

# Official Gazette (*Staatsblad*) of the Kingdom of the Netherlands

2005

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**Act of 17 March 2005 implementing Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (Involvement of Employees (European Companies) Act) (*Wet rol werknemers bij de Europese vennootschap*)**

We, Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau,  
...

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that it is necessary to implement Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294);

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as we hereby approve and decree:

## **CHAPTER 1: GENERAL PROVISIONS**

### *Definitions*

#### **Article 1:1**

1. The following definitions shall apply in this Act:

- a. Member State: a Member State of the European Union or any other state which is a party to the Agreement on the European Economic Area;
- b. Directive: Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294);
- c. Regulation: Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (OJ L 294);
- d. European company: a company established in accordance with the Regulation;
- e. participating companies: the companies directly participating in the establishment of a European company;

f. Dutch participating company: the participating company with its registered office in the Netherlands;

g. subsidiary of a company: an undertaking over which the parent company exercises a dominant influence as referred to in Article 1:2;

h. concerned subsidiary or establishment: a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the European company upon its formation;

i. special negotiating body: the body established in accordance with Article 2:2, first paragraph, to negotiate with the participating companies regarding the establishment of arrangements for the involvement of employees within the European company;

j. involvement of employees: any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company;

k. information: information provided by the European company to the European Works Council or to the employees' representatives on questions which

1. concern the European company itself or any of its subsidiaries or establishments situated in another Member State; or

2. exceed the powers of the decision-making organs in a single Member State;

l. consultation: dialogue and exchange of views between the European company and the European Works Council or the employee representatives;

m. the supervisory body, management body or administrative body of a European company: as defined in the Regulation;

n. participation: the influence of works council or the employees' representatives on the affairs of a company by way of:

1°. the right to elect or appoint some of the members of the company's supervisory or administrative body, or

2°. the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory body or administrative body, provided that where the administrative body applies an internal allocation of tasks whereby some members assume executive functions and others do not, "participation" is understood to relate to the rights of those members not assuming an executive function;

o. registration of the European company: registration of the European company as referred to in Article 12(1) of the Regulation.

2. Any actions or omissions by the management of the European company or the participating companies shall be attributed to the natural person or the legal entity which operates the company.

#### *Definition of parent company*

#### **Article 1:2**

1. For the purposes of this Act, a "parent company" shall be understood to mean a company which is able to exercise direct or indirect control over another company, and is

not itself a company over which another company is able to exercise direct or indirect control. Where no information to the contrary exists, a company shall be assumed to be a parent company where:

- a. it is able to appoint more than half the members of the administrative, management or supervisory body of the other company; or
- b. it is able to exercise more than half the voting rights at the general meeting of the other company; or
- c. it supplies more than half of the subscribed capital of the other company.

2. For the purposes of the first paragraph, the rights of the parent company deriving from its capital contribution, its voting rights and rights of appointment shall also include:

- a. the corresponding rights in other companies over which it exercises control;
- b. the corresponding rights of persons or bodies acting in their own name but on behalf of the parent company or one or more of its subsidiaries.

3. For the purposes of the first paragraph, the rights deriving from the capital contribution and the voting rights shall not accrue to a company where it holds such rights on behalf of another.

4. For the purposes of the first paragraph, voting rights relating to pledged shares shall accrue to the pledgee if he may determine how the rights are to be exercised. However, where the shares have been pledged to secure a loan provided by the pledgee in the normal course of his business, the voting rights shall accrue to him only where he has conducted such business on his own behalf.

5. No parent company shall be deemed to be a company as referred to in Article 3(5)(a) or (c) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395).

6. The laws of a Member State applying to a company shall determine whether the company is a parent company as referred to in the first paragraph.

7. Where more than one company meets the criteria referred to in the first paragraph,

- a. the company meeting the criterion set out in point a. shall be deemed to be the parent company, whereby the right of appointment in relation to the management body shall take priority; or
- b. where the application of point a. does not lead to single company being deemed the parent company, the criterion in point b. shall take priority over that in point c.; this shall be without prejudice to the provision of proof that another company is able to exercise a dominant influence.

*Definition of employee, employee representatives, European Works Council*

### **Article 1:3**

1. For the purposes of this Act, an "employee" shall be understood to mean:

- a. with regard to persons working in the Netherlands: a person employed, under a contract of employment, in the European company, the participating company or a concerned subsidiary or establishment;

b. with regard to persons working in the other Member States: as defined under the laws of the Member State concerned.

2. For the purposes of Article 2:2, second paragraph, Article 2:8, fifth paragraph (with regard to the representatives of employees in the participating companies), Article 2:9, first paragraph, Article 2:13, first paragraph, and Article 3:10, third paragraph, the meaning of the term "employee representatives" shall be as defined under the laws of the Member State in which the employees concerned are employed; in the case of the Netherlands, employees are represented by works councils.

3. For the purposes of this Act, the "European Works Council" shall be understood to mean the body representing employees as established under an agreement as referred to in Article 2:12 or pursuant to the provisions of Chapter 3 in order to provide information and advice to the employees of the European company and its subsidiaries and establishments in the Member States, or in order to exercise participation rights in relation to the European company.

4. For the purposes of Article 1:4 of this Act, the "European Works Council" shall also be understood to mean the body representing employees of a European company with its registered office in another Member State, as established under that Member State's provisions of national law transposing Article 4 of the Directive, or pursuant to the provisions set out in the Annex to the Directive, in order to provide information and advice to the employees of the European company and its subsidiaries and establishments in the Member States, or in order to exercise participation rights in relation to the European company.

#### *Rights and obligations of representatives of employees in the Netherlands*

##### **Article 1:4**

1. The second to seventh paragraphs shall apply to employees working in the Netherlands who are members of a special negotiating body or the European Works Council or who, as employee representatives, are members of the supervisory body or administrative body of the European company, or who act as representatives in any other capacity involving information or consultation of employees.

2. These employees shall retain their entitlement to wages for periods during which they do not carry out their agreed work tasks owing to their attendance at a meeting of the special negotiating body, the European Works Council, or the supervisory body or administrative body of the European company, or at a meeting otherwise relating to information and consultation.

3. As far as is reasonably necessary for the fulfilment of their tasks, they shall be given an opportunity, during work time and without loss of income, to have discussions among themselves and consult with other persons with regard to matters having a bearing on their functions, and to undergo training.

4. They shall be obliged to treat confidentially any trade or business secrets which come to their knowledge in the course of their activities, as well as all matters which are designated as being of a sensitive nature or which, in view of their sensitive nature, they must recognise as being confidential. This obligation shall also apply to persons carrying out a function as referred to in the first paragraph but who are not employees.

5. The duty of confidentiality shall not apply to persons called in as experts as referred to in Article 2:10, second paragraph, and Article 3:11, first paragraph, unless the participating companies, the European company or the party requiring confidentiality agreed in advance to such confidentiality being imposed and the expert issued an advance written undertaking to maintain confidentiality with regard to the matter concerned. In this case, the duty of confidentiality shall then apply to the expert.

6. The duty of confidentiality shall continue to apply after the function as referred to in the first paragraph has come to an end, and after the activities of the person concerned within the company have been completed.

7. The employer shall ensure that persons who apply or have applied for functions as referred to in the first paragraph, as well as persons who are carrying out or have carried out such functions, are not as a result placed at a disadvantage as regards their position within the company.

8. Each employee or employee representative working in the Netherlands may request that the employer provide him with an overview of the number of employees working in the European company, the participating companies, concerned subsidiaries or concerned establishment, as well as an overview of the distribution of these employees among the Member States.

9. The employer of an employee working in the Netherlands who is appointed or elected as a member of the special negotiating body or the European Works Council shall give notification thereof to the participating companies or the European company.

#### *Recourse to the courts*

#### **Article 1:5**

1. Each interested party may apply to the Industry Division of the Amsterdam Court of Appeal for a ruling that the provisions of this Act must be adhered to, with the exception of Article 1:4, unless otherwise provided in the second paragraph, or in the event of there being an agreement as referred to in Article 2:12. A special negotiating body or its members, and a European Works Council established pursuant to this Act, may not be ordered to bear the costs of any such proceedings.

2. The special negotiating body or its members, and the European Works Council, may apply to the Industry Division of the Amsterdam Court of Appeal for rulings:

a. lifting the confidentiality requirement imposed under Article 1:4, fourth and fifth paragraphs, Article 2:6, second paragraph, or Article 3:7, third paragraph, on the grounds that, upon consideration of the relevant factors, it was unreasonable of the party concerned to impose a duty of confidentiality;

b. requiring the person who refused to provide information as referred to in Article 2:6, second paragraph, or Article 3:7, third paragraph, to make such information available on the grounds that, upon consideration of the relevant factors, it was unreasonable of the party concerned to refuse to supply such information.

## *Relation to other legislation*

### **Article 1:6**

1. Where a European company is a Community enterprise or a parent company in a Community group within the meaning of the European Works Councils Act (*Wet op de Europese ondernemingsraden*), that Act shall not apply to the company and its subsidiaries unless the special negotiating body adopted a resolution as referred to in Article 2:7, first paragraph, point b.

2. With regard to the appointment of the members of the supervisory body or administrative body of the European company, the works council shall not enjoy the rights and powers granted to it under Article 158, third, fourth, fifth, sixth, seventh, eighth and twelfth paragraphs, Article 159, second paragraph, Article 161, second paragraph, Article 268, third, fourth, fifth, sixth, seventh, eighth and twelfth paragraphs, Article 269, second paragraph, and Article 271, second paragraph, of Book 2 of the Civil Code (*Burgerlijk Wetboek*).

3. The present Act shall not affect any provisions in or pursuant to the above-mentioned Act concerning the right to:

a. information, consultation and participation enjoyed by the employees of the European company and its subsidiaries and establishments, other than participation in the appointment of officers or managers of the supervisory body or administrative body of the European company;

b. participation in the appointment of officers or managers in the European company's subsidiaries.

## **CHAPTER 2: INVOLVEMENT OF EMPLOYEES IN EUROPEAN COMPANIES PURSUANT TO AGREEMENTS**

### *Section 1: General provisions*

#### *Applicability*

### **Article 2:1**

Where the European company is to have its registered office in the Netherlands, Dutch law shall apply to the negotiation procedure set out in this Chapter.

### *Section 2: The special negotiating body*

#### *Creation and purpose*

### **Article 2:2**

1. The participating companies which are planning to establish a European company shall create a special negotiating body, which is representative of the employees of the participating companies, concerned subsidiaries and concerned establishments, in order to enter into negotiations with the representatives of the companies' employees with regard to the involvement of the employees in the European company.

2. The participating companies shall provide the representatives of the companies' employees or, in the absence thereof, the employees themselves with an overview of the

participating companies, concerned subsidiaries and concerned establishments and the persons employed by these, as well as of the distribution of these employees among the Member States. Where, following the creation of the special negotiating body as referred to in the third paragraph, changes occur in the details of the above-mentioned overview, the participating companies shall as quickly as possible provide an amended overview to the special negotiating body and, where appropriate, to the employees or their representatives in the participating companies, concerned subsidiaries and concerned establishments in Member States not yet represented in the special negotiating body.

3. The special negotiating body shall be created and the information referred to the second paragraph provided as quickly as possible following the announcement of the planned merger or the proposed establishment of a parent company, or after the management or administrative bodies have given their agreement to a proposal to establish a subsidiary, or to establish a European company by way of conversion.

4. The participating companies shall ensure that the composition of the special negotiating body and the time at which the meeting as referred to in Article 2:5, first paragraph, second sentence, is to be held, are made known.

5. As soon as possible after its creation, or following receipt of the amended overview as referred to in the second sentence of the second paragraph above, the special negotiating body shall, for the purposes of applying Articles 2:3 and 2:8, draw up a summary of its composition and of the employees represented by its members. This summary shall contain at least the following information:

a. the number of members of the special negotiating body, and the Member States from which they have been sent;

b. the participating companies, concerned subsidiaries and concerned establishments whose employees are represented by each member, as well as the number of employees, which shall also be expressed as a percentage of all employees represented jointly by the members;

c. the participating company, concerned subsidiary and concerned establishment in which a member is employed, or an indication that the member is not an employee.

### *Composition*

#### **Article 2:3**

1. The special negotiating body shall consist of a number of representatives of the employees of the participating companies, concerned subsidiaries and concerned establishments which ensures that each Member State is entitled to elect or appoint one member to the special negotiating body for each 10% share of employees, or fraction thereof, in that Member State as a proportion of the total number of persons employed throughout the Member States in the participating companies, concerned subsidiaries and concerned establishments.

2. Where a European company is established in the context of a merger, each Member State shall send as many additional members to the special negotiating body as is necessary to ensure that each participating company which has employees in the Member State concerned – and which will cease to exist as a legal entity in its own right as a result of the planned registration of the European company – is represented by at least one additional member in the special negotiating body.

3. The number of additional members as referred to in the second paragraph may not exceed 20% of the total number of members provided for in the first paragraph.
4. The second paragraph shall not apply where the application thereof leads to double representation in the special negotiating body of employees of a participating company in a Member State. Double representation shall be deemed to exist only where a participating company eligible for an additional member is already represented by an employee who works in the participating company concerned.
5. Where the number of participating companies is greater than the number of additional members able to sit in the special negotiating body pursuant to the second and third paragraphs, the additional seats shall be allocated to the employee representatives in the various Member States in descending order of the number of employees in those companies.
6. Each participating company with employees working in the Netherlands shall be represented by at least one member in the special negotiating body, unless this would lead to an increase in the total number of members.
7. The number of members of the special negotiating body and the allocation of seats shall be in accordance with this Article. Where the number of members from a Member State changes without any new election or appointment to the seats concerned having taken place, the members representing that Member State shall, for the purposes of Article 2:8, first, second, third and fourth paragraphs, and Article 2:9, first and third paragraphs, have a combined number of votes corresponding to the number of members allocated to that Member State pursuant to the first paragraph above, and shall together represent the employees of the participating companies, concerned subsidiaries and concerned establishments who are working in that Member State under an arrangement to be determined by them or, where no agreement can be reached in this respect, according to the relative proportion of employees represented by them prior to the change in circumstances.
8. Where, under the provisions of the first sentence of the seventh paragraph, a member can no longer be sent to the special negotiating body from a given Member State, or where a member can in fact be sent from a Member State which is not yet represented, the special negotiating body shall not adopt any resolutions until its composition and the overview as referred to in Article 2:2, fifth paragraph, have been amended.

#### *Election or appointment of members*

#### **Article 2:4**

1. Each member of the special negotiating body shall be elected or appointed in accordance with the laws of, or the established practice in, the Member State from which the member is sent. In the case of appointments, it shall be specified what portion of the employees of the participating companies, concerned subsidiaries and concerned establishments who are working in that Member State are to be represented by the appointed member.
2. With regard to the Dutch participating companies, concerned subsidiaries and concerned establishments, the members of the special negotiating body shall be appointed, or their appointments shall be revoked, by the works councils set up in those participating companies, concerned subsidiaries and concerned establishments.



3. Where, solely with reference to the works councils as referred to in the second paragraph, one or more central works councils have been set up, any appointments shall be effected or revoked by the central works council(s) concerned.

4. Where no central works council has been set up but one or more group works councils have been created, any appointments shall be effected or revoked by the group works council(s) concerned.

5. Where not all works councils or group works councils are represented in a central works council or group works council, any appointments shall be effected or revoked jointly by the central/group works council(s) and the unrepresented works councils.

6. Where no single works council has been set up, the members of the special negotiating body shall be elected by all the employees of the participating companies, concerned subsidiaries and concerned establishments who are employed in the Netherlands. Votes shall be cast in writing in a secret ballot, with each employee being entitled to one vote. For the purposes of the election, an employees' association which counts the employees concerned among its members, whose statute stipulates that its aim is to promote the interests of its members as employees, which is active in such capacity within the participating companies, concerned subsidiaries and concerned establishments and which furthermore has full legal capacity, shall be empowered to submit a list of candidates provided that it has consulted about the composition of the list of candidates with its members in the participating companies, concerned subsidiaries and concerned establishments. The authority to submit a list of candidates shall also lie with one or more of the employees of the participating companies, concerned subsidiaries and concerned establishments who are not members of an association within the meaning of the previous sentence which has submitted a list of candidates.

7. For the purposes of the second to fifth paragraphs, employees of Dutch participating companies, concerned subsidiaries and concerned establishments who are not represented in a works council, group works council or central works council shall be given an opportunity to express their opinion about any persons to be appointed as members of the special negotiating body.

### *Section 3: Negotiations and conclusion of an agreement*

#### *Agreement*

#### **Article 2:5**

1. The participating companies and the special negotiating body shall conclude a written agreement providing for the involvement of the employees in the European company. To this end, the participating companies shall, following the creation of the special negotiating body, convene a meeting with the latter for the purpose of negotiations concerning such an agreement.

2. The participating companies shall give the special negotiating body the opportunity to meet prior to the negotiations.

## *Provision of information*

### **Article 2:6**

1. The participating companies shall provide the special negotiating body with the information required for the purpose of the negotiations. This information shall include at least the proposal to establish a European company, and details of the establishment procedure up until the registration of the European company.

2. The participating companies shall not be required to provide information where it may reasonably be assumed that this would seriously hamper or adversely affect the functioning of the participating companies or their subsidiaries. They may impose confidentiality requirements regarding the provision of information where this is reasonably justified. Notification shall be given – where possible prior to a given matter being discussed – of the reason for its being treated confidentially, what information provided in written form or by word of mouth is to be covered by the confidentiality requirement, how long this requirement will apply, and whether there are any persons who are not subject to the confidentiality requirement.

## *Resolutions*

### **Article 2:7**

1. The special negotiating body may resolve:

- a. to approve an agreement as referred to in Article 2:5, first paragraph;
- b. not to enter into negotiations, or to break off negotiations already under way.

2. The resolution as referred to in point b. of the first paragraph shall bring to an end the procedure for the conclusion of an agreement, and shall mean that the rules on information and consultation of employees shall apply which are in place in the Member States in which the European company has employees. The provisions of Chapter 3 shall not apply following such a resolution.

## *Adoption of resolutions*

### **Article 2:8**

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

2. Unless otherwise provided, the special negotiating body shall adopt resolutions by an absolute majority of its members representing an absolute majority of the employees.

3. A resolution of the special negotiating body approving an agreement under which the employees' right of participation is curtailed shall require a two-thirds majority of the members' votes representing at least two thirds of the employees from at least two Member States where:

- a. the European company is established by way of merger, and the participation covers at least 25% of the overall number of employees of the participating companies; or
- b. the European company is established by way of creating a parent company or a subsidiary, and the participation covers at least 50% of the overall number of employees of the participating companies.

4. A reduction of employees' participation rights as referred to in the third paragraph shall mean that the number of members of the supervisory or administrative board of the European company who are elected or appointed, or whose appointment may be recommended or opposed, by employee representatives is, as a result of the agreement, lower than the highest number of members with respect to whom the employee representatives could exercise such rights in the participating companies.

5. A resolution of the special negotiating body as referred to in Article 2:7, first paragraph, point b. shall require a two-thirds majority of the votes representing at least two thirds of the employees from at least two Member States.

6. A resolution as referred to in Article 2:7, first paragraph, point b. may not be adopted by the special negotiating body where the negotiations relate to a European company being established by way of conversion and rights of participation exist in the company to be converted.

### *Reopening of negotiations*

#### **Article 2:9**

1. Where the special negotiating body has adopted a resolution as referred to in Article 2:7, first paragraph, point b., the European company shall reconvene the special negotiating body at the written request of least 10% of the employees of the European company and its subsidiaries and establishments, or their representatives, for the purpose of entering into negotiations concerning the involvement of the employees in the European company.

2. The obligation referred to in the first paragraph shall not apply for a period of two years after the date of the resolution referred to in Article 2:7, point b., unless an agreement has been reached with the special negotiating body to reopen the negotiations earlier.

3. Where the special negotiating body is reconvened, Article 2:2, second, fourth and fifth paragraphs, Article 2:3, first, seventh and eighth paragraphs, Article 2:4, Article 2:5, Article 2:6, first paragraph, first sentence, Article 2:7, Article 2:8, first, second and fifth paragraphs, Article 2:10 and Article 2:12 shall apply *mutatis mutandis*, subject to the proviso that obligations incumbent upon the participating companies pursuant to these Articles shall apply to the European company.

4. The provisions of Chapter 3 shall not apply where the special negotiating body resolves to reopen the negotiations but these do not lead to the conclusion of an agreement.

### *Assistance from experts, costs*

#### **Article 2:10**

1. The special negotiating body may notify the representatives of outside organisations, including one or more employees' associations, about the opening of negotiations.

2. In the negotiations, the special negotiating body may draw on the assistance of one or more experts of its choice. These experts may, where the special negotiating body so requests, be invited to attend the negotiations with the participating companies in an advisory capacity.

3. The costs which are reasonably necessary for the fulfilment of the tasks of the special negotiating body shall be borne by the participating companies. This shall apply to costs incurred for experts and in connection with legal actions only where the participating companies are notified of the costs in advance.

#### *Commencement and duration of negotiations*

##### **Article 2:11**

1. The negotiations shall commence when the first meeting as referred to in Article 2:5, first paragraph, is held, and may be continued for a period of six months.
2. The participating companies and the special negotiating body may jointly decide to extend the negotiating period to one year as from the point in time referred to in the first paragraph.

#### *Content of the agreement*

##### **Article 2:12**

1. Where the participating companies and the special negotiating body agree to set up a European Works Council, the agreement shall cover at least the following matters:

- a. the scope of the agreement;
- b. the creation of a European Works Council to engage in discussions with the European company in the context of information and consultation of employees of the European company and its subsidiaries and establishments;
- c. the number of members, composition and allocation of seats in the European Works Council, and the members' period of appointment;
- d. the field of activity and the powers of the European Works Council;
- e. the procedure for the information and consultation of the European Works Council;
- f. the frequency and location of meetings of the European Works Council;
- g. the financial and material resources available to the European Works Council;
- h. the date of entry into force of the agreement and its duration;
- i. the instances in which the agreement must be renegotiated;
- j. the procedure for negotiating a new agreement, the adaptation of the agreement to changes in the structure and size of the European company, and in the number of persons employed in the Member States;
- k. the implications of not concluding a new agreement.

2. The participating companies and the special negotiating body may agree to set up one or more information and consultation procedures in place of the European Works Council. The first paragraph shall apply *mutatis mutandis* to any such agreement.

3. Where the participating companies and the special negotiating body decide to put participation arrangements in place, the agreement shall cover at least the following matters:

- a. the content of the participation arrangements;

b. the number of members of the European company's supervisory body or administrative body whom the employees are entitled to elect or appoint, or whose appointment they may recommend or oppose;

c. the procedures for electing or appointing the members referred to in point b., or for recommending or opposing their appointment;

d. the rights of the members referred to in point b.

4. Where the European company is established by way of conversion, the agreement shall provide for each aspect of employee involvement to the same extent as in the company to be converted into a European company.

5. The European company shall be responsible for ensuring that all rights and obligations contained in the agreement are observed.

6. The reference provisions set out in Chapter 3 shall not apply to the agreement unless otherwise provided therein.

7. The applicability of Article 2:13 may be wholly or partially excluded in the agreement.

#### *Negotiations on a new agreement*

#### **Article 2:13**

1. Where the agreement does not contain provisions as referred to in Article 2:12, first paragraph, points i. and j., or where the provisions contained therein do not state that employees, or their representatives, in companies or establishments incorporated into the European company following the conclusion of the agreement shall within two years be involved in the renewal or amendment of the agreement, or that they shall not within two years be represented in the European Works Council or in the other information and consultation procedure, the European company shall be obliged to negotiate with the European Works Council or, in the absence thereof, with a newly constituted special negotiating body with regard to a new agreement where:

a. this is requested by at least 100 such employees of the European company and its subsidiaries, or their representatives; and

b. these employees represent more than 20% of the total number of employees of the European company and its subsidiaries in all the Member States combined.

2. Where the agreement does not contain provisions as referred to in Article 2:12, first paragraph, point k. and no new agreement is concluded within one year after the date on which the first meeting was held with the European Works Council or the special negotiating body, the provisions of Chapter 3 shall apply unless the European Works Council or the special negotiating body prefers to continue to implement the agreement.

3. Article 2:2, second, fourth and fifth paragraphs, Article 2:3, first, seventh and eighth paragraphs, Article 2:4, Article 2:5, Article 2:6, first paragraph, first sentence, Article 2:7, Article 2:8, first, second and fifth paragraphs, Article 2:10 and Article 2:12 shall apply *mutatis mutandis* where negotiations on an agreement are conducted pursuant to the first paragraph, subject to the proviso that obligations incumbent upon the participating companies pursuant to these Articles shall apply to the European company.

## **CHAPTER 3: INVOLVEMENT OF EMPLOYEES IN EUROPEAN COMPANIES PURSUANT TO REFERENCE PROVISIONS**

### *Section 1: General provisions*

#### *Applicability of reference provisions*

##### **Article 3:1**

This Chapter shall apply as from the date of registration of the European company in the Netherlands where:

- a. the participating companies and the special negotiating body so agree; or
- b. no agreement is reached within the period referred to in Article 2:11 and
  - 1) each of the participating companies agrees that Chapter 3 shall apply to the European company in order that the latter may be registered, and
  - 2) the special negotiating body has not passed a resolution as referred to in Article 2:7, first paragraph, point b.

#### *Applicability of reference provisions to participation in conversions, mergers, and the creation of a parent company or a subsidiary*

##### **Article 3:2**

1. Without prejudice to Article 3:1, section 4 of this Chapter shall, in the event of a European company being established by way of conversion, be applicable only where legal provisions or practices concerning the participation of employees in the supervisory or administrative body applied in the company converted into a European company.
2. Without prejudice to Article 3:1, section 4 of this Chapter shall, in the event of a European company being established by way of merger, be applicable only where, prior to the registration of the European company, one or more of the participating companies had one or more forms of participation in place which
  - a. covered at least 25% of the total number of employees in those companies; or
  - b. covered less than 25% of the total number of employees in those companies, and the special negotiating body passes an appropriate resolution.
3. Where a European company is established through the creation of a parent company or a subsidiary, the second paragraph shall apply *mutatis mutandis*, subject to the proviso that the percentages referred to in points a. and b. are replaced by a figure of 50%.
4. Where more than one form of participation existed in the participating companies, the special negotiating body shall decide which of these forms shall be introduced into the European company. A resolution introducing a form of participation which would result in a reduction in employee participation shall require a two-thirds majority of the members' votes representing at least two thirds of the employees from at least two Member States. A reduction of employees' participation rights as referred to in the previous sentence shall mean that the number of members of the supervisory or administrative board of the European company who are elected or appointed, or whose appointment may be recommended or opposed, by the employees or their representatives would be lower than the highest number of members with respect to whom such rights were able to be exercised in one of the participating companies prior to the registration of

the European company. Any such resolution shall contain a description of the nature of the right of election or appointment, or of the right to recommend or oppose such appointments, in the participating company whose participation arrangements are introduced into the European company, and a description of the procedure applying in that participating company with regard to the exercise of such right. The special negotiating body shall notify the participating companies about the resolution.

5. Without prejudice to Article 38 of the Regulation, the form of participation introduced into a European company registered in the Netherlands shall, in the absence of a resolution as referred to in the fourth paragraph, consist of a right to make recommendations as provided for in Article 158, fourth, fifth, sixth, seventh, eighth and twelfth paragraphs, Article 159, second paragraph, and Article 161, second paragraph, of Book 2 of the Civil Code, provided that the provisions of the above Articles, or the provisions of Article 268, fourth, fifth, sixth, seventh, eighth and twelfth paragraphs, Article 269, second paragraph, and Article 271, second paragraph, of Book 2 of the Civil Code are applicable to one or more of the participating companies. In other instances where no resolution as referred to in the fourth paragraph has been adopted, the form of participation introduced into a European company registered in the Netherlands shall consist of the right of election or appointment, or of the right to recommend or oppose such appointments, which was able to be exercised, prior to the registration of the European company, in the participating company which had the highest number of members of the supervisory or administrative board who may be elected or appointed, or whose appointment may be recommended or opposed, by the employees or their representatives.

6. Where, upon application of the provisions of the final sentence of the fifth paragraph, it is established which form of participation is to be introduced, the right of election or appointment, or the right to recommend or oppose such appointments, as well as the procedure for exercising such right shall be in accordance with the procedure for its exercise in the participating company whose participation arrangements are introduced into the European company.

## *Section 2: Reference provisions concerning the establishment and composition of the European Works Council*

### *Establishment*

#### **Article 3:3**

1. The European company shall set up a European Works Council.
2. The European Works Council shall consist of employees of the European company and its subsidiaries and establishments. Membership shall come to an end with legal effect when a member ceases to be an employee.
3. Article 2:4, first paragraph, shall apply *mutatis mutandis* to the election or appointment of members of the European Works Council.
4. With regard to the Dutch participating companies, concerned subsidiaries and concerned establishments, the members of the European Works Council shall be elected or appointed, or their appointment shall be revoked, in accordance with Article 2:4, second to seventh paragraphs, provided that these members' period of incumbency is four years.

## *Composition and adoption of resolutions*

### **Article 3:4**

1. Article 2:3, first paragraph, shall apply *mutatis mutandis* with regard to the composition of the European Works Council, provided that the European Works Council takes the place of the special negotiating body in this connection. Where lasting changes occur in the European company or its subsidiaries and establishments which are such that the composition of the European Works Council no longer meets the requirements of the first sentence, the European company shall notify the European Works Council thereof as quickly as possible. The European Works Council shall change its composition accordingly within a period of no more than one year following such notification. For as long as the composition of the European Works Council is not changed, the members representing a given Member State shall, for the purposes of the relevant provisions concerning the voting weights within the Council, be deemed to have as many votes as corresponds to the number of members they will have once the changes have been made.
2. The European Works Council shall notify the European company of its composition.
3. Each member of the European Works Council shall, unless it specifies otherwise, have one vote.
4. Without prejudice to Article 3:6, second paragraph, the European Works Council shall, unless it specifies otherwise, adopt its resolutions by an absolute majority of the votes cast.

## *Regulation of activities*

### **Article 3:5**

1. The European Works Council shall elect a chairman and one or more deputies from among their number. The chairman or, if he is unavailable, his deputy shall represent the European Works Council in dealings of a legally binding nature.
2. The European Works Council may elect a select committee from among its number, which shall consist of no more than three members.
3. The European Works Council shall adopt rules of procedure. Prior to the adoption thereof, the administrative body of the European company shall be given an opportunity to set out its position regarding the matter. Where a select committee has been elected, the rules of procedure shall regulate its powers.

## *Evaluation procedure and new negotiations*

### **Article 3:6**

1. No later than four years after its establishment, the European Works Council shall, whether or not acting on a proposal from the European company, adopt a resolution on whether it is desirable to enter into negotiations with the European company concerning the conclusion of an agreement as referred to in Article 2:5, first paragraph.
2. Article 2:8, first and second paragraphs, and Articles 2:10, 2:11, 2:12 and 2:13 shall apply *mutatis mutandis* where a resolution to enter into negotiations has been adopted,



provided that the European Works Council takes the place of the special negotiating body in this connection.

3. A resolution of the European Works Council approving an agreement in which Chapter 3 is declared to be no longer applicable, or in which the employees' rights of participation are reduced, shall require a two-thirds majority of the members' votes representing at least two thirds of the employees from at least two Member States. A reduction of employees' participation rights as referred to in the first paragraph shall mean that the number of members of the supervisory or administrative board of the European company who are elected or appointed, or whose appointment may be recommended or opposed, by employee representatives is, as a result of the agreement, lower than the number of members with respect to whom the employee representatives are already able to exercise such right in the European company.

4. For the purposes of this Article, the period referred to in Article 2:11 shall begin to run when a resolution to enter into negotiations with the European company, as referred to in the first paragraph above, is adopted. Where no agreement has been concluded when this time-limit expires, this Chapter shall continue to be applicable.

### *Section 3: Reference provisions concerning information and consultation*

#### *Information, consultation and powers of the European Works Council*

#### **Article 3:7**

1. Information shall be provided by the European company at a time, in a manner and with a content which allows the European Works Council or employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the European company.

2. The European company shall consult the European Works Council or the employees' representatives at a time, in a manner and with a content which allows the European Works Council or the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the European company which may be taken into account in the decision-making process within the European company.

3. The European company shall not be required to provide information where it may reasonably be assumed that this would seriously hamper or adversely affect the functioning of the European company or its subsidiaries and establishments. The European company may impose confidentiality requirements regarding the provision of information where this is reasonably justified. Notification shall be given – where possible prior to a given matter being discussed – of the reason for its being treated confidentially, what information provided in written form or by word of mouth is to be covered by the confidentiality requirement, how long this requirement will apply, and whether there are any persons who are not subject to the confidentiality requirement

4. The powers of the European Works Council shall be limited to matters which relate to the European company itself, or to one or more of its subsidiaries or establishments in another Member State, or which exceed the powers of the decision-making bodies in an individual Member State. The European Works Council shall not assume the rights and powers of the employees as referred to in Article 1:6, third paragraph.

## *Regular meetings and provision of information*

### **Article 3:8**

1. Without prejudice to Article 3:9, the European company and the European Works Council shall meet at least once every calendar year. The European company shall give notification of the meeting to the local managements of companies and establishments. At the meeting, the European Works Council shall be informed and consulted, on the basis of a written reports drawn up by the European company, with regard to the development of the business situation and the future prospects of the European company.
2. Information and consultation shall relate in particular to the structure of the European company, its economic and financial situation, the likely development of the business and of production and sales, capital expenditure, fundamental organisational changes, the introduction of new working and manufacturing methods, mergers, relocation of production operations, retrenchments or closures of companies, establishments or important parts of such units, current status of and developments in the employment situation, and mass dismissals.
3. The European company shall provide the European Works Council with the agendas of all meetings of the administrative body, or of the management body and the supervisory body, and with copies of all documents distributed at the general meeting of shareholders.

## *Special circumstances*

### **Article 3:9**

1. The European company shall notify the European Works Council as quickly as possible about any unusual circumstances or adopted resolutions which significantly affect the interests of the employees, particularly in the case of relocations or closures of companies, or in the event of mass dismissals.
2. The European Works Council or, if it so decides in view of the urgency of the matter, the select committee shall have the right, on request, to meet with the European company or with another more appropriate level of management vested with decision-making powers within the European company in order to be informed and consulted in more detail about the matters referred to in the first paragraph. After the end of the meeting, or within a reasonable period thereafter, a recommendation may be issued by the European Works Council or the select committee.
3. Where the European company decides not to follow the recommendation of the European Works Council, the latter or the select committee shall be given an opportunity to again meet with the European company in order to try and reach agreement.
4. The meeting as referred to in the second and third paragraphs shall be held at a time when information and consultation still serves a useful purpose. This meeting shall not affect the powers of the European company.
5. With regard to meetings with the select committee, the members of the European Works Council who have also been elected by the employees of the establishments and companies directly affected by the measures concerned shall also be invited to attend.

## *Functioning of the European Works Council*

### **Article 3:10**

1. The European Works Council or the select committee shall be entitled, prior to any meeting with the European company, to meet together without a representative of the latter being present. Article 3:9, fifth paragraph, shall apply *mutatis mutandis*.
2. Unless otherwise provided, meetings as referred to in Articles 3:8 and 3:9 shall be chaired alternately by the European company and the European Works Council.
3. Without prejudice to any duty of confidentiality incumbent upon them, the members of the European Works Council shall inform the employees' representatives within the European company or, where no such representatives have been appointed, all employees of the European company and its subsidiaries and establishments about the content and results of the information and consultation procedure which has taken place in accordance with the provisions of this Chapter.

### *Assistance from experts, costs*

### **Article 3:11**

1. The European Works Council and the select committee may draw on the assistance of one or more experts of their choice where this is necessary for the performance of their tasks.
2. The costs which are reasonably necessary for the fulfilment of the tasks of the European Works Council and the select committee shall be borne by the European company. The obligation to bear the costs incurred for experts called in by the European Works Council shall, unless otherwise provided, be limited to one expert per agenda item.
3. The first sentence of the second paragraph shall also apply with respect to legal actions, provided that the European company is notified of the costs in advance.

### *Section 4: Reference provisions concerning participation*

### *Number of members of the supervisory body or administrative body of the European company to which participation arrangements apply*

### **Article 3:12**

1. In the instances referred to in Article 3:2, first paragraph, the employees of the company converted into a European company, and of its subsidiaries and establishments and their representative bodies, shall retain all elements of participation existing in the converted company prior to the registration of the European company. The provisions of this section concerning other methods of establishing a European company shall apply *mutatis mutandis*.
2. In the event of a European company being established by way of merger, or by way of creating a parent company or a subsidiary, the employees of the European company, and of its subsidiaries and establishments and their representative bodies, shall be entitled to elect or appoint the same number of members of the supervisory or administrative body of the European company, or to recommend or oppose their appointment, as the highest

number of members with respect to whom such entitlement was able to be exercised in one of the participating companies prior to the registration of the European company.

3. Where no provisions concerning the participation of employees were in place prior to the registration of the European company, the latter shall not be required to introduce any such provisions.

#### *Participation in relation to the number of employees in Member States*

#### **Article 3:13**

1. The European Works Council shall allocate the seats on the supervisory or administrative body of the European company which is covered by a participation procedure in such a way that the employees are represented in proportion to each individual Member State's share of the total number of persons employed in the European company, its subsidiaries and establishments.

2. Where the application of the provisions of the first paragraph means that, following the allocation of the first seat to the employees in the Member State with the largest number of employees, the employees in the Netherlands or in one or more other Member States are not represented, the European Works Council shall allocate the second seat to the employees of the European company who are working in the Netherlands. A third and subsequent seat shall be allocated to the employees in one of the hitherto unrepresented Member States.

3. The right to determine which person shall be elected or appointed as a member of the supervisory or administrative body of the European company, or whose election or appointment may be recommended or opposed, shall be exercised by or on behalf of the employees in the Member State to which such right has been assigned, and in accordance with the rules or practices applying in that Member State.

4. For the purpose of exercising the rights as referred to in the third paragraph, the employees shall, prior to the filling of any vacancy on the supervisory or administrative body of the European company, be provided in good time with all necessary information concerning such vacancy. The employees shall be given a reasonable time within which to exercise their rights.

5. Article 2:4, second to seventh paragraphs, shall apply *mutatis mutandis* to the exercise of the right assigned to the employees in the Netherlands under the third paragraph.

#### *Rights and obligations of the members of the supervisory or administrative body*

#### **Article 3:14**

Each member of the supervisory or administrative body of the European company with respect to whom the European Works Council has exercised its right of participation shall according to the law be deemed a member with the same rights and obligations as the members representing the shareholders, including voting rights.

## CHAPTER 4. OTHER PROVISIONS

### *Election and appointment of employees in a non-Dutch European company*

#### **Article 4:1**

1. Where, for the purpose of implementing the Directive in a Member State other than the Netherlands, a special negotiating body, a European Works Council or any other information and consultation procedure is set up, Article 2:4, second to seventh paragraphs, and Article 3:3, fourth paragraph, shall apply *mutatis mutandis* with regard to the election or appointment of the Dutch members.

2. Where, for the purpose of implementing the Directive in a Member State other than the Netherlands, the right as referred to in Article 3:13, third paragraph, may be exercised by Dutch employees, Article 2:4, second to seventh paragraphs, shall apply *mutatis mutandis* with regard to the exercise of such right.

### *End of the contract of employment of (applicant) members of the European Works Council*

#### **Article 4:2**

Book 7 of the Civil Code (*Burgerlijk Wetboek*) shall be amended as follows:

A

Article 670 shall be amended to read as follows:

1. The first sentence of the fourth paragraph shall read as follows:

"4. The employer may not terminate the employment contract with an employee who is a member of:

1. a works council, central works council, group works council, a standing committee of these councils, or of a subcommittee of the works council, or of a staff representation body;

2. a special negotiating body or a European Works Council as referred to in the European Works Councils Act (*Wet op de Europese ondernemingsraden*), or who acts in a representative capacity pursuant to that Act other than in connection with the provision of information or consultation;

3. a special negotiating body or a European Works Council or who, as an employee representative, is a member of the supervisory or administrative body of the European company as referred to in the Involvement of Employees (European Companies) Act (*Wet rol werknemers bij de Europese vennootschap*), or who acts in a representative capacity pursuant to that Act other than in connection with the provision of information or consultation."

2. The eleventh paragraph shall become the twelfth paragraph, and a new eleventh paragraph shall be inserted which reads as follows:

"11. For the purposes of the fourth paragraph and of Article 670a(1), the "European Works Council" shall also be understood to mean the body representing the employees in a European company which has its registered office in another Member State, and which has been established in accordance with the provisions of national law in that Member State for the purpose of implementing Council Directive 2001/86/EC of 8 October 2001

supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294)."

B

In Article 670a (1), point a. shall be replaced by the following:

"a. is entered on a list of candidates for a works council or a staff representation body or who, less than two years previously, was a member of a works council, a central works council, a groups works council, a committee of these councils, a staff representation body or a special negotiating body of a European-level works council or a European Works Council, as referred to in the European Works Councils Act (*Wet op de Europese ondernemingsraden*) and the Involvement of Employees (European Companies) Act (*Wet rol werknemers bij de Europese vennootschap*) or who, less than two years previously, acted in a representative capacity pursuant to these Acts other than in connection with the provision of information or consultation;"

*Amendment of the European Works Councils Act*

#### **Article 4:3**

Article 5 of the European Works Councils Act shall be replaced by the following:

"1. Each interested party may apply to the Industry Division of the Amsterdam Court of Appeal for a ruling that the provisions of this Act must be adhered to, with the exception of Article 4, unless otherwise provided in the second paragraph, or in the event of there being an agreement as referred to in Articles 11 or 24. A special negotiating body or its members, and a European-level works council established pursuant to this Act, may not be ordered to bear the costs of any such proceedings.

2. The special negotiating body or its members, and a European-level works council, may apply to the Industry Division of the Amsterdam Court of Appeal for rulings:

a. lifting the confidentiality requirement imposed under Article 4, fourth and fifth paragraphs, Article 11, seventh paragraph, and Article 19, fifth paragraph, on the grounds that, upon consideration of the relevant factors, it was unreasonable of the party concerned to impose a duty of confidentiality;

b. requiring the person who refused to provide information as referred to in Article 11, seventh paragraph, or Article 19, fifth paragraph, to make such information available on the grounds that, upon consideration of the relevant factors, it was unreasonable of the party concerned to refuse to supply such information."

*Entry into force*

#### **Article 4:4**

This Act shall enter into force on a date to be determined by royal decree.

*Reference title*

#### **Article 4:5**

This Act shall be cited as the "Involvement of Employees (European Companies) Act" (*Wet rol werknemers bij de Europese vennootschap*).

We order and command that this Act shall published in the Official Gazette and that all ministries, authorities, bodies and officials whom it may concern shall diligently implement it.

Done at The Hague on 17 March 2005

Beatrix

The Minister for Social Affairs and Employment  
A. J. de Geus

Published on 31 March 2005

The Minister for Justice  
J. P. H. Donner