two years prior to the date of the request to open negotiations referred to in Article 11.

The average number of employees employed in Belgium shall be calculated in accordance with the regulations on company elections, adopted in implementation of Article 14, § 1, subparagraph 1, of the Act of 20 September 1948 on economic organisation (*loi du 20 septembre 1948 portant organisation de l'économie*).

For the purposes of this provision, employees shall mean the persons employed in Belgium under a contract of employment or apprenticeship.

Article 8

Once every calendar year and at the request of the employees' representatives, the central management shall make available the information on the number of employees of the Community-scale undertaking or the Community-scale group of undertakings.

CHAPTER VI – CONTROLLING UNDERTAKING

Article 9

For the purposes of this Agreement, "controlling undertaking" means an undertaking which can exercise a dominant influence over another undertaking by virtue, for example, of ownership, financial participation or the rules which govern it.

Exercising a dominant influence shall be presumed, until proof to the contrary, when an undertaking, directly or indirectly:

a) can appoint more than half of the members of an undertaking's administrative, management or supervisory body;

or

b) controls a majority of the votes attached to an undertaking's issued share capital;

or

c) holds a majority of an undertaking's subscribed capital.

Where several undertakings of a group meet one of the criteria set out in the second subparagraph, the undertaking which meets criterion a) shall be presumed to exercise the dominant influence. If no undertaking meets criterion a), the undertaking which meets criterion b) shall be presumed to exercise the dominant influence.

For the application of the second subparagraph, a controlling undertaking's rights as regards voting and appointment shall include the rights of any other undertaking it controls 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 undertaking it controls.

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.

Notwithstanding the first and second subparagraphs, 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.

CHAPTER VII - ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR AN EMPLOYEE INFORMATION AND CONSULTATION PROCEDURE

Section I – Responsibility for the establishment

Article 10

- § 1. The central management shall be responsible for the implementation of the procedure for the setting-up of a European Works Council or an information and consultation procedure in the undertakings or groups referred to in Article 3, in compliance with the provisions of this Chapter, from the time when it has itself taken the initiative or if the request has been made by the employees or their representatives.

- § 2. Where the central management is not situated in a Member State, it shall designate a representative in one of the Member States.

In the absence of such a representative, the central management shall be presumed to be represented by the management of the establishment or undertaking employing the greatest number of employees in a Member State.

- § 3. For the application of this Agreement, the representatives referred to in the previous subparagraphs shall be regarded as the central management.

- § 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 § 2, subparagraph 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 this Agreement the information required for commencing the negotiations.

This shall refer in particular to information concerning the structure of the Community-scale undertaking or group of undertakings and its workforce. This obligation shall relate in particular to the information on the number of employees of the Community-scale undertaking or group of undertakings.

This information shall be broken down by establishments of the Community-scale undertaking and establishments and undertakings of the Community-scale group of undertakings.

Section II – Special negotiating body

Subsection I – Triggering the procedure

Article 11

The procedure for the establishment of a European Works Council or an information and consultation procedure shall be initiated:

- either on the initiative of the central management located in Belgium, which shall inform the local managements and the employees' representatives;
- or at the written request of 100 employees or their representatives. This request shall be addressed to the central management defined pursuant to Article 3. The employees' representatives may ask the local management to inform them of the identity and place of establishment of the central management.

The 100 employees referred to in the previous subparagraph must be employed in at least two establishments or two undertakings established in at least two different Member States.

Article 12

Once the procedure has been triggered, a special negotiating body shall be established.

Subsection II – Competence of the special negotiating body

Article 13

The special negotiating body shall have the task of determining, with the central management located in Belgium, by written agreement, the scope, composition, functions, and term of office of the European Works Council(s) or the arrangements for implementing one or more procedures for the information and consultation of employees.

Subsection III – Composition of the special negotiating body

Article 14

The members of the special negotiating body shall be elected or appointed in accordance with the rules in force in the national legislation applicable, in proportion to the number of employees employed in each Member State by the Community-scale undertaking or Community-scale group of undertakings. In respect of each Member State, one seat shall be allocated 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.

Comments

1. For the application of this Article, each Member State in which employees are employed by a Community-scale undertaking or a Community-scale group of undertakings is represented on the special negotiating body.

For example, if in a Member State, the proportion of employees employed in relation to the total number of employees is less than 10%, one seat will be allocated to that State. Likewise, if this proportion amounts to 10%, one seat will be allocated to that State. If this proportion exceeds 10% but is less than 20%, two seats are allocated. A proportion exceeding 20% gives entitlement to three seats.

2. A few practical examples are given in the Annex.

Subsection IV - Appointment of the employee members employed in Belgium of the special negotiating body and constitution of a reserve list

Article 15

The provisions of this Article shall refer to the appointment of the employee members of the special negotiating body established in Belgium or in another Member State.

The employee members of the special negotiating body employed in Belgium shall be appointed by and from among the employees' representatives employed in Belgium sitting on the works councils. In the absence of agreement among these representatives, the employee members of the special negotiating body shall be appointed by the majority of these representatives.

In the absence of a works council, the employee members of the special negotiating body shall be appointed by and from among the employees' representatives sitting on committees for prevention and protection at work. In the absence of agreement among these representatives, the employee members of the special negotiating body shall be appointed by the majority of these representatives.

In the absence of a works council and a committee for prevention and protection at work, each joint committee may authorise the trade union delegations of the undertakings or establishments coming under its sectoral competence to appoint the employee members of the special negotiating body.

In the absence of a works council and a committee for prevention and protection at work in the undertakings or establishments located in Belgium and in the absence of authorisation of the joint committee, the employees of the undertaking or establishment shall have the right to elect or appoint the employee members of the special negotiating body.

Article 16

A reserve list shall be drawn up in order to ensure continuity within the special negotiating body in the event of death, prolonged incapacity for work, maternity, departure from the undertaking or establishment, or resignation of the member.

The persons appearing on this reserve list shall be appointed according to the same procedure as the members of the special negotiating body.

This list shall consist of the following:

- one replacement per Member State;

- one additional replacement if at least 75% of the employees of the Community-scale undertaking or Community-scale group of undertakings are employed in the State concerned.

Article 17

The central management located in Belgium shall be informed of the names of the members of the special negotiating body and the names appearing on the reserve list. At the latest when the first meeting with the special negotiating body is convened, it shall inform the local managements and the competent European workers' and employers' organisations of the composition of the special negotiating body and of the start of the negotiations.

Comments

In a letter of 14 June 2010 addressed to the European Commission, which the Belgian social partners support, "the European social partners stress the importance of a simple, non-bureaucratic procedure in order to ensure effective implementation of this new obligation.

To this end, the ETUC and BUSINESSEUROPE have supplied dedicated e-mail contact addresses to ensure effective transmission of the information from the undertakings to the European social partner organisations. Once they have received this information from the undertakings, the two organisations are responsible for forwarding the information at the appropriate time to the addressees identified in the recast Directive. This will be achieved with due regard for their respective structures and procedures. On the trade union side, the competent trade union federation(s) will notify the undertakings when the information has been received so that the undertakings have clear feedback concerning which European trade union organisation(s) are involved."

Subsection V – Spirit of cooperation

Article 18

The central management located in Belgium and the special negotiating body must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees provided for in this Agreement.

Subsection VI - Meetings

Article 19

Once it has been informed of the names of the members of the special negotiating body, the central management located in Belgium shall convene a first meeting with the special negotiating body. It shall inform the managements of the establishments of the Community-scale undertaking or the managements of the undertakings comprising the Community-scale group.

Article 20

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.

Subsection VII – Operation

Article 21

For the purpose of the negotiations, the special negotiating body may request assistance from experts of its choice which can include representatives of competent recognised Community-level trade union organisations. 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.

The special negotiating body shall sort out the practical arrangements for the presence of the experts at meetings with the central management located in Belgium.

Funding by the central management located in Belgium shall be limited to cover one expert only.

Article 22

The special negotiating body may decide to stop the negotiations with the central management located in Belgium or not to open them.

This decision shall be taken by a majority of two thirds of its members.

Unless otherwise agreed between the special negotiating body and the central management located in Belgium, the special negotiating body shall be dissolved.

Where such a decision is taken, the secondary requirements shall not be applicable.

A new request to establish the special negotiating body may be made at the earliest two years after the above-mentioned decision, unless the parties concerned lay down a shorter period.

Article 23

Any expenses relating to the negotiations shall be borne by the central management located in Belgium so as to enable the special negotiating body to carry out its task in an appropriate manner.

Article 24

Decisions shall be taken by the special negotiating body by the majority of the members.

Section III – Agreement establishing a European Works Council or an information and consultation procedure in Belgium

Article 25

The agreement shall cover the establishment of one or more European Works Councils or one or more information and consultation procedures.

The agreement shall be effected in writing.

Article 26

The agreement on the establishment and operation in Belgium of one or more European Works Councils shall determine at least:

1. the undertakings comprising the Community-scale group of undertakings or the establishments forming the Community-scale undertaking which are covered by the agreement;
2. 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;
3. 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 Article 2, § 4;
4. the venue, frequency and duration of meetings of the European Works Council;
5. where necessary, the composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the European Works Council;
6. the financial and material resources to be allocated to the European Works Council for the purposes of its operation;
7. 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.

Article 27

The central management and the special negotiating body may decide to establish in Belgium one or more information and consultation procedures instead of a European Works Council.

The agreement must stipulate:

1. the issues giving rise to information and consultation. This information shall relate in particular to transnational issues which significantly affect the interests of the employees of the Community-scale undertaking and the Community-scale group of undertakings;
2. by what method the employees' representatives shall have the right to meet to discuss the information conveyed to them.

**CHAPTER VIII – SIGNIFICANT CHANGES IN THE STRUCTURE OF THE
COMMUNITY-SCALE UNDERTAKING OR COMMUNITY-
SCALE GROUP OF UNDERTAKINGS**

Article 28

- § 1. 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 Chapter VII on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

- § 2. At least three members of the existing European Works Council or 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 Articles 14 to 17.
- § 3. During the negotiations, the existing European Works Council(s) shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council(s) and the central management.

Comments

In accordance with Article 13 of the recast Directive, three cumulative conditions must be satisfied to lead to renegotiation:

- the structure of the undertaking changes significantly, pursuant to Article 13 of the recast Directive;
- there are no specific provisions in the existing agreement on the European Works Council concerning the procedure to be followed for adaptation, or there is a conflict between two or more applicable agreements;
- the central management initiates the negotiations on its own initiative or at the written request of at least 100 employees or their representatives in at least two different Member States.

Once these three conditions have been satisfied, Articles 5, 6 and 7 of the recast Directive are applicable to the negotiations. This may lead to the conclusion of a new agreement within the negotiation period of three years provided for in Article 7(1) of the recast Directive and this agreement would then be covered by the recast Directive.

CHAPTER IX – SUBSIDIARY REQUIREMENTS

Section I - Application of the subsidiary requirements

Article 29

The subsidiary requirements concerning the establishment of a European Works Council in Belgium shall be applicable where:

1. the central management and the special negotiating body so decide;

or

2. the central management refuses to convene the special negotiating body within six months following the request made pursuant to Article 11;

or

3. the central management and the special negotiating body do not conclude an agreement within a period of three years from the date on which the procedure is initiated in accordance with Article 11, unless the absence of an agreement results from a decision as referred to in Article 22.

Section II - Competence of the European Works Council

Article 30

§ 1. The competence of the European Works Council shall be determined in accordance with Article 2, § 4.

§ 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 Community-scale group of undertakings.

- § 3. 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.
- § 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.

Section III - Composition of the European Works Council

Article 31

- § 1. 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.
- § 2. 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.

Comments

1. For the application of this Article, each Member State in which employees are employed by a Community-scale undertaking or a Community-scale group of undertakings is represented on the European Works Council.

For example, if in a Member State the proportion of employees employed in relation to the total number of employees is less than 10%, one seat will be allocated to that State. Likewise, if this proportion amounts to 10%, one seat will be allocated to that State. If this proportion exceeds 10% but is less than 20%, two seats are allocated. A proportion exceeding 20% gives entitlement to three seats.

2. A few practical examples are given in the Annex.

Section IV - Appointment of the employee members employed in Belgium of the European Works Council and constitution of a reserve list

Article 32

The provisions of this Article shall refer to the appointment of the employee members of the European Works Council established in Belgium or in another Member State.

The employee members of the European Works Council employed in Belgium shall be appointed by and from among the employees' representatives employed in Belgium sitting on the works councils. In the absence of agreement among these representatives, the employee members of the European Works Council shall be appointed by the majority of these representatives

In the absence of a works council, the employee members of the European Works Council shall be appointed by and from among the employees' representatives sitting on committees for prevention and protection at work. In the absence of agreement among these representatives, the employee members of the European Works Council shall be appointed by the majority of these representatives.

In the absence of a works council and a committee for prevention and protection at work, each joint committee may authorise the trade union delegations of the undertakings or establishments coming under its sectoral competence to appoint the employee members of the European Works Council.

In the absence of a works council or a committee for prevention and protection at work in the undertakings or establishments located in Belgium and in the absence of authorisation of the joint committee, the employees of the undertaking or establishment shall have the right to elect or appoint the employee members of the European Works Council.

Article 33

A reserve list shall be drawn up in order to ensure continuity within the European Works Council in the event of death, prolonged incapacity for work, maternity, departure from the undertaking or establishment, or resignation of the member.

The persons appearing on this reserve list shall be appointed according to the same procedure as the members of the European Works Council.

This list shall consist of the following:

- one replacement per Member State;

- one additional replacement if at least 75% of the employees of the Community-scale undertaking or Community-scale group of undertakings are employed in the State concerned.

Article 34

The central management located in Belgium shall be informed of the names of the members of the European Works Council and the names appearing on the reserve list. It shall inform the managements of the establishments of the Community-scale undertaking and the managements of the undertakings comprising the Community-scale group.

Section V - Procedure for the negotiation of an agreement or replacement of the existing European Works Council

Article 35

Four years after the European Works Council is established, it shall:

- either proceed to replacement;

- or open a negotiating procedure for the conclusion of an agreement as referred to in Chapter VII, Section III.

If a decision has been taken to open the negotiating procedure, the European Works Council shall act as special negotiating body. The European Works Council shall remain in operation for the duration of the procedure.

If it is decided not initiate negotiations or if the central management located in Belgium and the European Works Council are unable to conclude an agreement within three years, a European Works Council shall be re-established in accordance with the subsidiary requirements set out in this Chapter.

Section VI – Select committee

Article 36

- § 1. 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.
- § 2. The select committee must benefit from conditions enabling it to exercise its activities on a regular basis.
- § 3. The rules of procedure of the European Works Council may provide for rules relating to the geographical distribution of the seats on the select committee.

Section VII – Meetings

Article 37

Before any meeting with the central management located in Belgium, the European Works Council or the select committee, where necessary enlarged in accordance with the third subparagraph of Article 39, shall be entitled to meet without the management concerned being present.

Subsection I – Annual meetings

Article 38

The European Works Council shall have the right to meet with the central management located in Belgium once a year, to be informed and consulted in accordance with Article 30 of this Agreement, on the basis of a report drawn up by the central management located in Belgium, 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.

The protocol on cooperation referred to in Article 51 shall provide for the time limit and the arrangements for transmitting the above-mentioned report to the members of the European Works Council.

Subsection II – Meetings where there are exceptional circumstances

Article 39

§ 1. Without prejudice to the application of Article 30, § 1, 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.

The select committee or, in its absence, the European Works Council shall have the right to meet, at its request, the central management located in Belgium, 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.

§ 2. The protocol on cooperation referred to in Article 51 shall provide for the arrangements for convening special meetings.

§ 3. 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.

§ 4. The information and consultation procedures provided for in exceptional circumstances shall be carried out without prejudice to Article 2, §§ 2 and 3 of this Agreement.

Article 40

This information and consultation meeting shall take place as soon as possible and at a time when this information and consultation are still meaningful.

Article 41

This information and consultation meeting shall take place on the basis of a report drawn up by the central management located in Belgium 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 located in Belgium.

Section VIII – Operation of the European Works Council

Article 42

The European Works Council shall adopt its own rules of procedure.

Article 43

The European Works Council and the select committee may be assisted by experts of their choice, in so far as this is necessary for them to carry out their tasks. The protocol on cooperation referred to in Article 51 shall lay down the practical arrangements for the presence of experts at the European Works Council and select committee meetings.

The funding by the central management located in Belgium shall be limited to one expert only.

Article 44

The operating expenses of the European Works Council shall be borne by the central management located in Belgium.

This management 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 this central management unless otherwise agreed.

CHAPTER X – MISCELLANEOUS PROVISIONS

Section I - Links between the information and consultation of the European Works Council and national employee representation bodies

Article 45

- § 1. Information and consultation of the European Works Council 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 Article 2, § 4 of this Agreement.
- § 2. The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established by the agreement referred to in Article 26 of this Agreement. That agreement shall be without prejudice to the rules in force under national law on the information and consultation of employees.
- § 3. Where no such arrangements have been defined by agreement, the processes of informing and consulting shall be conducted in the European Works Council 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.

Comments

If there are no agreements on this subject and where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged, the process must be conducted at both national and European level in such a way that it respects the competences and areas of action of the employee representation bodies. Opinions expressed by the European Works Council should be without prejudice to the competence of the central management to carry out the necessary consultations in accordance with the schedules provided for in national legislation and/or practice. The European Works Council must be able, where applicable, to receive information at the same time as the national employee representation bodies, but must not reduce the general level of protection of employees.

Section II - Operation of the European Works Council and the information and consultation procedure for employees

Article 46

The central management located in Belgium and the European Works Council shall work in a spirit of cooperation with due regard to their reciprocal rights and obligations.

The same shall apply to cooperation between the central management located in Belgium and the members of the European Works Council in the framework of an information and consultation procedure.

Section III – Means to be granted to the members of the European Works Council and the employees’ representatives, employed in Belgium, of the establishments of a Community-scale undertaking or of the establishments or undertakings of a Community-scale group of undertakings for the dissemination of information

Article 47

The necessary time and means shall be granted to the members of the European Works Council and the employees’ representatives of the technical production units as a whole located in Belgium, which are covered by the scope of the European Works Council, to enable the members of the European Works Council to inform the employees’ representatives of the technical production units as a whole of the content and outcome of the information and consultation procedure carried out within the European Works Council.

Section IV - Status

Article 48

Members of the special negotiating body, members of the European Works Council and employees’ representatives exercising their functions under the procedure referred to in Article 27, employed in Belgium, shall, in the exercise of their functions, benefit from the same rights and the same protection as the members representing employees on the works council, in particular concerning attendance at meetings and any preparatory meetings and payment of their wages for the period of absence necessary for the performance of their duties.

Section V – Training

Article 49

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.

Section VI – Change in thresholds

Article 50

Without prejudice to Article 28, where the thresholds provided for under Article 3 are no longer attained, the bodies established in Belgium, in accordance with Articles 12, 25 and 29, shall be maintained for a transitional period of six months.

Section VII – Protocol on cooperation

Article 51

To ensure effective organisation of the information and consultation meetings, the central management located in Belgium and the European Works Council and the select committee respectively shall lay down rules on the following points in particular in a protocol on cooperation: chairing, secretariat and agenda for meetings, convening of special meetings, transmitting of reports, changes in the structure or size of the Community-scale undertaking or group of undertakings, experts' attendance at meetings, budgetary rules, translation and interpretation and arrangements for enforcing Article 49 of this Agreement.

CHAPTER XI – FINAL PROVISIONS

Article 52

This Agreement shall be concluded for an indefinite period. It shall enter into force on 6 June 2011.

It may be revised or terminated at the request of the signatory party that is the first to take action, subject to six months' notice.

The organisation taking the initiative of revision or termination shall state the reasons and submit proposals for amendments which the other organisations shall undertake to discuss within the National Labour Council (*Conseil national du Travail*) within one month of their receipt.

Done in Brussels, on twenty-first December two thousand and ten.

For the Federation of Enterprises of Belgium

P. TIMMERMANS

For the Organisations of Middle Classes

Ch. ISTASSE

For "De Boerenbond", the Wallonian Agriculture Federation

Ch. BOTTERMAN

For the Union of For-Profit Social Enterprises

S. SLANGEN

For the Belgian Confederation of Christian Trade Unions

A. DEBRULLE

For the General Federation of Belgian Labour

H. DUROI

For the General Confederation of Liberal Trade Unions of Belgium

B. NOEL

x x x

Having regard to Article 28 of the Act of 5 December 1968 on Collective Agreements and Joint Committees (*loi du 5 décembre 1968 sur les conventions collectives de travail et les commissions paritaires*), the National Labour Council (*Conseil national du Travail*) requests that this Collective Agreement be rendered compulsory by Royal Decree.

ANNEX: Articles 14 (special negotiating body) and 31 (European Works Council – subsidiary requirements) – Practical examples

I. **Example 1 - Companies A to F are located in four different Member States – Calculation of the number of members of the special negotiating body and the European Works Council (subsidiary requirements)**

These companies employ a total workforce of 7 000. One seat is allocated per Member State for each portion of 10% (700) or fraction thereof.

Country	Workforce	Workforce	Total workforce per country	% of total workforce	Seats
Belgium	Company A: 120	-	120	1.7%: 1 seat	
France	Company B: 500	Company C: 1 000	1 500	21.4%: 3 seats	
Spain	Company D: 5 000	Company E: 320	5 320	76%: 8 seats	
Luxembourg	-	Company F: 60	60	0.86%: 1 seat	
			7 000	13 seats	

II. **Example 2 - Companies A to R are located in three different Member States – Calculation of the number of members of the special negotiating body and the European Works Council (subsidiary requirements)**

Country	Workforce	Workforce	Workforce	Workforce	Workforce	Workforce	Total workforce	% of total workforce	Seats
Belgium	Company A 1 000	Company B 900	Company C 800	Company D 600	Company E 500	Company F 500	4 300	7.4%: 1 seat	
France	Company G 10 000	Company H 900	Company I 800	Company J 7 000	Company K 6 000	Company L 5 000	29 700	51.2%: 6 seats	
United Kingdom	Company M 4 000	Company N 3 000	Company O 2 000	Company P 1 000	Company Q 5 000	Company R 9 000	24 000	47.37%: 5 seats	
							58 000	12 seats	

III. Example 3 - Companies A to R are located in ten different Member States – Calculation of the number of members of the special negotiating body and the European Works Council (subsidiary requirements)

Country	Workforce	Workforce	Total workforce per country	% of total workforce	Seats
Belgium	Company A: 120	Company B: 150	270	4.2%: 1 seat	
France	Company C: 500	Company D: 600	1 100	17.3%: 2 seats	
Germany	Company E: 550	Company F: 450	1 000	15.7%: 2 seats	
Netherlands	-	Company G: 400	400	6.3%: 1 seat	
Austria	Company H: 350	Company I: 400	750	11.8%: 2 seats	
Spain	Company J: 600	Company K: 150	750	11.8%: 2 seats	
Italy	Company L: 325	-	325	5.1%: 1 seat	
United Kingdom	Company M: 100	Company N: 440	540	8.5%: 1 seat	
Ireland	Company O: 60	Company P: 540	600	9.4%: 1 seat	
Sweden	Company Q: 520	Company R: 100	620	9.7%: 1 seat	
			6 355		14 seats

CONTENTS

	<u>Pages</u>
CHAPTER I - SCOPE (Article 1)	3
CHAPTER II - OBJECT (Article 2)	3
CHAPTER III - DEFINITIONS AND SCOPE (Articles 3 to 5)	5
CHAPTER IV - AGREEMENTS IN FORCE (Article 6)	7
CHAPTER V - DETERMINATION OF THE NUMBER OF EMPLOYEES (Articles 7 and 8)	9
CHAPTER VI - CONTROLLING UNDERTAKINGS (Article 9)	10
CHAPTER VII - ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR AN EMPLOYEE INFORMATION AND CONSULTATION PROCEDURE	11
Section I - Responsibility for the establishment (Article 10)	11
Section II - Special negotiating body	12
Subsection I - Triggering the procedure (Articles 11 and 12)	12
Subsection II - Competence of the special negotiating body (Article 13)	13
Subsection III - Composition of the special negotiating body (Article 14)	13
Subsection IV - Appointment of the employee members employed in Belgium of the special negotiating body and constitution of a reserve list (Articles 15 to 17)	14
Subsection V - Spirit of cooperation (Article 18)	16

	<u>Pages</u>
Subsection VI - Meetings (Articles 19 and 20)	16
Subsection VII- Operation (Articles 21 to 24)	17
Section III - Agreement establishing a European Works Council or an information and consultation procedure in Belgium (Articles 25 to 27)	18
CHAPTER VIII - SIGNIFICANT CHANGES IN THE STRUCTURE OF THE COMMUNITY-SCALE UNDERTAKING OR COMMUNITY- SCALE GROUP OF UNDERTAKINGS	20
CHAPTER IX - SUBSIDIARY REQUIREMENTS	22
Section I - Application of the subsidiary requirements (Article 29)	22
Section II - Competence of the European Works Council (Article 30)	22
Section III - Composition of the European Works Council (Article 31)	23
Section IV - Appointment of the employee members employed in Belgium of the European Works Council and constitution of a reserve list (Articles 32 to 34)	24
Section V - Procedure for the negotiation of an agreement or replacement of the existing European Works Council (Article 35)	25
Section VI - Select committee (Article 36)	26
Section VII - Meetings (Article 37)	26
Subsection I - Annual meetings (Article 38)	26
Subsection II - Meetings where there are exceptional circumstances (Articles 39 to 41)	27

	<u>Pages</u>
Section VIII - Operation of the European Works Council (Articles 42 to 44)	28
CHAPTER X - MISCELLANEOUS PROVISIONS	29
Section I - Links between the information and consultation of the European Works Council and national employee representation bodies (Article 45)	29
Section II - Operation of the European Works Council and the information and consultation procedure for employees (Article 46)	30
Section III - Means to be granted to the members of the European Works Council and the employees' representatives, employed in Belgium, of the establishments of a Community-scale undertaking or of the establishments or undertakings of a Community-scale group of undertakings for the dissemination of information (Article 47)	31
Section IV - Status (Article 48)	31
Section V - Training (Article 49)	31
Section VI - Change in thresholds (Article 50)	32
Section VII - Protocol on cooperation (Article 51)	32
CHAPTER XI - FINAL PROVISIONS (Article 52)	32
ANNEX	