

Act on the involvement of employees in European companies

Act No 281 of 26 April 2004 (valid)

Subsequent amendments

Summary (contents)

- Part 1 – Scope and definitions
- Part 2 – Special negotiating body
- Part 3 – Standard rules
- Part 4 – Standard rules on participation
- Part 5 – Confidentiality and other provisions
- Part 6 – Sanctions
- Part 7 – Entry into force etc.

Full text

Act on the involvement of employees in European companies¹

WE MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, hereby announce that Parliament has adopted the following Act and that We confirm our Assent thereto:

Part 1

Scope and definitions

§1(1) This Act applies to the establishing of European companies which will have their registered offices in Denmark, and to European companies which have their registered offices in Denmark.

(2) §§ 1-3, 9, 21(3) and (4), 36-39 and Parts 5 and 6 also apply to companies which have their registered offices in Denmark and participate in the establishing of the European company which will have its registered office outside Denmark or is a subsidiary of a European company, and to establishments located in Denmark which are establishments of a European company.

§2(1) “European company (SE)” means any company established in accordance with Council Regulation No 2157/2001/EC of 8 October 2001 on the Statute for a European company (SE).

(2) “Participating companies” means the companies participating directly in the establishing of an SE.

(3) “Subsidiary” of a company, for the purposes of this Act, means an undertaking over which the SE exercises a dominant influence, cf. §6 of Act No 371 of 22 May 1996 on European works councils.

(4) “Establishment” means a workplace which is part of a company, e.g. a branch, department or similar unit.

(5) “Concerned subsidiaries or establishments” are subsidiaries or establishments which are linked to a participating company and will be subsidiaries or establishments of an SE once it is established.

(6) “Special negotiating body” means the body established to negotiate with the competent organs of the participating companies regarding the establishment of arrangements for the involvement of employees in the SE.

(7) “Representative body” means the body representative of the employees set up with the purpose of informing and consulting the employees of the SE and its subsidiaries and establishments and, where applicable, of exercising employees' participation rights in relation to the SE.

(8) For the purposes of this Act, “involvement of employees” means any mechanism, including information, consultation and participation, through which employees may exercise an influence on decisions to be taken by the company.

(9) “Information” means the informing of the employees' representatives by the competent organ of the SE at a time, in a manner and with a content which provide them with a basis on which to adopt a position. The information to be provided shall relate to the SE and any of its subsidiaries or establishments situated in another country or to questions which exceed the powers of the decision-making organs in a single country.

(10) “Consultation” means the establishing of dialogue and exchanges of views between the employees' representatives and the competent organ of the SE at a time, in a manner and with a content which allow the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which can be taken into account in the decision-making process within the SE.

(11) “Participation” means the influence which the employees, either directly or through representatives, exercise on a company's activities, by way of the right to:

- a) elect or appoint some of the members of the company's supervisory or administrative body, or
- b) recommend or oppose the appointment of some or all of the members of the company's supervisory or administrative body.

Part 2

Special negotiating body

Procedure

§3(1) After publication of a plan for the establishment of an SE, the management or administrative bodies of all the participating companies shall, as soon as possible, take the necessary steps to start negotiations with representatives of the companies' employees on arrangements for the involvement of employees.

(2) As part of those necessary steps, the employees of the participating companies and concerned subsidiaries or establishments shall be provided with information on:

- a) the identity of the participating companies and concerned subsidiaries and establishments, and
- b) the number of employees in the various Member States and companies.

Establishment

§4 A special negotiating body shall be created, which shall be representative of the employees of the participating companies and concerned subsidiaries and establishments.

§5 The special negotiating body shall, for the purposes of the deadlines in §§ 12 and 19, be regarded as having been created 10 weeks after the employees of all participating companies and concerned subsidiaries and establishments receive the information referred to in § 3(2), unless otherwise agreed.

Number of members of the special negotiating body

§6(1) The seats on the special negotiating body shall be allocated in proportion to the number of employees employed by the participating companies and concerned subsidiaries or establishments in each State in which Directive 2001/86/EC applies.

(2) The employees in each State in which Directive 2001/86/EC applies shall be allocated one ordinary seat on the special negotiating body for each 10%, or part thereof, of the overall number of employees employed by the participating companies and concerned subsidiaries and establishments in all countries together for which they account.

§7(1) In the case of an SE formed by way of merger, the employees in each Member State shall be allocated the number of additional seats needed so that there is one member from each company ceasing to exist which is registered in and has employees in the Member State concerned. However, the number of additional seats shall not exceed 20% of the number of ordinary seats.

(2) If the number of participating companies exceeds the total number of seats, the additional seats shall be allocated to the employees of the companies which have the most employees and have not been allocated an ordinary seat under § 6.

§8 All employees employed by participating companies and concerned subsidiaries and establishments at the time when the information referred to in § 3 is communicated shall be included in the calculation of the number of employees.

Election of special negotiating body representatives in Denmark

§9(1) Members of the special negotiating body who are elected in Denmark shall be elected from among the employees by the employees' representatives on the works councils of the participating companies and concerned subsidiaries and establishments. Where no works council has been established, the members shall be elected by the shop stewards. If no shop stewards have been appointed, or if it is so agreed between the management and ordinary representatives of the employees, the members shall be elected by all employees.

(2) If requested before the election, the works council or group of shop stewards may be supplemented by representatives of groups who are not represented by the ordinary works council members or shop stewards.

Duties of the special negotiating body.

§10 The competent organs of the participating companies shall inform the special negotiating body of the plan for and process of establishing the SE up to its registration.

§11 The special negotiating body may negotiate with the participating companies to reach an agreement establishing arrangements for the involvement of employees in the SE. The agreement shall be in writing.

§12(1) Negotiations shall commence as soon as the special negotiating body is established and may continue for six months, unless otherwise agreed in accordance with paragraph (2).

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

§13(1) For the purposes of the negotiations, the special negotiating body may request assistance from experts of its choice, e.g. representatives of European trade union organisations. Where appropriate to promote coherence and consistency above the national level, such experts may be present in an advisory capacity at negotiations with the company's competent organ, at the request of the special negotiating body.

(2) The participating companies shall bear the costs of negotiations and of the activities of the special negotiating body, including the cost of at least one expert.

Voting within the special negotiating body.

§14(1) The special negotiating body shall decide by a simple majority of members, who must also represent a majority of employees, unless otherwise provided for under §§ 15 and 16.

(2) Each member of the special negotiating body shall have one vote.

§15(1) If negotiations lead to a reduction of participation rights, at least two-thirds of the members of the special negotiating body, representing at least two-thirds of employees from at least two countries, must vote in favour.

(2) Paragraph (1) shall apply only where:

1) the SE is established by way of merger, and at least 25% of the overall number of employees of all participating companies are covered by the participation arrangements, or

2) the SE is established as a holding company or subsidiary, if the participation arrangements cover at least 50% of the overall number of employees of the participating companies.

(3) "Reduction of participation rights" is where the proportion of the members of the SE's supervisory or administrative bodies accounted for by employees is less than the highest proportion which employees have had in at least one of the participating companies.

(4) If there are different forms of participation in the participating companies, the special negotiating body may decide which of these forms shall be applied in the SE. If the special negotiating body does not make that decision, the form of participation which applies to most employees in all participating companies, concerned subsidiaries and establishments shall be applied in the SE.

(5) The special negotiating body shall inform the competent organs of the participating companies of the decision taken pursuant to paragraph (4).

No negotiations

§16(1) The special negotiating body may decide, by a majority of at least two-thirds of the votes of members representing at least two-thirds of the employees employed in at

least two countries, not to open negotiations, or to terminate negotiations already opened, and instead to rely on the rules on information and consultation of employees in force in the countries where the SE has employees.

(2) In the case of an SE established by way of transformation, paragraph (1) shall not apply if there is participation in the company to be transformed.

(3) The special negotiating body shall be convened at the earliest two years after a decision is taken under paragraph (1), if this is requested in writing by at least 10% of the employees of the SE, its subsidiaries and establishments or the employees' representatives, unless otherwise agreed by the parties.

Content of an agreement on employee involvement

§17 An agreement on employee involvement in accordance with § 11, shall stipulate at least the following:

- 1) The scope of the agreement.
- 2) The composition, number of members and allocation of seats on the representative body which will be involved in dialogue with the competent organ of the SE in connection with arrangements for the information and consultation of the employees of the SE and concerned subsidiaries and establishments.
- 3) The functions and the procedure for the information and consultation of the representative body.
- 4) The frequency of meetings of the representative body.
- 5) The financial and material resources to be allocated to the representative body.
- 6) Detailed arrangements for implementing information and consultation procedures, if the parties decide during the negotiations to establish such arrangements instead of a representative body.
- 7) The substance of arrangements for participation, if the parties decide during the negotiations to establish such arrangements, including:
 - a) the number of members of the SE's supervisory or administrative body which the employees are entitled to elect, appoint, recommend or oppose,
 - b) detailed rules on how these members may be elected, appointed, recommended or opposed by the employees, and
 - c) these members' rights.
- 8) The date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated, and the procedure for is renegotiation.

§18 In the case of an SE established by way of transformation, agreements on employee involvement shall provide for at least the same level of all elements of employee involvement as that existing within the company to be transformed into an SE.

Part 3

Standard rules

Establishing and competence of the representative body

§19 A representative body shall be established for the purposes of information and consultation in accordance with the provisions of this part of the Act where:

- 1) the parties agree to this, or
- 2) no agreement in accordance with § 11 is reached by the deadline referred to in § 12, and the competent organ in each of the participating companies decides to proceed with the establishing, and the special negotiating body has not taken the decision referred to in § 16.

§20 The representative body shall be competent only with regard to information and consultation on questions which concern the SE, subsidiaries or establishments which are located in another country, or questions which exceed the powers which the decision-making organs in subsidiaries or establishments have in a single country.

§21(1) The representative body shall consist of employees of the SE and its subsidiaries. The members shall be elected by the employees' representatives or, if there are no such representatives, by all employees.

(2) The employees in each State in which Directive 2001/86/EC applies shall be allocated one seat on the representative body for each 10%, or part thereof, of the overall number of employees employed by the participating companies and concerned subsidiaries and establishments in all countries together for which they account at the point in time when the information referred to in § 3 is provided.

(3) Members of the representative body who are elected in Denmark shall be elected from among the employees by the employees' representatives on the works councils. Where no works council has been established, the members shall be elected by the shop stewards. If no shop stewards have been appointed, or if it is so agreed between the management and ordinary representatives of the employees, the members shall be elected by all employees.

(4) If requested before the election, the works council or group of shop stewards may be supplemented by representatives of groups who are not represented by the ordinary works council members or shop stewards.

(5) If the representative body consists of more than 10 members, it shall elect from those members an executive committee consisting of no more than 3 members.

(6) The representative body shall adopt its rules of procedure.

§22 The competent organ of the SE shall be informed of the composition of the representative body.

§23 Once a year, the representative body shall examine whether changes within the SE, its subsidiaries or establishments mean that the allocation of seats pursuant to § 21(2) would be different. If so, the representative body shall reconstitute itself such that the changes are reflected in its composition, in a manner which is consistent with the provisions of §21(2) on the allocation of seats.

§24(1) Four years after the representative body is established in accordance with the provisions of this part of the Act, it shall consider whether there is a need to open

negotiations for the conclusion of the agreement referred to in § 11 or whether the representative body should continue as hitherto.

(2) The provisions of § 17 on the content of an agreement establishing a representative organ shall apply *mutatis mutandis* to the representative organ if it is decided to open negotiations as referred to in paragraph (1).

(3) If no agreement as referred to in paragraph (1) is entered into by the deadline stipulated in § 12, the representative body shall continue as hitherto, in accordance with the provisions of this part of the Act.

Meetings

§25(1) The representative body shall have the right to meet with the competent organ of the SE at least once a year, on the basis of regular reports drawn up by the competent organ on the progress of the business of the SE and its prospects. The local managements shall be informed accordingly.

(2) Before any such meeting, the SE shall provide the representative body with the agendas of meetings of the administrative, management or supervisory bodies and with copies of all documents submitted to the general meeting of its shareholders.

(3) The meeting shall cover in particular the SE's structure, the economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, the running down or closure of establishments, undertakings or significant parts thereof, and collective redundancies.

§26(1) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocation, closure of establishments or undertakings, transfers or collective redundancies, the representative body shall have the right to be informed.

(2) The representative body or, if it so decides (in particular for reasons of urgency), the executive committee shall have the right, in the circumstances referred to in paragraph (1) or on request, to meet with the competent organ of the SE or any more appropriate level of management within the SE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

(3) In cases where the competent organ of the SE decides not to act in accordance with the opinion expressed by the representative body, the latter shall be entitled to a further meeting with the competent organ of the SE in an attempt to reach agreement.

(4) In the case of a meeting organised with the executive committee, the members of the representative body who represent employees directly concerned by the measures in question shall also have the right to participate.

(5) The meetings referred to above shall not affect the prerogatives of the competent organ.

(6) Before any meeting with the competent organ of the SE, the representative body or the executive committee, where necessary enlarged in accordance with paragraph (4), shall be entitled to meet without the representatives of the competent organ of the SE being present.

§27 Without prejudice to § 41(1) on confidentiality, the members of the representative body shall inform the representatives of the employees of the SE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures established under this part of the Act.

§28 The representative body or the executive committee may be assisted by experts chosen by the members.

§29 The members of the representative body shall be entitled to time off for training without loss of wages, if this is necessary for the fulfilment of their tasks within the representative body.

§30(1) The costs of the representative body shall be borne by the SE, which shall provide the body's members with the resources needed to enable them to perform their duties in an appropriate manner.

(2) In particular, and unless otherwise agreed, the SE shall bear the cost of organising meetings and providing interpretation facilities as well as the accommodation and travelling expenses of the members of the representative body and executive committee and at least one expert.

§31 The Minister of Employment may lay down budgetary rules applicable to the operation of the representative body.

Part 4

Standard rules on participation

§32(1) The rules on participation in this part of the Act shall apply in the following cases:

1) Where the SE is established by transformation and the rules on participation in the administrative or supervisory body applied in a company transformed into an SE.

2) Where the SE is established by merger and, before the SE's registration, one or more forms of participation:

a) covered at least 25% of the overall number of employees in all the participating companies, or

b) applied in at least one participating company, provided the special negotiating body decides that the provisions on participation contained in this part of the Act should apply.

3) Where the SE is established as a holding company or subsidiary and, before the SE's registration, one or more forms of participation applied in one or more participating companies and covered:

a) at least 50% of the overall number of employees of the participating companies, or

b) employees in at least one participating company, provided the special negotiating body decides that the provisions on participation contained in this part of the Act should apply.

(2) The participating companies shall be informed of the decisions taken by the special negotiating body under paragraph (1).

§33(1) In the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the supervisory or administrative body applied

before registration, all aspects of employee participation shall continue to apply to the SE.

(2) In other cases in which an SE is established, the employees of the SE, its subsidiaries and establishments or the representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the supervisory or administrative body of the SE corresponding to the highest possible proportion of seats which the employees could have in the competent organs of the participating countries before registration of the SE.

§34 If there were no participation rules in the participating companies before registration of the SE, the SE shall not be required to establish provisions for employee participation.

§35 The representative body shall decide:

1) how the seats in the supervisory or administrative body shall be allocated among the members representing the employees in the States in which Directive 2001/86/EC applies, or

2) how the SE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SE's employees in each State.

§36(1) Companies situated in Denmark which employ employees who are allocated seats in the SE's supervisory or administrative body in accordance with § 35 shall ensure that an election committee is established. If all employees are employed in establishments belonging to companies situated outside Denmark, the management of these establishments shall ensure that an election committee is established.

(2) The election committee shall be composed of representatives of employees in Denmark and of the management. The majority of the election committee's members shall consist of representatives of employees, and at least one of the members shall be a member of the competent organ of one of the companies or of the management of one of the establishments, in accordance with paragraph (1).

(3) The employees' representatives on the election committee shall be appointed from among the employee members of the companies' representative bodies or works councils. It shall be ensured as far as possible that the interests of all employees in Denmark are represented on the election committee. The other members shall be appointed by the companies' competent organs or establishments' management, in accordance with paragraph (1).

(4) If companies do not have a representative body or works council, their competent organs shall appoint the employees' representatives on the election committee from among the company's employees. If all employees are employed at an establishment belonging to a company situated outside Denmark, the establishment's management shall appoint the employees' representatives on the election committee from among the establishment's employees. If shop stewards have been elected within the company or establishment, they shall be represented wherever possible.

§37(1) The election committee, after negotiating with the companies' competent organs or establishments' management in accordance with § 36(1), shall set a date for the election and shall ensure that all employees have a reasonable opportunity to find out the date.

(2) The election committee shall announce the election date to employees at least 6 weeks and no more than 10 weeks beforehand. If any employees are employed on sea-going vessels, the election date shall be announced at least 9 weeks and no more than 20 weeks beforehand.

(3) The announcement of the election date shall include:

- 1) information on the number of members to be elected by the employees, and
- 2) an invitation to employees to nominate candidates for election as members of the competent organ or as alternates, stating the deadline for the submission of nominations, which shall be at least 4 weeks before the election date.

§38 The executive committee shall check whether the nominated candidates are employees in Denmark and are willing to be elected. It shall arrange for the printing of voting papers on which the candidates' names are listed in alphabetical order, for members of the SE's competent organ and alternates respectively.

§39 The executive committee shall be responsible for organising the election and counting the votes. The result of the vote and the elected persons' names and addresses shall be communicated immediately to the competent organ of the SE and to the elected persons, and shall be announced to the employees.

§40 Members of the SE's supervisory or administrative body who are elected, appointed or recommended by the representative body or by the employees shall have the same rights, obligations and responsibilities as the other members.

Part 5

Confidentiality and other provisions

§41(1) Where it is in the interests of participating companies, concerned subsidiaries and establishments or of the SE, subsidiaries and establishments, the supervisory or administrative body of participating companies or the SE may in specific cases impose a confidentiality obligation on the members of the special negotiating body and representative body and on any experts who might assist them. This obligation shall continue to apply even after the expiry of their terms of office.

(2) The supervisory or administrative body of the SE or the competent organ of a participating company may, in the interests of the company, decline to give information to the members of the special negotiating body, representative body or executive committee, if this would be detrimental or harmful to the company.

§42 § 41 shall also apply where an information and consultation procedure has been agreed in accordance with § 11.

§43(1) Employees' representatives, including members of the special negotiating body and representative body, shall enjoy protection against dismissal or other deterioration in their circumstances in the same way as shop stewards in the relevant or comparable fields.

(2) The protection under paragraph (1) shall also apply to employees' representatives in the supervisory or administrative body of the SE.

§44(1) If changes take place within the SE, its subsidiaries or establishments within two years of its registration, and applying the provisions of this Act would have led to a

different result if those changes had been implemented before the establishment of the SE, new negotiations shall take place. In this case:

1) negotiations shall take place at the request of the representative body or the employees' representatives in companies, subsidiaries or establishments which become part of the SE after its establishment, and

2) Part 2 of this Act shall apply *mutatis mutandis*, whereby:

a) "the SE, subsidiaries and establishments" replaces "participating companies",

b) "the representative body" or any body established with a view to implementing information and consultation procedures in accordance with § 17(1)(6) replaces "the special negotiating body", and

c) "the date of registration of the SE" is replaced by "where the negotiations end without reaching an agreement in accordance with § 11".

(2) If it is shown that the changes referred to in paragraph (1) were not intended to limit employees' involvement, new negotiations shall not take place.

(3) If it can be determined on a basis other than changes within the SE after its establishment that the purpose of establishing the SE was primarily to limit employees' involvement, new negotiations shall take place as referred to in paragraph (1).

Part 6

Sanctions

§45 Anyone who transmits information regarded as confidential under § 41(1) shall be fined, unless a more severe penalty is required under other legislation.

§46(1) Contraventions of §§ 3, 25, 26, 36(4), 37, 38(2), 39 and 44 shall be punishable by a fine.

(2) Anyone who before or after the establishment of the SE intentionally or through gross negligence gives employees or their representatives incorrect information which is of substantial importance to employee participation in the SE shall be fined.

(3) Penalties may be imposed on companies etc. (legal persons) under the provisions of Part 5 of the Penal Code.

Part 7

Entry into force, etc.

§47 This Act shall enter into force on 8 October 2004.

§48 This Act shall not apply to the Faeroes or Greenland.

26 April 2004

Margrethe R.

/Claus Hjort Frederiksen

Official Notes

¹ This Act transposes Council Directive 2001/86/EEC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294, p. 22).