
STATUTORY INSTRUMENTS

1999 No. 3323

**The Transnational Information and
Consultation of Employees Regulations 1999**

**PART I
GENERAL**

Controlled and Controlling Undertaking

3.—(1) In these Regulations “controlling undertaking” means an undertaking which can exercise a dominant influence over another undertaking by virtue, for example, of ownership, financial participation or the rules which govern it and “controlled undertaking” means an undertaking over which such a dominant influence can be exercised.

(2) The ability of an undertaking to exercise a dominant influence over another undertaking shall be presumed, unless the contrary is proved, when in relation to another undertaking it directly or indirectly—

- (a) can appoint more than half of the members of that undertaking’s administrative, management or supervisory body;
- (b) controls a majority of the votes attached to that undertaking’s issued share capital; or
- (c) holds a majority of that undertaking’s subscribed capital.

(3) In applying the criteria in paragraph (2), a controlling undertaking’s rights as regards voting and appointment shall include—

- (a) the rights of its other controlled undertakings; and
- (b) the rights of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other of the controlling undertaking’s controlled undertakings.

(4) Notwithstanding paragraphs (1) and (2) above an undertaking shall not be a controlling undertaking of another undertaking in which it has holdings where the first undertaking is a company referred to in Article 3(5)(a) or (c) of Council Regulation (EEC) No. 4064/89 of 21 December 1989⁽¹⁾ on the control of concentrations between undertakings.

(5) A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising functions, according to the law of a Member State, relating to liquidation, winding-up, insolvency, cessation of payments, compositions of creditors or analogous proceedings.

(6) Where the law governing an undertaking is the law of a Member State, the law applicable in order to determine whether an undertaking is a controlling undertaking shall be the law of that Member State.

(7) Where the law governing an undertaking is not that of a Member State the law applicable shall be the law of the Member State within whose territory—

(1) O.J. L 395, 30.12.89, p. 1.

- (a) the representative of the undertaking is situated; or
- (b) in the absence of such a representative, the management of the group undertaking which employs the greatest number of employees is situated.

(8) If two or more undertakings (whether situated in the same or in different Member States) meet one or more of the criteria in paragraph (2) in relation to another undertaking, the criteria shall be applied in the order listed in relation to each of the first-mentioned undertakings and that which meets the criterion that is highest in the order listed shall be presumed, unless the contrary is proved, to exercise a dominant influence over the undertaking in question.