

ACT N° 371 OF 22 MAY 1996

on European Works Council

CHAPTER 1

OBJECTIVE OF THE ACT

§ 1

The objective of this Act is to improve employees' possibilities for information and consultation on matters affecting undertakings in several countries, through the establishment of a European works council or the introduction of an information and consultation procedure.

§ 2

The Act applies to Community-scale undertakings and Community-scale groups of undertakings, cf. § 4 and § 5. Where the central management, cf. § 7, is located in Denmark, the provisions of the Act, with the exception of §§ 8, 11.3, 11.4, 22.2, 22.3, 33 and 35-37, shall also apply to foreign subsidiaries and establishments.

§ 3

1. The Act does not apply where a collective agreement or other agreement contains obligations and rights which at least match the provisions of Directive 94/45 on the establishment of a European works council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purpose of informing and consulting employees.

2. However, the provisions of Chapter 6 shall in all cases apply to Community-scale undertakings and Community-scale groups of undertakings and to foreign subsidiaries and establishments.

CHAPTER 2

DEFINITIONS

§ 4

An undertaking shall be regarded as a Community-scale undertaking if it :

- 1) employs at least 1 000 employees in EU Member States and EEA countries (excluding the United Kingdom), and
- 2) has establishments in at least two of the countries referred to in (1), and
- 3) employs at least 150 employees in each of at least two of the countries referred to in (1).

§ 5

A group of undertakings shall be regarded as a Community-scale group of undertakings if :

- 1) it employs at least 1 000 employees in the countries referred to in § 4 (1), and
- 2) it has at least two undertakings in the countries referred to in § 4 (1), and
- 3) at least one undertaking employs 150 employees in one of the countries referred to in § 4 (1) and another undertaking employees at least 150 employees in another of the countries referred to in § 4 (1).

§ 6

1. An undertaking shall be regarded as a parent undertaking if it can exercise a dominant influence over another undertaking, e.g. by virtue of ownership, financial participation or the rules which govern it, subject to § 6.6.

2. The ability to exercise a dominant influence shall be presumed, without prejudice to proof to the contrary, when an undertaking directly or indirectly :

- 1) has the right to appoint more than half of the members of another undertaking's administrative, management or supervisory bodies, or
- 2) holds a majority of the voting rights in another undertaking, or
- 3) holds a majority of another undertaking's subscribed registered capital.

▲ **DIRECTIVE**

3. Where two or more undertakings within the same group meet the conditions laid down in § 6.2, the undertaking which satisfies the condition laid down in § 6.2 (1) thereof shall be regarded as the parent company. If this condition is not met by any undertaking, the undertaking which meets the condition in § 6.2 (2) shall be regarded as the parent undertaking.

▲ **DIRECTIVE**

4. A group of undertakings consists of a parent undertaking and its subsidiaries.

5. A subsidiary undertaking is an undertaking with which a parent undertaking has one of the relationships described in § 6.1.

6. Notwithstanding § 6.1 to 6.3, an undertaking shall not be regarded as a parent undertaking where it is a company as referred to in Article 3 (5) (a) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ⁽⁰¹⁾. This shall also apply in the case of a company as referred to in Article 3 (5) (c) of the same Regulation, cf. Article 5 (3) (first paragraph) of the fourth Council Directive of 25 July 1978 on the annual accounts of certain types of companies (78/660) ⁽⁰²⁾.

7. When considering the voting rights and rights to appoint or remove members of administrative, management or supervisory bodies, account shall be taken both of the rights enjoyed by the parent undertaking and of the rights enjoyed by its subsidiaries.

▲ **DIRECTIVE**

8. An administrator of a bankrupt estate, a liquidator or a similar supervisory authority exercising functions under the Bankruptcy Act, Companies Act or equivalent legislation shall not be regarded as exercising a dominant influence within the meaning of §§ 6.1 and 6.2.

▲ **DIRECTIVE**

§ 7

1. The central management of a Community-scale undertaking is the management of the Community-scale undertaking. The central management of a Community-scale group of undertakings is the management of the parent undertaking. If several undertakings within the same group of undertakings are parent undertakings, the management of that undertaking which can exercise dominant influence over the other undertakings shall be regarded as the central management, subject to § 6.6.

2. Where the central management of a Community-scale undertaking or community-group of undertakings is not situated in one of the countries referred to in § 4 (1), the representative appointed by the central management shall be regarded as the central management. If no such representative is appointed, the management of the establishment or undertaking which has the largest number of employees in one of the countries referred to in § 4 (1) shall be regarded as the central management.

▲ **DIRECTIVE**

§ 8

The Minister of Labour shall establish rules for determining the number of employees as referred to in § 4 and § 5.

▲ **DIRECTIVE**

CHAPTER 3

PROCEDURE

§ 9

The central management shall provide the conditions and means necessary for establishing a European works council or for introducing an information and consultation procedure.

§ 10

1. The central management may initiate negotiations for the establishment of a European works council or for the introduction of an information and consultation procedure on its own initiative and shall be obliged to do so at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different countries referred to in § 4.1.

2. The request referred to in § 10.1 shall be submitted to the central management or any other management of the Community-scale undertaking or community-group of undertakings.

▲ **DIRECTIVE**

3. The time periods referred to in § 20 start when the request referred to in § 10.1 is submitted to the central management or to the management of one of the undertakings or establishments which are part of the Community-scale group of undertakings or Community-scale undertaking.

CHAPTER 4

SPECIAL NEGOCIATING BODY

Establishment

§ 11

1. When the conditions set out in § 10 are met, the central management shall take the initiative to establish a special negotiating body.

2. The negotiating body shall have a minimum of 3 and a maximum of 17 members, appointed by the employees' representatives or, in the absence of such representatives, by the employees. [\(SEE ALSO\)](#)

▲ **DIRECTIVE**

3. Members appointed in Denmark shall be elected from among the employees by the employees' representatives on the works councils. Where no works council has been set up, members shall be elected by the shop stewards or, if agreed between the management and the ordinary employees' representatives, by all employees.

4. If an appropriate request is made before the election, the works council or shop stewards may be supplemented by representatives of groups not represented through the ordinary works council

members or union representatives.

▲ **DIRECTIVE**

5. The composition of the special negotiating body shall be as follows :

1) One member to represent employees in each of the countries referred to in § 4 (1) in which the undertaking or group of undertakings has one or more establishments or undertakings, subject to (2) and (3).

2) If the undertaking or group of undertakings has fewer than 2 000 employees and has establishments or undertakings in only two of the countries referred to in § 4 (1), a further representative shall be appointed to represent the employees in the country in which the most employees are employed.

3) If the undertaking or group of undertakings has 2 000 employees or more, the following shall also be appointed :

a) one member to represent employees in the countries referred to in § 4 (1) in which at least 25 % of the employees of the undertaking or group of undertakings are employed; and

b) two members representing employees in the countries referred to in § 4 (1) in which more than 50 % of the employees of the undertaking or group of undertakings are employed; or

c) three members representing employees in the countries referred to in § 4 (1) in which more than 75 % of the employees of the undertaking or group of undertakings are employed; and

d) one member for every 5 000 employees, or part thereof, in countries in which more than 5 000 employees are employed, where the undertaking or group of undertakings employs a total of more than 10 000 employees.

6. If the total number of members appointed pursuant to § 11.5 (1 to 3) exceeds 17, first of all the members pursuant to 3 d) shall be omitted, followed by those pursuant to 3 a), b) and c) in that order.

§ 12

The central management and local managements shall be informed of the names of the persons appointed to the special negotiating body.

Duties of the special negotiating body

§ 13

1. The special negotiating body and central management shall negotiate in a spirit of cooperation with a view to entering into an agreement in writing on the establishment of either a European works

council or the introduction of one or more information and consultation procedures.

▲ **DIRECTIVE**

2. The special negotiating body may be assisted by experts chosen by its members.

▲ **DIRECTIVE**

§ 14

The central management shall convene a meeting with the special negotiating body in order to start negotiations with a view to concluding an agreement. The other managements shall be informed of the meeting.

§ 15

1. The special negotiating body may decide, by at least two-thirds of the votes, not to open negotiations or to terminate negotiations.

2. If the special negotiating body makes such a decision, negotiations shall stop and the provisions of Chapter 5 shall not apply.

3. A new request to convene the special negotiating body may be made at the earliest two years after the decision referred to in § 15.1, unless the special negotiating body and central management lay down a shorter period.

▲ **DIRECTIVE**

§ 16

Any expenses relating to the negotiations referred to in §§ 13 and 14 shall be borne by the central management. §§ 28.2 and 28.3 shall be correspondingly applicable. [\(SEE ALSO\)](#)

▲ **DIRECTIVE**

Content of a European works council agreement

§ 17

An agreement on the establishment of a European works council as referred to in § 13.1 shall, *inter alia*, determine the following :

- 1) which undertakings are covered by the agreement,
- 2) the works council's composition, the number of members, the allocation of seats and the term of office,
- 3) the responsibilities of the council and the procedure for information and consultation of the works council,

- 4) the venue, frequency and duration of meetings,
- 5) the financial and material resources to be made available to the European works council,
- 6) the procedure for adaptation of the agreement to changes in the structure and size of the parent undertaking or group of undertakings,
- 7) the duration of the agreement and the procedure for its renegotiation.

 **DIRECTIVE**

Content of an agreement on an information and consultation procedure

§ 18

1. An agreement on one or more information and consultation procedures, in accordance with § 13, shall lay down guidelines for the way in which the employees' representatives shall have the right to meet to discuss the information conveyed to them.
2. Such information shall relate in particular to questions which concern undertakings in several countries and significantly affect employees' interests.

Common provisions

§ 19

The special negotiating body shall make its decisions by a majority of the vote of its members, notwithstanding § 15.1. Where votes are equal, the members from the country with the largest number of employees shall have an extra vote.

 **DIRECTIVE**

CHAPTER 5

SUBSIDIARY PROVISIONS

Establishment and powers of the European works council

§ 20

The European works council shall be established according to the provisions of this Chapter :

- 1) where the central management and the special negotiating body so decide, or
- 2) where the central management has not commenced negotiations within six months of the request referred to in § 10, or
- 3) where, after three years from the date of this request, the parties fail to reach agreement as laid down in § 17 or § 18, and where the special negotiating body has not previously taken the decision referred to in § 15.

▲ **DIRECTIVE**

§ 21

1. The European works council's competence shall be limited to information and consultation on matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two establishments or group undertakings situated in different countries of the countries referred to in § 4 (1).

2. In the case of the undertakings or groups of undertakings referred to in § 7.2, the European works council's competence shall be limited to matters concerning all their establishments or group undertakings situated in the countries referred to in § 4 (1) or concerning at least two of their establishments or group undertakings situated in different countries out of such countries.

§ 22

1. The European works council shall have a minimum of 3 members and a maximum of 30. Members shall be elected by and from among employees' representatives or, in the absence of such representatives, all employees.

▲ **DIRECTIVE**

2. Members appointed in Denmark shall be elected by the employees' representatives on the works councils. Where no works council has been set up, members shall be elected by the shop stewards or, if agreed between the management and the ordinary employees' representatives, by all employees.

3. If an appropriate request is made before the election, the works council or union representatives may be supplemented by representatives of groups not represented through the ordinary works council members or union representatives.

▲ **DIRECTIVE**

4. If the European works council consists of more than 10 members, or if agreed with the central management, it shall elect an executive board from among its members, composed of not more than 3 members. The select committee shall adopt its own rules of procedure.

▲ **DIRECTIVE**

5. The composition of the European works council shall be as follows :

- 1) One member to represent employees in each of the countries referred to in § 4 (1) in which the undertaking or group of undertakings has one or more establishments or undertakings, subject to (2) and (3).

2) If the undertaking or group of undertakings has fewer than 2 000 employees and has establishments or undertakings in only two of the countries referred to in § 4 (1), a further representative shall be appointed for the country in which the most employees are employed.

3) If the undertaking or group of undertakings has 2 000 employees or more, the following shall also be appointed :

a) one member to represent employees in the countries referred to in § 4 (1) in which at least 25 % of the employees of the undertaking or group of undertakings are employed; and

b) two members representing employees in the countries referred to in § 4 (1) in which more than 50 % of the employees of the undertaking or group of undertakings are employed; or

c) three members representing employees in the countries referred to in § 4 (1) in which more than 75 % of the employees of the undertaking or group of undertakings are employed; and

d) one member for every 5 000 employees, or part thereof, in countries in which more than 5 000 employees are employed, where the undertaking or group of undertakings employs a total of more than 10 000 employees. No more than 30 members shall be appointed.

6. If the total number of members appointed pursuant to § 22.5 (1 to 3) exceeds 30, the members pursuant to 3 d) shall be omitted,

 **DIRECTIVE**

7. The central management or, on its instructions, any other more appropriate level of management shall be informed of the composition of the European works council.

8. Every second year after the establishment of the European works council, the central management shall calculate the number of members for each of the countries referred to in § 4 (1) and inform the European works council of the result of its calculation. If the calculation necessitates a change in composition on the basis of § 22.5 and § 22.6, the number of members from the countries henceforth entitled to more or fewer members shall be adjusted accordingly.

9. Four years after the European works council has been established according to the provisions of this Chapter, it shall consider whether to open negotiations for the conclusion of the agreement referred to in § 17 or § 18 or whether the European works council should be maintained on the given legal basis.

10. § 17, § 18 and § 20 (1) shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to § 17 and § 18, in which case the term "special negotiating body" shall be replaced by the term "European works council".

 **DIRECTIVE**

Meetings

§ 23

1. The European works council shall have the right to meet the central management once a year. Before the meeting the central management shall draw up a report, which shall serve as the basis for the meeting. The purpose of the meeting shall be to inform and consult the European works council on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed of the report.

▲ **DIRECTIVE**

2. The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

▲ **DIRECTIVE**

§ 24

1. Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the executive board or, where no such committee exists, the European works council shall have the right to be informed.

2. The executive board or, where no such committee exists, the European works council shall have the right to meet, at its request, the central management or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted on measures significantly affecting the employees' interests.

3. Those members of the European works council who have been elected or appointed by the establishments or undertakings which are directly concerned by the measures in question shall also have the right to participate in meetings between the executive board and management as referred to in § 24.2.

4. The meeting referred to in § 24.2 shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management. The executive board or the European works council may deliver an opinion on the report at the end of the meeting or within a reasonable time.

5. The meeting referred to in § 24.2 shall not affect the prerogatives of the central management.

▲ **DIRECTIVE**

§ 25

Before any meeting with the central management, the European works council or the executive board, where necessary enlarged in accordance with § 24.3, shall be entitled to meet without the management being present.

▲ **DIRECTIVE**

§ 26

The members of the European works council shall inform, subject to § 30, the representatives of the employees of the establishments or undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with this Chapter.

▲ **DIRECTIVE**

§ 27

The European works council or executive board may be assisted by experts chosen by its members, insofar as this is necessary for it to carry out its tasks.

▲ **DIRECTIVE**

§ 28

1. The operating expenses of the European works council shall be borne by the central management.
2. The central management shall provide the members of the European works council with such resources as will enable them to perform their duties in an appropriate manner. The central management shall ensure that the members of the European works council and select committee do not suffer any loss of wages as a result of their participation in the work of the council.
3. The cost of organising meetings, interpretation facilities for meetings, and the accommodation and travelling expenses of members of the European works council and executive board, as well as for one expert, shall be met by the central management unless otherwise agreed.

§ 29

The Minister of Labour may lay down budgetary rules regarding the operation of the European works council.

▲ **DIRECTIVE**

CHAPTER 6

CONFIDENTIALITY

§ 30

Where warranted by the interests of the undertaking, the central management may in specific cases require the members of the special negotiating body, the European works council and the select

committee, including assisting experts, to observe confidentiality. This obligation shall continue to apply even after the expiry of members' terms of office.

▲ **DIRECTIVE**

§ 31

The central management may decide not to submit information to the members of the special negotiating body, the European works council and the select committee if this is warranted by the interests of the undertaking, if this submission would be in detriment of the undertaking.

▲ **DIRECTIVE**

§ 32

§§ 30 and 31 shall also apply where it has been agreed to set up an information and consultation procedure, cf. § 13.1.

CHAPTER 7

MISCELLANEOUS PROVISIONS

§ 33

The representatives of the special negotiating body and the European works council shall be protected against dismissal and other adverse effects on their circumstances in the same way as shop stewards in corresponding or similar positions.

▲ **DIRECTIVE**

§ 34

1. Crew members of merchant ships may not be elected as members of the special negotiating body or European works council.
2. The Minister of Labour shall lay down special rules covering crew members of merchant ships.

▲ **DIRECTIVE**

§ 35

The Minister of Labour may lay down more detailed rules on election procedures for special negotiating body and European works council members in Denmark.

CHAPTER 8

PENALTIES

§ 36

Anyone who discloses information which has been given in confidence in accordance with §§ 30 and 32 shall be punished by a fine, unless more severe punishment is warranted under other legislation.

§ 37

1. Infringements of §§ 9, 10.1, 11.1, 16, 20, 23, 24.1, 24.2 and 24.4 shall be punishable by a fine.
2. Rules laid down pursuant to §§ 29, 34 and 35 may make provision for fines.
3. Where infringements are committed by a company, association, private institution, foundation or similar body, the fine may be imposed upon the legal person as such.



CHAPTER 9

ENTRY INTO FORCE

§ 38

This Act shall enter into force on 22 September 1996.

§ 39

1. This Act shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which agreements on information and consultation entered or enter into force no later than 21 September 1996, provided that such agreements cover all employees in the undertaking or group of undertakings concerned and relate to information and consultation on matters which affect undertakings or establishments in several of the countries referred to in § 4 (1).
2. If the agreements referred to in § 39.1 expire, the parties may agree to continue to apply them. If they fail to do so, this Act shall apply.



§ 40

This Act does not extend to the Faroe Islands and Greenland.

⁽⁰¹⁾ " A concentration shall not be deemed to arise where :

a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the sale of all part of that undertaking or of its assets or the sale of those securities and that any such sale takes place within one year of the date of acquisition; that period may be extended by the Commission on request where such institutions or companies justify the fact that the sale was not reasonably possible within the period set; (...)

c) the operations (direct or indirect acquisition) carried out by the financial holding companies (...), provided however that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings."

⁽⁰²⁾ " (...) *Financial Holding Companies shall mean only those companies the sole object of which is to acquire holdings in other undertakings, and to manage such holdings and turn them to profit, without involving themselves directly or indirectly in the management of those undertakings, the foregoing without prejudice to their rights as shareholders."*