
STATUTORY INSTRUMENTS

2009 No. 2401

The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009

PART 2

PARTICIPATING COMPANIES AND THE SPECIAL NEGOTIATING BODY

Duty on participating company to provide information

5.—(1) When the competent organ of a participating company decides to form an SE, that organ must, as soon as possible after—

- (a) publishing the draft terms of merger,
- (b) creating a holding company, or
- (c) agreeing a plan to form a subsidiary or to transform into an SE,

provide information to the employees' representatives of the participating company, its concerned subsidiaries and establishments or, if no such representatives exist, the employees themselves.

(2) The information referred to in paragraph (1) must include, as a minimum, information—

- (a) identifying the participating companies, concerned subsidiaries and establishments,
- (b) giving the number of employees employed by each participating company and concerned subsidiary and at each concerned establishment,^{F1}...
- (c) giving the number of employees employed to work in each EEA State;
- [^{F2}(d) the number of agency workers working temporarily for and under the supervision and direction of the undertaking;
- (e) the parts of the undertaking in which those agency workers are working; and
- (f) the type of work those agency workers are carrying out.]

(3) When a special negotiating body has been formed in accordance with regulation 8, the competent organs of each participating company must provide that body with such information as is necessary to keep it informed of the plan and progress of establishing the SE up to the time the SE has been registered.

Textual Amendments

- F1** Word in reg. 5(2)(b) omitted (1.10.2011) by virtue of [The Agency Workers Regulations 2010 \(S.I. 2010/93\)](#), [reg. 1\(1\)](#), [Sch. 2 para. 49\(a\)](#)
- F2** Reg. 5(2)(d)-(f) inserted (1.10.2011) by [The Agency Workers Regulations 2010 \(S.I. 2010/93\)](#), [reg. 1\(1\)](#), [Sch. 2 para. 49\(b\)](#)

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

Complaint of failure to provide information

6.—(1) An employees' representative, or an employee for whom there is no such representative, may present a complaint to the CAC that—

- (a) the competent organ of a participating company has failed to provide the information referred to in regulation 5, or
- (b) the information provided by the competent organ of a participating company for the purpose of complying with regulation 5 is false or incomplete in a material particular.

(2) If the CAC finds the complaint well-founded, it must make an order requiring the competent organ to disclose information to the complainant.

(3) The order must specify—

- (a) the information in respect of which the CAC finds that the complaint is well-founded and which is to be disclosed to the complainant, and
- (b) a date (not less than one week after the date of the order) by which the competent organ must disclose the information specified in the order.

Function of the special negotiating body

7. The special negotiating body and the competent organs of the participating companies have the task of reaching an employee involvement agreement.

Composition of the special negotiating body

8.—(1) The competent organs of the participating companies must make arrangements for the establishment of a special negotiating body constituted in accordance with the following provisions of this regulation.

(2) In each EEA state in which employees of a participating company or concerned subsidiary are employed to work, those employees must be given an entitlement to elect or appoint one member of the special negotiating body for each 10%, or fraction of 10%, which those employees represent of the total workforce. These members are the “ordinary members”.

(3) If, in the case of an SE to be established by merger, following an election or appointment under paragraph (2), the members elected or appointed to the special negotiating body do not include at least one eligible member in respect of each relevant company, the employees of any relevant company in respect of which there is no eligible member must be given an entitlement, subject to paragraph (4), to elect or appoint an additional member to the special negotiating body.

(4) The number of additional members which the employees are entitled to elect or appoint under paragraph (3) must not exceed 20% of the number of ordinary members elected or appointed under paragraph (2). If the number of additional members under paragraph (3) would exceed that percentage, the employees who are entitled to appoint or elect the additional members are—

- (a) if one additional member is to be appointed or elected, those employed by the company not represented under paragraph (3) having the highest number of employees;
- (b) if more than one additional member is to be appointed or elected, those employed by the companies in each EEA state that are not represented under paragraph (3) having the highest number of employees in descending order, starting with the company with the highest number, followed by those employed by the companies in each EEA state that are not so represented having the second highest number of employees in descending order, starting with the company (among those companies) with the highest number.

(5) The competent organs of the participating companies must, as soon as reasonably practicable and in any event no later than one month after the establishment of the special negotiating body,

inform their employees and those of their concerned subsidiaries of the identity of the members of the special negotiating body.

(6) If, following the appointment or election of members to the special negotiating body in accordance with this regulation, changes to the participating companies, concerned subsidiaries or concerned establishments result in the number of ordinary or additional members which employees would be entitled to elect or appoint under this regulation either increasing or decreasing—

- (a) the original appointment or election of members of the special negotiating body ceases to have effect, and
- (b) those employees are entitled to elect or appoint the new number of members in accordance with the provisions of these Regulations.

(7) If a member of the special negotiating body is no longer willing or able to continue serving as such a member, the employees whom the member represents are entitled to elect or appoint a new member in place of that member.

(8) In this regulation—

“eligible member” means a person who is—

- (a) in the case of a relevant company registered in an EEA state whose legislation allows representatives of trade unions who are not employees to be elected to the special negotiating body, an employee of the relevant company or a trade union representative;
- (b) in the case of a relevant company not registered in such an EEA state, an employee of the relevant company;

“relevant company” means a participating company which has employees in the EEA state in which it is registered and which it is proposed will cease to exist on or following the registration of the SE;

“the total workforce” means the total number of employees employed by all participating companies and concerned subsidiaries throughout all EEA states.

Complaint about establishment of special negotiating body

9.—(1) An application may be presented to the CAC for a declaration that the special negotiating body has not been established at all or has not been established properly in accordance with regulation 8.

(2) An application may be presented under this regulation by any of the following—

- (a) a person elected or appointed to be a member of the special negotiating body;
- (b) an employees' representative;
- (c) where there is no employees' representative in respect of a participating company or concerned subsidiary, an employee of that participating company or concerned subsidiary;
- (d) the competent organ of a participating company or concerned subsidiary.

(3) The CAC may only consider an application made under paragraph (1) if it is made within a period of one month following the date or, if more than one, the last date on which the participating companies complied or should have complied with the obligation to inform their employees under regulation 8(5).

(4) If the CAC finds the application well-founded—

- (a) it must make a declaration that the special negotiating body has not been established at all or has not been established properly, and
- (b) the competent organs of the participating companies continue to be under the obligation in regulation 8(1).

Changes to legislation:

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Changes and effects yet to be applied to :

- Regulations applied by Regulation (EC) No. 2157/2001, Art. 1(4) (as substituted) by [S.I. 2018/1298 reg. 98\(c\)](#)
- Regulations applied by Regulation (EC) No. 2157/2001, Art. 12(4) (as amended) by [S.I. 2018/1298 reg. 107\(b\)](#)
- Regulations applied by Regulation (EC) No. 2157/2001, Art. 40(2) (as amended) by [S.I. 2018/1298 reg. 113\(b\)](#)
- Regulations applied by Regulation (EC) No. 2157/2001, Art. 43(2) (as amended) by [S.I. 2018/1298 reg. 115\(b\)\(iv\)](#)
- Regulations applied by Regulation (EC) No. 2157/2001, Art. 52(b) (as amended) by [S.I. 2018/1298 reg. 122\(a\)](#)
- Regulations applied by Regulation (EC) No. 2157/2001, Art. 9(1)(c)(i) (as substituted) by [S.I. 2018/1298 reg. 104\(a\)\(ii\)](#)
- Regulations applied by Regulation (EC) No. 2157/2001, Art.AA1 (as inserted) by [S.I. 2018/1298 reg. 97](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Blanket amendment words substituted by [S.I. 2011/1043 art. 3-68-10](#)

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 3(2A) inserted by [S.I. 2018/1298 reg. 49\(c\)](#)
- reg. 17(4)(d) inserted by [S.I. 2018/1298 reg. 52\(c\)\(iii\)](#)
- reg. 20(3)(b) words substituted by [S.I. 2018/1298 reg. 54\(b\)](#)
- reg. 24(1)(aa) inserted by [S.I. 2018/1298 reg. 57\(a\)](#)
- reg. 41(2A) inserted by [S.I. 2018/1298 reg. 64\(b\)](#)