
STATUTORY INSTRUMENTS

2006 No. 2059

**The European Cooperative Society
(Involvement of Employees) Regulations 2006**

PART 4

NEGOTIATION OF THE EMPLOYEE INVOLVEMENT AGREEMENT

Negotiations to reach an employee involvement agreement

16.—(1) In this regulation and in regulation 17 the participating individuals and competent organs of the participating legal entities on the one hand and the special negotiating body on the other are referred to as “the parties”.

(2) The parties are under a duty to negotiate in a spirit of cooperation with a view to reaching an employee involvement agreement.

(3) The duty referred to in paragraph (2) commences one month after the date or, if more than one, the last date on which the members of the special negotiating body were elected or appointed and applies—

- (a) for the period of 6 months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within that period, until the completion of the negotiations; or
- (b) where the parties agree before the end of that 6 month period that it is to be extended, for the period of 12 months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within the 12 month period, until the completion of the negotiations.

The employee involvement agreement

17.—(1) The employee involvement agreement must be in writing.

(2) Without prejudice to the autonomy of the parties and subject to paragraph (4), the employee involvement agreement shall specify:

- (a) the scope of the agreement;
- (b) the composition, number of members and allocation of seats on the representative body;
- (c) the functions and the procedure for the information and consultation of the representative body;
- (d) the frequency of meetings of the representative body;
- (e) the financial and material resources to be allocated to the representative body;
- (f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;

- (g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SCE's administrative or supervisory organ which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights; and
- (h) if, where the statute of the SCE so provides, during negotiations the parties decide to establish arrangements for employees or their representatives to participate in and vote in the general meeting or any section or sectorial meetings of the SCE, the substance of those arrangements, including (where appropriate) the number of employees or representatives who will be entitled to participate, the procedure as to how they are to be elected, appointed, recommended or opposed, and their rights; and
- (i) the date of entry into force of the agreement, its duration, the circumstances, if any, in which the agreement is required to be re-negotiated including (where appropriate), in the event of changes in the structure of the SCE or its subsidiaries or establishments, and the procedure for its re-negotiation.

(3) The employee involvement agreement shall not be subject to the standard rules on employee involvement, unless it contains a provision to the contrary.

(4) In relation to an SCE to be formed by conversion, the employee involvement agreement shall provide for the elements of employee involvement at all levels to be at least as favourable as those which exist in the cooperative to be converted into an SCE.

(5) If the parties decide, in accordance with paragraph (2)(f), to establish one or more information and consultation procedures instead of a representative body and if those procedures include a provision for representatives to be elected or appointed to act in relation to information and consultation, those representatives shall be "information and consultation representatives".

Decisions of the special negotiating body

18.—(1) Each member of the special negotiating body shall have one vote.

(2) Subject to paragraph (3) and regulation 19, the special negotiating body shall take decisions by an absolute majority vote.

(3) In the following circumstances any decision which would result in a reduction of participation must be taken by a two thirds majority vote:

- (a) where an SCE is to be formed by merger and at least 25% of the employees employed to work in the EEA States by the participating cooperatives which are due to merge have participation; and
- (b) where an SCE is to be formed in any other way and at least 50% of the total number of employees employed to work in the EEA States by the participating individuals and participating legal entities have participation.

In this paragraph, reduction of participation means that the proportion of members of the supervisory or administrative organ of the SCE who may be elected or appointed (or whose appointment may be recommended or opposed) by virtue of participation is lower than the proportion of such members in the participating legal entity which had the highest proportion of such members.

(4) The special negotiating body must publish the details of any decision taken under this regulation or under regulation 19 in such a manner as to bring the decision, so far as reasonably practicable, to the attention of the employees whom they represent and such publication shall take place as soon as reasonably practicable and, in any event no later than 14 days after the decision has been taken.

(5) For the purpose of negotiations, the special negotiating body may be assisted by experts of its choice.

(6) The participating individuals and participating legal entities shall pay for any reasonable expenses of the functioning of the special negotiating body and any reasonable expenses relating to the negotiations that are necessary to enable the special negotiating body to carry out its functions in an appropriate manner; but where the special negotiating body is assisted by more than one expert the participating individuals and participating legal entities are not required to pay such expenses in respect of more than one of them.

Decision not to open or to terminate negotiations

19.—(1) Subject to paragraph (2), the special negotiating body may decide, by a two thirds majority vote, not to open negotiations with the participating individuals and the competent organs of the participating legal entities or to terminate any such negotiations.

(2) The special negotiating body cannot take the decision referred to in paragraph (1) in relation to an SCE to be formed by conversion if any employees of the cooperative to be converted have participation.

(3) Any decision made under paragraph (1) shall have the following effects—

- (a) the duty in regulation 16(2) to negotiate with a view to reaching an employee involvement agreement shall cease as from the date of the decision;
- (b) any rules relating to the information and consultation of employees in an EEA State in which employees of the SCE are employed shall apply to the employees of the SCE in that EEA State; and
- (c) the special negotiating body shall be reconvened only if a valid request in accordance with paragraph (4) is made by employees or employees' representatives.

(4) To amount to a valid request, the request referred to in paragraph (3)(c) must—

- (a) be in writing;
- (b) be made by at least 10% of the employees of, or by employees' representatives representing at least 10% of, the total number of employees employed by—
 - (i) the participating individuals, the participating legal entities and such participating legal entities' concerned subsidiaries, or
 - (ii) where the SCE has been registered, the SCE and its subsidiaries; and
- (c) be made no earlier than two years after the decision made under paragraph (1) was or should have been published in accordance with regulation 18(4) unless the special negotiating body and every participating individual and the competent organs of every participating legal entity or, where the SCE has been registered, the SCE agree to the special negotiating body being reconvened earlier.

Complaint about decisions of the special negotiating body

20.—(1) If a member of the special negotiating body, an employees' representative, or where there is no such representative in respect of an employee, that employee believes that the special negotiating body has taken a decision referred to in regulation 18 or 19 and—

- (a) that the decision was not taken by the majority required by regulation 18 or 19, as the case may be; or
- (b) the special negotiating body failed to publish the decision in accordance with regulation 18(4),

he may present a complaint to the CAC within 21 days of the date the special negotiating body did or should have published their decision in accordance with regulation 18(4).

(2) Where the CAC finds the complaint well-founded it shall make a declaration that the decision was not taken properly and that it shall have no effect.