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STATUTORY INSTRUMENTS

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**2004 No. 2326**

The European Public Limited-  
Liability Company Regulations 2004

PART 3

EMPLOYEE INVOLVEMENT

CHAPTER 6

COMPLIANCE AND ENFORCEMENT

**Disputes about operation of an employee involvement agreement or the standard rules on employee involvement**

33.—(1) Where—

- (a) an employee involvement agreement has been agreed; or
- (b) the standard rules on employee involvement apply,

a complaint may be presented to the CAC by a relevant applicant who considers that the competent organ of a participating company or of the SE has failed to comply with the terms of the employee involvement agreement or, as the case may be, one or more of the standard information and consultation provisions.

(2) A complaint brought under paragraph (1) must be brought within a period of 3 months commencing with the date of the alleged failure or where the failure takes place over a period, the last day of that period.

(3) In this regulation—

“failure” means an act or omission,

“relevant applicant” means—

- (a) in a case where a representative body has been appointed or elected, a member of that body; or
- (b) in a case where no representative body has been elected or appointed, an information and consultation representative or an employee of the SE.

(4) Where the CAC finds the complaint well-founded it shall make a declaration to that effect and may make an order requiring the SE to take such steps as are necessary to comply with the terms of the employee involvement agreement or, as the case may be, the standard rules on employee involvement.

(5) An order made under paragraph (4) shall specify—

- (a) the steps which the SE is required to take;
- (b) the date of the failure; and
- (c) the period within which the order must be complied with.

(6) If the CAC makes a declaration under paragraph (4), the relevant applicant may, within the period of three months beginning with the day on which the decision is made, make an application to the Appeal Tribunal for a penalty notice to be issued.

(7) Where such an application is made, the Appeal Tribunal shall issue a written penalty notice to the SE requiring it to pay a penalty to the Secretary of State in respect of the failure unless satisfied, on hearing representations from the SE, that the failure resulted from a reason beyond the its control or that he has some other reasonable excuse for its failure.

(8) Regulation 33 shall apply in respect of a penalty notice issued under this regulation.

(9) No order of the CAC under this regulation shall have the effect of suspending or altering the effect of any act done or of any agreement made by the participating company of the SE.

### **Penalties**

**34.**—(1) A penalty notice issued under regulation 33 shall specify—

- (a) the amount of the penalty which is payable;
- (b) the date before which the penalty must be paid; and
- (c) the failure and period to which the penalty relates.

(2) No penalty set by the Appeal Tribunal under this regulation may exceed £75,000.

(3) When setting the amount of the penalty, the Appeal Tribunal shall take into account—

- (a) the gravity of the failure;
- (b) the period of time over which the failure occurred;
- (c) the reason for the failure;
- (d) the number of employees affected by the failure; and
- (e) the number of employees employed by the undertaking.

(4) The date specified under paragraph (1)(b) above must not be earlier than the end of the period within which an appeal against a decision or order made by the CAC under regulation 33 may be made.

(5) If the specified date in a penalty notice has passed and—

- (a) the period during which an appeal may be made has expired without an appeal having been made; or
- (b) such an appeal has been made and determined,

the Secretary of State may recover from the SE, as a civil debt due to him, any amount payable under the penalty notice which remains outstanding.

(6) The making of an appeal suspends the effect of the penalty notice.

(7) Any sums received by the Secretary of State under regulation 33 or this regulation shall be paid into the Consolidated Fund.

### **Misuse of procedures**

**35.**—(1) If an employees' representative or where there is no such representative in relation to an employee, the employee, believes that a participating company or an SE is misusing or intending to misuse the SE or the powers in these Regulations for the purpose of—

- (a) depriving the employees of that participating company or of any of its concerned subsidiaries or, as the case may be, of the SE or of its subsidiaries of their rights to employee involvement; or
- (b) withholding rights from any of the people referred to in sub-paragraph (a),

he may make present a complaint to the CAC.

(2) Where a complaint is made to the CAC under paragraph (1) before registration or within a period of 12 months of the date of the registration of the SE, the CAC shall uphold the complaint unless the respondent proves that it did not misuse or intend to misuse the SE or the powers in these Regulations for either of the purposes set out in sub-paragraphs (a) or (b) of paragraph (1).

(3) If the CAC finds the complaint to be well founded—

- (a) it shall make a declaration to that effect and may make an order requiring the participating company or of the SE, as the case may be, to take such action as is specified in the order to ensure that the employees referred to in paragraph (1)(a) are not deprived of their rights to employee involvement or that such rights are not withheld from them; and
- (b) the provisions in regulations 33(6) to (9) and 34 shall apply to the complaint.

### **Exclusivity of remedy**

**36.** The remedy for infringement of the rights conferred by these Regulations is by way of complaint to the CAC in accordance with Chapters 1 to 5 of this Part and not otherwise.