

BILL

entitled

An Act to implement Directive Nr 94/45/EC of 22 september 1994 of the Council of the European Union by providing for the establishment of transnational arrangements for the information and consultation of employees in community-scale undertakings and community-scale groups of undertakings where requested in the manner provided for in this Act, to provide for the establishment of European Works Councils in such undertakings or groups of undertakings unless agreements entered into in accordance with this Act provide otherwise, and to provide for related matters.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS :

PART I

PRELIMINARY AND GENERAL

SECTION 1

Short title

This Act may be cited as the Transnational Information and Consultation of Employees Act, 1996.

SECTION 2

Commencement

This Act shall come into operation on such day as the Minister may by order appoint.

SECTION 3

Interpretation

(1) In this Act, unless the context otherwise requires.

"appointed" means, in the absence of an election, appointed by employees, or appointed by management on a basis agreed with employees;

"central management" means :

(a) in the case of a Community-scale undertaking, the central management of the undertaking, and

(b) in the case of a Community-scale group of undertakings, the central management of the controlling undertaking,

or such other level of management determined by the central management or agreed between the central management and the employees of the undertaking or group of undertakings;

"Community-scale undertaking" means any undertaking with at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States;

"Community-scale group of undertakings" means a group of undertakings with :

(a) at least 1,000 employees within the Member States, and

(b) at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;

"Community" means :

(a) the European Community excluding the United Kingdom; and

(b) Norway, Iceland and Liechtenstein;

"consultation" means the exchange of views and establishment of dialogue between employees' representatives and the central management;

"contract of employment" means a contract of service or of apprenticeship, whether express or implied, and if express, whether oral or in writing;

"controlled undertaking" and "controlling undertaking" have the meanings assigned to them, respectively, by section 5 (1);

"the Directive" means Council Directive 94/45/EC of 22 September 1994, on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees;

"elected" means elected in accordance with the First Schedule;

"employee" means a person who has entered into or works under a contract of employment with an undertaking or group of undertakings, other than a person who is employed in a managerial capacity in the central management of the undertaking or group of undertakings;

"employees' representatives" means :

(a) in the case of a Special Negotiating Body; persons elected or appointed to that Body, who may include :

(i) employees, and

(ii) trade union officials and officials of an excepted body, whether or not they are employees, and

(b) in the case of a European Works Council or European Employees' Forum, or in relation to any other arrangement for the information and consultation of employees to which this Act applies, employees elected or appointed to those bodies or for the purposes of those arrangements;

"establishment", in relation to an undertaking, means a division (however described) of the undertaking physically separated from other parts of the undertaking;

"European Employees' Forum" means a European Employees' Forum established in accordance with an agreement referred to in section 11 (1);

"European Works Council" means a Council established in accordance with the Second Schedule for the purpose of informing and consulting employees;

"excepted body" has the meaning assigned to it by section 6 (3) of the Trade Union Act, 1941 [\(01\)](#), as amended;

"expert" means a natural person, and may be the holder from time to time of a named office or position in a body corporate or other body or Organisation;

"group of undertakings" means a controlling undertaking and its controlled undertakings, and "group undertaking" has a corresponding meaning;

"Information and consultation procedure" means an information and consultation procedure established in accordance with an agreement referred to in section 11 (1);

"Member State" means a Member State of the Community;

"the Minister" means the Minister for Enterprise and Employment;

"Special Negotiating Body" means a Special Negotiating Body established in accordance with section 10 to negotiate with the central management for an agreement for the establishment of arrangements for the information and consultation of employees;

"trade union official" means an official of a trade union licensed under the Trade Union Acts, 1871 to 1990, which is already recognised for collective bargaining or information and consultation purposes by the business units of the Community-scale undertaking or group of undertakings located in the State;

"undertaking" means any form of economic activity.

(2) A word or expression used in this Act that is also used in the Directive has, unless the context otherwise requires, the same meaning in this Act as it has in the Directive.

(3) In construing a provision of this Act, a court shall give it a construction that will give effect to the Directive, and for that purpose the court shall have regard to the provisions of the Directive, including its preamble.

(4) In this Act, including a Schedule to this Act :

(a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended,

(b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and

(c) a reference to a Schedule is a reference to a Schedule to this Act.

(5) A reference in this Act to the performance of functions includes a reference to the exercise of powers and the performance of duties.

SECTION 4

Workforce thresholds

(1) In determining whether, for the purposes of the establishment of a Special Negotiating Body, an undertaking is a Community-scale undertaking or undertakings are a Community-scale group of undertakings, the number of employees employed in the undertaking or group of undertakings shall be taken to be the average number of employees, including part-time employees, employed in the undertaking or group of undertakings during the two years immediately preceding the request for the establishment of the Special Negotiating Body.

(2) The central management shall, on being so requested by an employees' representative, give to that representative such information about the numbers and status of employees employed in an undertaking or undertakings as is reasonably necessary to enable the numbers referred to in subsection (1) to be assessed.

(3) For the purposes of this section :

"employees' representatives" includes those employees' representatives already recognised by the undertaking or group of undertakings for collective bargaining or information and consultation purposes;

"part-time employees", in relation to employment in the State, means employees :

(a) in the continuous service of an employer for not less than 13 weeks, and

(b) normally expected to work not less than eight hours each week for the employer.

SECTION 5

Definition of controlling and controlled undertaking

(1) In this Act "controlling undertaking" means an undertaking which can exercise a dominant influence over another undertaking by virtue of ownership, financial participation or the rules which govern the controlled undertaking, and "controlled undertaking" means an undertaking over which that dominant influence can be exercised.

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

(a) holds a majority of that other undertaking's subscribed capital,

(b) controls a majority of the votes attached to that other undertaking's issued share capital, or

(c) can appoint more than half of the members of that other undertaking's administrative, management or supervisory body.



(3) Subject to subsection (4), if more than one undertaking in the State meets the criteria in subsection (2), the undertaking that meets the criterion in subsection (2) (c) shall be regarded as the controlling undertaking, or if no undertaking meets the criterion in subsection (2) (c), then the undertaking that meets the criterion in subsection (2) (b) shall be regarded as the controlling undertaking in preference to one that meets the criterion in subsection (2) (a).

(4) Where an undertaking (in this section referred to as a "joint venture"), wherever in the Community located, is carried on by two undertakings in the State neither of whom can exercise a dominant influence over the joint venture, it shall be regarded as a controlled undertaking of each of them unless they agree that it is a controlled undertaking of one only of them for the purposes of this Act, in which case, but subject to subsection (5), that undertaking shall be regarded as the controlling undertaking of the joint venture.

(5) If being the controlled undertaking of one undertaking would result in employees of a joint venture being deprived of an entitlement to be informed and consulted under this Act they would have if the joint venture were a controlled undertaking of the other undertaking, that other undertaking shall be regarded as the controlling undertaking of the joint venture.

(6) For the purposes of subsections (2) and (3) but without prejudice to proof that another undertaking is able to exercise a dominant influence, a controlling undertaking's rights as regards voting and appointment referred to in subsection (2) (b) or (c) shall include :

(a) the rights of any other of its controlled undertakings, and

(b) the rights of any person or body acting in the person's or body's own name but on behalf of the controlling undertaking (or any other of the controlling undertaking's

controlled undertakings) as the controlling undertaking.

▲ **DIRECTIVE**

(7) Notwithstanding subsections (1), (2), (3), (4) and (5), an undertaking shall not be regarded as a controlling undertaking of another undertaking in which it has holdings where the first-mentioned undertaking is a company referred to in Article 3 (5) (a) and (c) of Council Regulation (EEC) No.4064/89 of 21 December 1989 [\(02\)](#), on the control of concentrations between undertakings.

(8) 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.

▲ **DIRECTIVE**

(9) The law applicable in order to determine whether an undertaking is a controlling undertaking shall be the law of the Member State which governs that undertaking. 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 the representative of the undertaking or, in the absence of such a representative, the central management of the group undertaking which employs the highest number of employees in any one Member State, is situated.

▲ **DIRECTIVE**

(10) Where, in the case of a conflict of laws in the application of subsection (2) (except in its application in relation to subsection (3)), two or more undertakings from a group satisfy one or more of the criteria in subsection (2), the undertaking which satisfies the criterion in subsection (2) (c) shall be regarded as the controlling undertaking unless it is proved that another undertaking is able to exercise a dominant influence.

▲ **DIRECTIVE**

SECTION 6

Exemption

(1) Subject to subsections (3), (4) and (5), the obligations under this Act shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which, on the commencement of this Act or the 22nd day of September, 1996, whichever is the earlier, there is or was in force within the same Community-scale undertaking or Community-scale group of undertakings an agreement covering the entire workforce providing for the transnational information and consultation of employees, and while that agreement remains in force.

(2) An agreement referred to in subsection (1) may comprise multiple agreements within the same Community-scale undertaking or group of undertakings if, construed together, they satisfy the requirements of that subsection.

(3) At any time before an agreement referred to in subsection (1) expires or within the period of six months immediately after it expires, the parties to the agreement may jointly renew it for such further period as they think fit.

(4) An agreement renewed under subsection (3) within the six months period referred to in that subsection shall be deemed to have remained in force from the date it would otherwise have expired.

(5) Where an agreement is not renewed in pursuance of subsection (3) before its expiration or before the expiration of the six months period referred to in that subsection, this Act shall, on the expiration of that six months period, but not before, apply in full to and in relation to the Community-scale undertaking or group of undertakings to which the agreement applied.

(6) An agreement referred to in subsection (1) shall be presumed to be valid unless proved to the contrary, and shall remain in force :

(a) for such period, if any, as is specified in the agreement or the agreement as renewed; or

(b) in the case of an open ended agreement, until it is brought to an end in accordance with its terms.

(7) An agreement referred to in subsection (1) shall not be valid unless it has been accepted by a majority of the workforce to which it applies.

(8) In this section "agreement" includes an open ended agreement subject to review and alteration by the parties.



SECTION 7

Regulations

(1) The Minister may make such regulations as are necessary for the purpose of giving effect to this Act and in particular in relation to :

(a) expenses to be borne by the central managements in relation to undertakings and groups of undertakings;

(b) the appointment of an arbitrator for the purposes of section 20 and the terms and conditions to which such an appointment shall be subject;

(c) the powers and procedures of arbitrators, and the conduct of arbitration proceedings, under sections 20 and 21; and

(d) subject to the Second Schedule in relation to a European Works Council, the funding by central managements of the expenses of the operation of Special Negotiating Bodies, European Works Councils, European Employees' Fora or information and consultation procedures.

(2) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be expedient for any purpose of this Act.

(3) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the regulation is passed by either such House within the next subsequent 21 days on which that

House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

SECTION 8

General obligations

(1) In order to improve the right of employees in Community-scale undertakings and Community-scale groups of undertakings to be informed and consulted, a European Works Council or arrangements for the information and consultation of employees shall be established in every such undertaking and group of undertakings in the manner and under terms, and with the effects, laid down in this Act.

(2) Where a Community-scale group of undertakings consists of one or more undertakings or groups of undertakings which in themselves are Community-scale undertakings or Community-scale groups of undertakings and the employees or their representatives request the establishment of a European Works Council or arrangements for the information and consultation of employees, the European Works Council or, where those arrangements require its establishment, a European Employees' Forum shall be established at the level of the group, unless an agreement referred to in section 11 (1) provides otherwise.

(3) Unless a wider application is provided for in an agreement referred to in section 11 (1), the powers and competence of or in relation to an arrangement for the information and consultation of employees (including a European Employees' Forum or an information and consultation procedure), or of a European Works Council established pursuant to this Act, shall :

(a) in the case of a Community-scale undertaking, cover all the establishments; and

(b) in the case of a Community-scale group of undertakings, cover all group undertakings, located within the Member States.

PART II

ESTABLISHMENT OF AN EMPLOYEE INFORMATION AND CONSULTATION PROCEDURE OR A EUROPEAN EMPLOYEES' FORUM OR A EUROPEAN WORKS COUNCIL

SECTION 9

Responsibility of central management

(1) The central management shall be responsible for creating the conditions and means necessary for the setting up of an arrangement for the information and consultation of employees, as required by section 8 (1), in a Community-scale undertaking and a Community-scale group of undertakings.

(2) Subject to subsection (3), where the central management is not located in a Member State, the central management's representative agent in the State, which must be the management of an establishment or part-undertaking of the undertaking or group of undertakings and nominated in writing for that purpose by the central management if not otherwise appointed, shall assume the responsibility referred to in subsection (1).

(3) In the absence of a representative referred to in subsection (2), the management of the establishment or group undertaking in which the greatest number of employees are employed in any one Member State shall assume the responsibility referred to in subsection (1).

(4) For the purposes of this Act, the representative or representatives or, in the absence of any such representative, the management referred to in subsection (3), shall be regarded as the central management.

SECTION 10

Establishment of Special Negotiating Body

(1) In order to facilitate the information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings, the central management may on its own initiative, or shall at the written request of at least a total of 100 employees or their representatives spread over at least two undertakings or establishments one or more of which are in one Member State and the other or others of which are in at least one other Member State, establish a Special Negotiating Body to negotiate with the central management for the establishment of a European Employees' Forum or an information and consultation procedure.

(2) For the purposes of subsection (1), "representatives" includes those employees' representatives already recognised by the undertaking or group of undertakings for collective bargaining or information and consultation purposes.

(3) (a) A request by employees for the establishment of a Special Negotiating Body shall be addressed to the central management but may be lodged with the local management where the identity or location of the central management is not readily discernible to the employees or their representatives making the request.

(b) Where the request is lodged with the local management, the local management shall ensure that the request is passed on to the central management within a period of 15 working days from its receipt.

(c) Any avoidable or unreasonable delay after that period in the transmission of the request to the central management shall not of itself extend the six month period referred to in section 13 (1) (b).

DIRECTIVE

(4) A Special Negotiating Body shall be established in accordance with the following:

(a) subject to paragraphs (b) and (c), the Body shall have not less than three but not more than 17 members elected or appointed in accordance with this Act;

(b) each Member State in which the Community-scale undertaking has one or more establishments, or in which the Community-scale group of undertakings has the

controlling undertaking or one or more controlled undertakings, shall be represented by at least one member;

(c) there shall be the following additional members in proportion to the number of employees employed in the establishments, the controlling undertaking or the controlled undertakings:

(i) one additional member from a Member State where between 25 per cent. and 50 per cent. of the employees of the undertaking or group of undertakings are employed;

(ii) two additional members from a Member State where more than 50 per cent. but not more than 75 per cent. of the employees of the undertaking or group of undertakings are employed;

(iii) three additional members from a Member State where more than 75 per cent. of the employees of the undertaking or group of undertakings are employed;

(d) employees' representatives from countries that are not within the Community may be permitted to participate in the meetings and activities of the Body but shall not be entitled to a vote.

▲ **DIRECTIVE**

(5) The central management and local managements shall be informed by notice in writing of the composition of the Special Negotiating Body as soon as practicable after the election or appointment of its members.

SECTION 11

Functions of Special Negotiating Body

(1) Subject to subsection (4) and section 12 (8), the function of the Special Negotiating Body shall be to negotiate with the central Negotiating Body. management for a written agreement or agreements for the establishment of arrangements for the information and consultation of employees and determining the matters referred to in section 12 (3), (4) or (5).

▲ **DIRECTIVE**

(2) With a view to the conclusion of an agreement referred to in subsection (1), the central management shall convene a meeting with the Special Negotiating Body and shall inform local managements accordingly.

▲ **DIRECTIVE**

(3) The Special Negotiating Body may be assisted by experts of its choice.

▲ **DIRECTIVE**

(4) The Special Negotiating Body may decide, by at least two-thirds of the votes of its members present and entitled to vote at the meeting, not to open negotiations referred to in subsection (1), or to terminate negotiations already opened.

(5) A decision taken under subsection (4) shall cause the cessation of the procedure to conclude an agreement referred to in subsection (1) and when it has been taken the provisions in the Second Schedule shall not apply.

(6) A new request to convene a Special Negotiating Body shall not be made earlier than two years after a decision taken under sub-section (4), unless the parties concerned agree on a shorter period.

▲ **DIRECTIVE**

(7) The reasonable expenses relating to the negotiations referred to in subsection (1) shall be borne by the central management so as to enable the Special Negotiating Body to carry out its functions in an appropriate manner.

(8) For the purposes of subsection (7), reasonable expenses shall include the cost of meetings of the Special Negotiating Body, whether with the central management or otherwise, including the cost of materials, the venue, translations, travel and accommodation, and the equivalent cost of one expert per meeting. [\(SEE ALSO\)](#)

▲ **DIRECTIVE**

SECTION 12

Content of agreement

(1) The central management and the Special Negotiating Body shall carry out the negotiations referred to in section 11 (1) in a spirit of co-operation with a view to reaching an agreement or agreements.

(2) An arrangement for the information and consultation of employees referred to in section 11(1) may invoke the establishment of a European Employees' Forum but the parties may also agree to establish one or more information and consultation procedures instead of a European Employees' Forum.

(3) Without prejudice to the autonomy of the parties or the generality of section 11 (1), an agreement making arrangements for the information and consultation of employees, whether it involves the establishment of a European Employees' Forum or an information and consultation procedure, shall determine :

(a) the undertakings of the Community-scale group of undertakings, or the establishments of the Community-scale undertaking, covered by the agreement,

(b) the duration of the agreement and, subject to subsection (8), the procedure for its renegotiation, and

(c) by what method the information conveyed to employees' representatives shall be conveyed to employees in the State and the opinion of employees given on the information so conveyed shall be recorded, irrespective of the Member State in which the central management is located.

▲ **DIRECTIVE** [\(SEE ALSO\)](#)

▲ **DIRECTIVE** [\(SEE ALSO\)](#)

(4) Where an agreement requires the establishment of a European Employees' Forum, it shall also determine:

- (a) the composition of the Forum, the number of members, the allocation of seats and the term of office,
- (b) the functions, and the procedure for information and consultation, of the Forum,
- (c) the venue, frequency and duration of meetings of the Forum, and
- (d) the financial and other resources to be allocated to the Forum. [\(SEE ALSO\)](#)

(5) Where an agreement requires the establishment of an information and consultation procedure, it shall also determine :

- (a) what that procedure shall be,
- (b) the issues for information and consultation,
- (c) the methods according to which the employees' representatives in the different Member States can meet for exchange of views regarding the information conveyed to them, and
- (d) the financial and other resources to be allocated to ensure the operation of the procedure and the holding of the meetings referred to in paragraph (c).

(6) Unless it otherwise provides, an agreement shall not be subject to the subsidiary requirements of the Second Schedule.

(7) For the purposes of concluding an agreement, the Special Negotiating Body shall act by a majority of its members present and entitled to vote at a meeting.

(8) An agreement which results in the establishment of a European Employees' Forum or an information and consultation procedure shall not provide for its re-negotiation by a Special Negotiating Body but may be renegotiated with the central management by the European Employees' Forum (which shall be deemed to continue in existence as may be necessary for that purpose) or the employees' representatives to the information and consultation procedure, as the case may be.

(9) A Special Negotiating Body shall remain in existence for as long only as it continues to have the function of negotiating for an agreement referred to in section 11 (1) and shall automatically dissolve on its ceasing to have that function.

SECTION 13

Subsidiary requirements

(1) The subsidiary requirements set out in the Second Schedule shall apply to an undertaking or group of undertakings, and a European Works Council shall be established :

- (a) where the central management and the Special Negotiating Body so agree,
- (b) where the central management refuses to commence negotiations within six months of a request referred to in section 10 (1), or
- (c) where after the expiration of a period of three years from the date of the request, the parties are unable to conclude an agreement and the Special Negotiating Body has not taken the decision provided for in section 11(4).

(2) Where the subsidiary requirements apply to an undertaking or group of undertakings, the central management shall as soon as practicable, but in any case not later than six months after they first become applicable, comply with the requirements.

▲ **DIRECTIVE**

PART III

MISCELLANEOUS

SECTION 14

Employee's representative representing employees employed in the State

Employees' representatives who represent employees employed in the State on a Special Negotiating Body, European Works Council or European Employees' Forum, or in relation to an employed in the information and consultation procedure, shall be :

- (a) elected by those employees,
- (b) appointed by those employees as determined by them, or
- (c) appointed by the central management on a basis agreed with those employees,

and on written notification to the central management of their election or appointment being given shall, unless the contrary is proved, be regarded as having been duly elected or

appointed. [\(SEE ALSO\)](#)

▲ **DIRECTIVE**

SECTION 15

Confidential information

(1) Subject to subsection (2) and section 20, a person who is or at any time was :

- (a) a member of :

- (i) a Special Negotiating Body,
- (ii) a European Employees' Forum, or
- (iii) a European Works Council, or

(b) an employees' representative to an information and consultation procedure,

shall not reveal any information expressly provided in confidence to him or her or to the Body, Forum or Council.

(2) A person may, in accordance with his or her duties as a member, expert or employees' representative to the procedure, disclose such information :

- (a) to the Body, Forum or Council of which he or she is or was then a member,
- (b) to another employees' representative to the procedure, or
- (c) to the member, body or person he or she is or was then employed to advise.

[\(SEE ALSO\)](#)



(3) The central management may withhold from a Special Negotiating Body, European Employees' Forum, European Works Council or in connection with an information and consultation procedure, information that it claims is commercially sensitive :

(a) where it can show that the disclosure would be likely to prejudice significantly and adversely the economic or financial position of an undertaking or group of undertakings or breach statutory or regulatory rules, or

(b) where the information is of a kind that meets objective standards for determining that it should be withheld agreed between the central management and the Special Negotiating Body, European Employees' Forum, European Works Council or the employees' representatives to an information and consultation procedure.



(4) In this section "member" and "employees' representative to an information and consultation procedure" includes a person who at any time, as an expert, assists or assisted such a member or person.

SECTION 16

Operation of information and consultation arrangements and European Works Council

The central management and the employees' representatives, in the framework of an arrangement for the information and consultation of employees (being either a European Employees' Forum or arrangements and an information and consultation procedure) or a European Works European Works Council, shall work in a spirit of co-operation with due regard to their reciprocal rights and obligations.

SECTION 17

Protection of employee's representatives

(1) Employees' representatives who are employees and who perform their functions in accordance with this Act shall not :

(a) be dismissed or suffer any unfavourable change in their conditions of employment or any unfair treatment, including selection for redundancy, or

(b) suffer any other action prejudicial to their employment,

because of their status or reasonable activities as employees' representatives.

(2) Employees' representatives shall be afforded such reasonable facilities, including time off, as will enable them to carry out their functions as employees' representatives promptly and efficiently.

(3) Subsections (1) and (2) shall apply in particular to attendance by employees' representatives at meetings of Special Negotiating Bodies, European Employees' Fora, European Works Councils or any other meetings within the framework of an agreement referred to in section 11 (1) or of the Second Schedule.

(4) Employees' representatives who are employed in a Community-scale undertaking or a Community-scale group of undertakings shall be paid their wages (within the meaning of the Payment of Wages Act, 1991 ⁽⁹³⁾) for any period of absence for the purposes of the

performance of their functions under this Act.

▲ **DIRECTIVE**

SECTION 18

Offences

(1) An undertaking or group of undertakings the central management of which refuses to provide information about the workforce numbers or status of employees for the purposes of section 4 or unreasonably and wilfully obstructs or delays the provision of such information, shall be guilty of an offence. [\(SEE ALSO\)](#)

▲ **DIRECTIVE**

▲ **DIRECTIVE**

(2) An undertaking or group of undertakings the central management of which does not comply with the requirements referred to in section 13 (2) applicable to it shall be guilty of an offence.

(3) A person to whom section 15 (1) applies who, except as permitted by section 15, reveals information expressly provided in confidence to him or her, the Body, Forum or Council of which he or she is a member, or the member or body he or she is employed to advise, shall be guilty of an offence.

(4) Where an offence under this Act which is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who, when the offence was committed, was a director, manager, secretary or other similar officer of the body or a person who was purporting to act in such capacity, that person (as well as the body corporate) shall be guilty of an offence and liable to be proceeded against and punished as if guilty of the offence committed by the body corporate.

SECTION 19

Prosecution and penalties

(1) A person guilty of an offence under section 18 (1) or (2) shall be liable :

(a) on summary conviction, to a fine not exceeding £1,500 or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both the fine and the imprisonment, or

(b) on conviction on indictment, to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding three years or to both the fine and the imprisonment.

(2) If the offence under section 18 (1) or (2) of which a person was convicted is continued after conviction, the person shall be guilty of a further offence on every day on which the act or omission constituting the offence continues, and for each such further offence the person shall be liable on summary conviction to a fine not exceeding £200 or on conviction on indictment to a fine not exceeding £1,000.

(3) A person guilty of an offence under section 18 (3) shall be liable :

(a) on summary conviction, to a fine not exceeding £1,500 or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both the fine and the imprisonment, or

(b) on conviction on indictment, to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding three years or to both the fine and the imprisonment.

(4) Proceedings in relation to a summary offence under section 18 may be brought and prosecuted by the Minister for Enterprise and Employment. [\(SEE ALSO\)](#)

SECTION 20

Arbitration relating to confidentiality and withholding of sensitive information

(1) Disputes between the central management and employees (or their representatives) employed in the State concerning the withholding by the central management of commercially sensitive information or as to whether information disclosed by the central management in confidence to employees' representatives is of a kind that, pursuant to section 15, may not be revealed, may be referred by either the central management or employees' representatives to an independent arbitrator appointed by the Minister under regulations made

for the purposes of this section.

(2) An arbitrator appointed under subsection (1) shall be paid, from moneys made available for that purpose by the Oireachtas, such fees as the Minister, with the consent of the Minister for Finance, may determine.

(3) The parties to an arbitration under this section shall each bear their own costs.

(4) The procedure adopted by the arbitrator shall, as far as practicable, protect the confidentiality of the information concerned.

(5) A party to an arbitration under this section may not appeal to a court against a determination of the arbitrator except on a point of law. [\(SEE ALSO\)](#)

▲ **DIRECTIVE**

SECTION 21

Arbitration relating to disputes concerning interpretation or operation of agreements

(1) Disputes between the central management and employees (or their representatives) concerning the interpretation or operation of an agreement referred to in section 11 (1) may be referred by either the central management or employees' representatives to an independent arbitrator appointed, on such terms as to remuneration or otherwise, as agreed between the parties.

(2) If the parties cannot reach agreement on the appointment or terms of appointment of an arbitrator, either of them may apply to the Labour Court established by section 10 of the Industrial Relations Act, 1946, which shall refer the dispute to the arbitration of one or more persons as it thinks fit.

(3) An arbitrator to whom under subsection (2) a dispute is referred shall be paid such fees as the Minister, with the consent of the Minister for Finance, may determine, which fees shall be paid by the parties or a party to the arbitration as directed by the arbitrator.

(4) An arbitrator to whom under subsection (2) a dispute is referred shall make his or her determination on the basis of the written submissions of the parties, but may conduct a hearing, at which both parties may be present, if he or she thinks the circumstances of the case require it.

(5) Subject to subsection (3), the parties to an arbitration under this section shall bear their own costs.

(6) A party to an arbitration under this section may not appeal to a court against a determination of the arbitrator except on a point of law.

SECTION 22

Application

This Act shall apply without prejudice to :

- (a) the Protection of Employment Act, 1977, as amended,
- (b) the European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) Regulations, 1980 (S.I. No.306 of 1980).

SECTION 23

Arbitration Acts not to apply to arbitration under sections 20 and 21

The Arbitration Acts, 1954 and 1980, shall not apply to or in relation to an arbitration under section 20 or 21.

FIRST SCHEDULE

ELECTION OF EMPLOYEES' REPRESENTATIVES

1. An employee who is employed in the State by the relevant undertaking or group of undertakings (wherever located) on the day or days of the election for employees' representatives, shall be entitled to vote in such an election.
2. An employee who has been employed in the State by the undertaking or group of undertakings in a full-time or regular part-time capacity for a continuous period of not less than one year on the nomination day, or, in relation to a Special Negotiating Body, a trade union official or official of an excepted body, whether or not he or she is an employee, shall be eligible to stand as a candidate for election as an employees' representative provided that he or she is nominated :
 - (a) by a trade union or an excepted body which is already recognised by the business units of the undertaking or group of undertakings located in the State for collective bargaining or information and consultation purposes, or
 - (b) by at least two employees.
3. Where the number of candidates on the nomination day exceeds the number of employees' representatives to be elected to the Special Negotiating Body or a European Works Council, or in connection with an arrangement for the information and consultation of employees, a poll shall be taken by the returning officer and voting in the poll shall take place by secret ballot on a day or days to be decided by the returning officer and according to the principle of proportional representation.
4. The central management in consultation with existing employee representatives shall appoint a returning officer whose duties shall include the organisation and conduct of nominations and elections and that officer may authorise other persons to assist in the performance of the duties of returning officer.
5. The returning officer shall perform his or her duties in a fair and reasonable manner and in the interests of an orderly and proper conduct of nomination and election procedures. [\(SEE ALSO\)](#)

6. The cost of the nomination and election procedure shall be borne by the central management.

SECOND SCHEDULE

SUBSIDIARY REQUIREMENTS: EUROPEAN WORKS COUNCIL

1. (1) The competence of the European Works Council (in this Schedule referred to as "the Council") 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 of its establishments or group undertakings situated in different Member States. This provision shall apply whether the central management is located within the Community or elsewhere.

(2) In the case of undertakings or groups of undertakings referred to in section 9 (2), the competence of the Council shall be limited to those matters concerning all their establishments or group undertakings located within the Member States or concerning at least two of their establishments or group undertakings located in different Member States.

2. (1) The Council shall be composed of employees' representatives who shall be employees of the Community-scale undertaking or Community-scale group of undertakings.

(2) The representatives of employees based in the State shall be elected in accordance with the First Schedule.

(3) In the absence of elections, the representatives shall be appointed. [\(SEE ALSO\)](#)

▲ **DIRECTIVE**

(4) The Council shall have at least three but not more than 30 members but, where it considers that its size so warrants, it shall elect a select committee from among its members comprising not more than three members.

▲ **DIRECTIVE**

▲ **DIRECTIVE**

3. The Council shall adopt its own rules of procedure subject to the following:

(a) the arrangements for the meetings of the Council shall be agreed by the central management in consultation with employees or their representatives but the management may not unreasonably withhold consent to proposals made by employees or their representatives;

(b) the minutes of the Council meetings shall be approved by both management and employees' representatives to the Council;

(c) before any meeting with the central management, the Council or a select committee, where necessary enlarged in accordance with paragraph 5 (5), shall be entitled to meet without the management concerned being present;

(d) without prejudice to sections, the members of the Council shall inform the representatives of the employees employed in the establishments of, or employees of the undertakings of, a Community-scale group of undertakings, or in the absence of such representatives, the workforce as a whole, of the content and outcome of the information and consultation procedures carried out in accordance with this Schedule;

(e) the Council or the select committee may be assisted by such experts of its choice as are necessary for it to carry out its task.

▲ **DIRECTIVE**

▲ **DIRECTIVE**

▲ **DIRECTIVE**

▲ **DIRECTIVE**

4. (1) In the election or appointment of members of the Council, the central management shall, as far as it is able to, ensure :

(a) that, each Member State in which the Community-scale undertaking has one or more establishments or in which the Community-scale group of undertakings has the controlling undertaking or one or more controlled undertakings, is represented by one member, and

(b) that there are additional or supplementary members in proportion to the number of employees employed in the establishments, or by the controlling undertaking or the controlled undertakings, in accordance with the following:

(i) one additional member, from a Member State where between 25 per cent. and 50 per cent of the employees of the undertaking or group of undertakings are employed;

(ii) two additional members from a Member State where more than 50 per cent but not more than 75 per cent of the employees of the undertaking or group of undertakings are employed;

(iii) three additional members from a Member State where more than 75 per cent of the employees of the undertaking or group of undertakings are employed.

▲ **DIRECTIVE**

(2) The central management, or such other level of management as the central management thinks more appropriate, shall be informed, of the composition of the Council as soon as practicable after election or appointment of its members.

5. (1) The Council shall have the right to meet, with the central management once a year to be informed and consulted, on the basis of a report drawn up by the central management on the progress of the business, of the Community-scale undertaking or Community-scale group of

undertakings and its prospects, and local managements shall be informed accordingly.

▲ **DIRECTIVE**

(2) The meeting shall relate in particular to the structure, economic and financial situation and probable trends in employment, investments, and substantial changes, concerning the organisation, introduction of new working methods or production processes, transfer of production, mergers, cutbacks or closures of undertakings, establishments or important parts thereof, and collective redundancies.

▲ **DIRECTIVE**

(3) Where there are "exceptional circumstances" affecting the employees' interests to a considerable extent, particularly in the event of relocation, the closure of establishments or undertakings or collective redundancies, a select committee or, where no such committee exist, the Council, shall have the right to be informed and the right to meet, at its request, the central management or such other level of management as the central management thinks more appropriate and advises the Council, so as to be informed and consulted on measures significantly affecting employees' interests.

(4) For the purposes of subparagraph (3), collective redundancies are those which concern a significant number of employees in relation to the size of the Community-scale undertaking, the establishment, the Community-scale group of undertakings or the undertaking which is a member or part of the Community-scale group of undertakings, in which the collective redundancy is taking place.

(5) Those members of the Council who have been elected or appointed from the establishments or undertakings which are directly concerned with the measures referred to in subparagraph (3) shall also have the right to participate in the meeting organised with the select committee.

(6) The information and consultation meeting referred to in subparagraph (3) shall take place as soon as possible after any request to meet the central management, on the basis of a report prepared by the central management, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

▲ **DIRECTIVE**

(7) The meeting shall not affect the prerogatives of the central management.

6. (1) The operating expenses of the Council, including a select committee where one is established, shall be borne by the central management.

(2) The central management concerned shall provide the members of the Council with such financial and other resources as are necessary to enable them to perform their duties in an appropriate manner.

(3) In particular, the cost of ongoing meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the Council and its select committee shall be 'net by the central management unless otherwise agreed.

(4) The funding of experts by the central management shall be limited to funding the

equivalent of one expert per meeting.

▲ **DIRECTIVE**

7. (1) Four years after the establishment of the Council it shall examine whether to open negotiations for the conclusion of an agreement referred to in section 11 (1) or to continue to apply the requirements adopted in accordance with this Schedule.

Sections 11 and 12, with any necessary modifications, shall apply if a decision has been taken to negotiate an agreement referred to in section 11 (1), in which case "Special Negotiating Body" in those sections shall be read as "European Works Council".

▲ **DIRECTIVE**

⁽⁰¹⁾ " a. a body which carries on negotiations for the fixing of the wages or other conditions of employment of its own (but no other)" employees,

b. (Repealed)

c. a civil service staff association recognised by the Minister for Finance,

d. an organisation of teachers recognised by the Minister for Education,

e. the Agriculture Wages Board,

f. a trade board established under the Trade Board Acts, 1909 and 1918, and

g. a body in respect of which an order under sub-section (6) of this section is for the time being in force" (by order of the Minister).

⁽⁰²⁾ " 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."

⁽⁰³⁾ "'wages', in relation to an employee, means any sums payable to the employee by the employer in connection with his employment, including:

a. any fee, bonus or commission, or any holiday, sick or maternity pay, or any other emolument, referable to his employment or otherwise, and

b. any sum payable to the employee upon the termination by the employer of his contract of employment without his having given to the employee the appropriate prior notice of the termination, being a sum paid in lieu of the giving of such notice: Provided however that the following payments shall not be regarded as wages for the purposes of this definition:

(i) any payment in respect of expenses incurred by the employee in carrying out his employment,

(ii) any payment by the way of a pension, allowance or gratuity in connection with the death, or the retirement or resignation from his employment, of the employee or a compensation for loss of office,

(iii) any payment referable to the employee's redundancy,

(iv) any payment to the employee otherwise than in his capacity as an employee,

(v) any payment in kind or benefit in kind."