

2836. European Works Councils Act (ZESD)

Pursuant to the second indent of the first paragraph of Article 107 and the first paragraph of Article 91 of the Constitution of the Republic of Slovenia, I hereby issue the following:

ORDER
on the promulgation of the European Works Councils Act (ZESD)

I hereby promulgate the European Works Councils Act (ZESD), adopted by the National Assembly of the Republic of Slovenia at its session of 20 June 2002.

No. 011-22-76/02
Ljubljana, 28 June 2002

President of the
Republic of Slovenia
Milan Kučan

EUROPEAN WORKS COUNCILS ACT (ZESD)

I. GENERAL PROVISIONS

Article 1 (Purpose of the Act)

(1) This Act regulates the establishment of European Works Councils comprising employees' representatives, that is, the regulation of information and consultation procedures for employees in undertakings and groups of undertakings established in the member states of the European Union and that operate in at least two European Union member states (hereinafter: undertakings or groups of undertakings located within the European Union).

(2) The purpose of this Act is to improve the right of employees to information and consultation in undertakings and groups of undertakings that are established in European Union member states. To that end, European Works Councils shall be established or an information and consultation procedure for employees shall be introduced by agreement within an undertaking or group of undertakings in the manner stipulated in the Act.

(3) The competences and tasks of European Works Councils or of information and consultation procedures for employees adopted to achieve the objectives of the previous paragraph shall in the case of an undertaking apply to all affiliates located within a particular member state, and in the case of a group of undertakings to all undertakings with head offices in the member states, unless a wider area of validity shall be agreed.

Article 2 (Application of the Act)

(1) This Act shall apply to undertakings located within the European Union with head offices in the Republic of Slovenia and to groups of undertakings located within the European Union for which the controlling undertaking has its head office in the Republic of Slovenia.

(2) If an undertaking or the controlling undertaking of a group of undertakings does not have its head office in a European Union member state then the provisions of this Act shall apply to any affiliate or controlled undertaking in the Republic of Slovenia if the undertaking or the controlling undertaking has authorised that affiliate or dependent undertaking as its representative. If there is no authorised representative, this Act shall apply if the affiliate or undertaking with the greatest number of employees in comparison with other affiliates or undertakings in groups of undertakings in the member states of the European Union is located in the Republic of Slovenia.

(3) The provisions that relate to the calculation of the number of employees (Article 4), the obligation to provide information (Article 5), the controlling undertaking (Article 6), the submission of a request to the central management (third paragraph of Article 7), the shared responsibility of the employer (second paragraph of Article 14 and second paragraph of Article 26), the election of employees' representatives from the Republic of Slovenia, (Articles 9 and 20), informing employees' representatives (Article 30) and the protection of

employees' representatives (Article 35) shall also apply if the central management is located within another European Union member state.

Article 3 (Definitions)

The following terms used in this Act shall have the following definitions:

- "undertaking located within the European Union" shall mean an undertaking that operates within the European Union and employs at least 1,000 employees in European Union member states, of which there are at least 150 employees in at least two European Union member states;
- "group of undertakings" shall mean undertakings that comprise a controlling undertaking and one or more controlled undertakings;
- "group of undertakings located within the European Union" shall mean undertakings that operate within the European Union and employ at least 1,000 employees in at least two European Union member states and including at least two undertakings that have a head office in different European Union member states in which at least 150 employees are employed;
- "controlling undertaking" shall mean an undertaking that has a decisive influence over another controlled undertaking in accordance with Article 6 of this Act;
- "central management" shall mean the management of the undertaking that operates within the European Union or the management of the controlling undertaking within a group of undertakings located within the European Union. The management of an affiliate or undertaking from the second paragraph of Article 2 of this Act shall also be considered as central management;
- "consultation" shall mean the exchange of positions and the establishment of dialogue between employees' representatives and central management or another appropriate level of management;
- "European Works Council" shall mean a council established to inform and consult employees pursuant to the provisions of this Act;
- "Special Negotiating Body" shall mean a body established to negotiate with the central management regarding the establishment of a European Works Council or the regulation of an information and consultation procedures for employees pursuant to the provisions of this Act.

Article 4 (Calculation of the Number of Employees)

The number of employees in undertakings and affiliates in the Republic of Slovenia shall be calculated on the basis of the average number of employees over the previous two years of operation.

Article 5 (Obligation to Provide Information)

The central management must, when so requested, provide employees' representatives with information on the total number of employees and their distribution among the European

Union member states, undertakings and their affiliates, as well as on the structure of the undertakings or groups of undertakings.

Article 6
(Controlling Undertaking)

(1) An undertaking within a group of undertakings located within the European Union shall be considered the controlling undertaking if it directly or indirectly controls the other undertakings in the group of undertakings (controlled undertakings).

(2) An undertaking shall be considered as directly or indirectly controlling another undertaking if it:

- can appoint more than half of the members of the administrative, management or supervisory bodies of the controlled undertakings; or
- controls a majority of votes deriving from the controlled undertakings' issued share capital; or
- holds a majority of the listed share capital of the controlled undertakings.

(3) If more than one undertaking satisfies the criteria set out from the first to third indent of the previous paragraph, the controlling undertaking shall be determined by applying the criteria in the order in which they are set out.

(4) In defining the controlling undertaking through the application of the criteria set out in the second paragraph of this article, a controlling undertaking's voting and appointment rights shall include the rights of all its controlled undertakings and all natural and legal persons that act on its behalf, whether on behalf of the controlling undertaking or its controlled undertakings.

II. SPECIAL NEGOTIATING BODY

Article 7
(Tasks)

(1) A Special Negotiating Body shall be established to negotiate an agreement on informing and consulting employees with the central management of an undertaking. It shall be established on the basis of a written request made to the central management by the employees or their representatives or on the initiative of the central management.

(2) A request shall be deemed to have been properly submitted if it has been signed by at least 100 employees or their representatives from at least two affiliates or undertakings in different member states and has been received by the central management. If more than one request has been submitted the signatures shall be added together.

(3) If a request is submitted to the management of an affiliate or an undertaking in the Republic of Slovenia, the request shall be immediately sent to the central management and the submitter of the request shall be informed thereof.

(4) The central management must within a reasonable time provide the Special Negotiating Body with the information and documentation that it requires to perform its tasks.

(5) Cooperation between the central management and the Special Negotiating Body shall be founded on mutual trust.

(6) The central management and the Special Negotiating Body shall determine by agreement the time, frequency and venue of negotiations.

Article 8

(Composition of a Special Negotiating Body)

(1) Each European Union member state in which the undertaking or affiliate or group of undertakings operates shall have one employees' representative on the Special Negotiating Body. The Special Negotiating Body shall have a minimum of three and a maximum of 17 members.

(2) Each European Union member state with at least 25 per cent of the employees within the undertaking or affiliate or group of undertakings shall have an additional representative. Two additional representatives shall be given to member states with at least 50 per cent of the employees and three additional representatives for member states with at least 75 per cent of the employees.

Article 9

(Election of Representatives of a Special Negotiating Body from the Republic of Slovenia)

(1) An assembly of employees shall elect employees' representatives from the Republic of Slovenia to the Special Negotiating Body by secret ballot.

(2) Employees' councils, representative trade unions within the undertaking or affiliate and groups of at least 50 employees within the undertaking or affiliate shall have the right to propose candidates for membership of the Special Negotiating Body.

Article 10

(Notification of the Members of a Special Negotiating Body)

A Special Negotiating Body must immediately inform the central management of the names of its members, their addresses and data stating from which undertaking or affiliate they come. The central management shall send this information to the management and employees' councils in affiliates or undertakings and to representative trade unions that are represented within affiliates and undertakings in the Republic of Slovenia.

Article 11
(Sessions, Rules of Procedure, Experts)

- (1) Immediately after the election of the members the central management shall convene the founding session of the Special Negotiating Body and inform the management of the affiliates and undertakings thereof. The Special Negotiating Body shall elect a chair from among its members and shall adopt a Rules of Procedure.
- (2) The Special Negotiating Body shall have the right to meet before negotiating with central management and to invite selected persons to the meeting. The sixth paragraph of Article 7 of this Act shall be applied *mutis mutandis* thereto.
- (3) The Special Negotiating Body shall adopt decisions by a majority of the votes of its members, unless otherwise determined by this Act.
- (4) The Special Negotiating Body may request the assistance of experts that it shall select itself if this is necessary for the proper performance of its tasks.

Article 12
(Including Employees' Representatives from States that are not European Union Member States)

If the central management and the Special Negotiating Body agree that the agreement to be concluded pursuant to Article 15 of this Act shall also apply to affiliates or undertakings in states that are not European Union member states, they may agree that representatives from these states be included in the Special Negotiating Body and they shall determine their number and define their legal status.

Article 13
(Decision to Terminate Negotiations)

- (1) A Special Negotiating Body may decide, by at least a two-thirds majority of the votes of its members, not to start negotiations or to terminate them. That decision shall halt the procedure of agreement on informing and consulting employees. A report of the decision and the result of the vote must be compiled and signed by the chair. A copy of the report shall be sent to the central management.
- (2) A new request to form a Special Negotiating Body may be submitted two years after the date of the adoption of the decision from the previous paragraph unless the Special Negotiating Body and central management agree on a shorter period in writing.

Article 14
(Expenses)

- (1) Expenses for establishing and operating a Special Negotiating Body shall be met by the central management. If the experts referred to in the fourth paragraph of Article 11 of this Act are included in the Special Negotiating Body, the central management shall meet the expenses

of one expert only. The central management must provide the venue, material resources, translators and administrative persons required by the meetings and meet the travelling and accommodation expenses (food and lodging) incurred by the members of the Special Negotiating Body.

(2) The employer, jointly with the central management, shall guarantee the right to reimbursement of expenses of members of a Special Negotiating Body from the Republic of Slovenia.

III. AGREEMENT ON THE ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL

Article 15 (Freedom of Organisation)

The central management and the Special Negotiating Body may decide how they shall organise the informing and consulting of employees and in doing so they shall not be bound by the provisions of Chapter IV of this Act. The agreement must apply to all employees in European Union member states in which the undertaking or affiliate or group of undertakings operate. The parties shall agree whether to establish a European Works Council to inform and consult employees pursuant to Article 16 of this Act or to introduce a information and consultation procedures for employees pursuant to Article 17 of this Act.

Article 16 (Agreement on the Establishment and Competences of a European Works Council)

(1) A European Works Council shall be established by written agreement that shall specifically determine:

- which affiliates and undertakings the agreement covers, including the affiliates or undertakings outside the territory of the member states when they are also included;
- the composition of the European Works Council, the number of members, the allocation of membership and the term of office;
- the competences and tasks of the European Works Council and the information and consultation procedure;
- the venue, frequency and duration of sessions;
- the financial and material resources required by the European Works Council;
- a clause on adapting the agreement to structural changes, on the duration of the agreement, and the procedure for new negotiations to conclude an agreement and interim provisions.

(2) Unless otherwise agreed, Article 20 of this Act shall apply to determining members of European Works Councils from the Republic of Slovenia.

Article 17
(Agreement on an Information and Consultation Procedure)

To regulate an information and consultation procedure for employees, a written agreement shall be concluded that stipulates under which conditions employees' representatives shall have the right to be consulted on information received and the procedure for considering their proposals or problems together with the central management or another appropriate level of management. This information largely concerns matters that significantly affect the interests of employees in all undertakings to which the agreement applies.

**IV. ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL ACCORDING TO
THIS ACT**

1. Establishment of a European Works Council

Article 18
(Conditions)

(1) A European Works Council shall be established pursuant to Articles 19 and 20 of this Act, if:

- the central management refuse to start negotiations within six months from the day the request is submitted (Article 7);
- within three years from the day the request is submitted, an agreement as laid down in Articles 16 or 17 of this Act has not been concluded; or
- the central management and the Special Negotiating Body announce the failure of negotiations.

(2) It shall not be necessary to establish a European Works Council if the Special Negotiating Body has adopted a decision on the termination of negotiations from the first paragraph of Article 13 of this Act before the expiry of the period from the second indent of the previous paragraph.

Article 19
(Composition of a European Works Council)

(1) A European Works Council shall be composed of employees from undertakings and groups of undertakings that operate within the European Union.

(2) Each European Union member state in which the undertaking or affiliate or group of undertakings operates shall have one employees' representative on the European Works Council. The European Works Council shall have a minimum of three and a maximum of 30 members. The members may appoint deputies.

(3) Each member state with at least:

- a) 20 per cent of the employees shall have one additional representative;
- b) 30 per cent of the employees shall have two additional representatives;
- c) 40 per cent of the employees shall have three additional representatives;
- d) 50 per cent of the employees shall have four additional representatives;

- e) 60 per cent of the employees shall have five additional representatives;
- f) 70 per cent of the employees shall have six additional representatives;
- g) 80 per cent of the employees shall have seven additional representatives.

Article 20

(Election of Members of a European Works Council from the Republic of Slovenia)

(1) An assembly of employees shall elect members of a European Works Council from the Republic of Slovenia by secret ballot.

(2) Employees' councils, representative trade unions within the undertaking or affiliate and groups of at least 50 employees within the undertaking or affiliate shall have the right to propose candidates for membership of a European Works Council.

Article 21

(Notification of the Members of a European Works Council)

A European Works Council must inform the central management of the names of its members, their addresses and data stating from which undertaking or affiliate they come. The central management shall send this information to the management and employees' councils in affiliates or undertakings and to representative trade unions that are represented within the affiliates or undertakings in the Republic of Slovenia.

2. Operation of a European Works Council

Article 22

(Founding Session)

After the election of the members of a European Works Council the central management shall convene a founding session of the European Works Council. The European Works Council shall elect a chair and vice-chair from among its members.

Article 23

(Chair)

(1) The chair shall represent the European Works Council.

(2) The vice-chair shall represent the European Works Council in the chair's absence.

Article 24

(Committee)

(1) If a European Works Council has nine or more members, then a three-person committee shall be formed comprising the chair and two other members. Members of the committee

should be employees from different European Union member states. The committee shall run the ongoing operations of the European Works Council.

(2) A European Works Council with fewer than nine members may transfer the running of ongoing operations to the chair or another member of the European Works Council.

Article 25

(Decisions, Rules of Procedure, Experts)

(1) A European Works Council shall adopt decisions by a majority of the votes of members present unless otherwise determined by this Act.

(2) A European Works Council's methods of operation shall be regulated by the Rules of Procedure.

(3) The Rules of Procedure may envisage assistance in the work of a European Works Council and its committee being provided by experts selected by the European Works Council or its committee, if that is required for the proper performance of its tasks.

Article 26

(Expenses)

(1) The expenses incurred establishing and operating a European Works Council and its committee shall be met by the central management. If the experts referred to in the previous article are included, the central management shall meet the expenses of one expert only. The central management must provide a venue, material resources, and administrative persons required by meetings and the performance of ongoing work and in addition provide translators for the meetings. It must meet the travelling and accommodation expenses (food and lodgings) incurred by the members of the European Works Council and its committee.

(2) The employer, jointly with the central management, shall guarantee the right to reimbursement of expenses of members of the European Works Council from the Republic of Slovenia.

3. Competences and Tasks of a European Works Council

Article 27

(Sessions)

A European Works Council or its committee has the right to meet once a year with the central management for the purpose of being informed and consulted on matters set out in Article 28 and 29 of this Act that concern at least two affiliates or two undertakings in different European Union member states. The time and venue of the session should be arranged with the central management. The European Works Council may also convene for further sessions if the central management so agrees. European Works Council sessions shall not be public.

Article 28
(Annual Informing and Consulting)

(1) The central management shall at least once per calendar year inform and consult the European Works Council with regard to the business success and the prospects of the undertaking or group of undertakings that operates within the European Union and shall within a reasonable time provide it with the documentation it requests.

(2) The business success and prospects from the previous paragraph shall cover in particular:

- the structural, economic and financial situation of the undertaking or group of undertakings;
- the expected business development, production and sales;
- the state and anticipated development of employment;
- the investment programme;
- substantial organisational changes;
- introduction of new working methods or production processes;
- changes in the location of the undertaking, affiliate or important parts thereof and the transfer of production to another location;
- the merger or division of undertakings or affiliates;
- reduction in size or closure of undertakings or affiliates, or important parts thereof;
- collective dismissals of employees.

Article 29
(Informing and Consulting in Exceptional Circumstances)

(1) In exceptional circumstances that seriously affect the interests of employees, the central management must inform the European Works Council within a reasonable time, provide any necessary material and consult it on request.

(2) Exceptional circumstances shall be:

- changes in the location of the undertaking or affiliates, or important parts thereof;
- closure of the undertaking or affiliates, or important parts thereof;
- collective dismissals of employees.

(3) If a European Works Council committee has been formed, that committee shall be informed instead of the European Works Council with regard to the first paragraph of this article. Article 27 of this Act shall apply *mutis mutandis* thereto. Members of the European Works Council from those undertakings or affiliates directly affected by the circumstances in question shall be invited to the committee session and shall in that case participate as members of the committee.

Article 30
(Informing Employees' Representatives)

Following its sessions, a European Works Council or its committee shall report to employees' representatives (to employees' councils or representative trade unions) on the information and

consultation procedure or, if such representatives do not exist, to all employees in undertakings or affiliates.

4. Changes in Composition, Transfer to an Agreement

Article 31

(Term in Office and Determining New Members)

(1) The term in office for members of a European Works Council shall be four years if not terminated earlier by removal or other reasons. The term in office shall start on election or appointment.

(2) Every two years calculated from the date of the founding session of the European Works Council the central management shall check whether the number of employees in individual member states has changed to an extent sufficient to alter the calculation of the composition of the European Works Council from the second and third paragraphs of Article 19 of this Act. It must inform the European Works Council of the results. If the results require the composition of the European Works Council to be altered, the European Works Council shall require that the competent bodies again determine the members of the European Works Council for those member states that require a different number of employees' representatives in comparison with the preceding period. This shall terminate the membership of those employees' representatives that have until that time represented those member states on the European Works Council.

(3) The previous paragraph shall be applied *mutis mutandis* to member states that have not previously been represented on the European Works Council.

Article 32

(Start of Negotiations)

A European Works Council established on the basis of this Act must at least six months before the end of its term in office adopt a decision by a majority of votes on whether it shall start negotiations for an agreement with the central management pursuant to Article 15 of this Act. The provisions of Articles 7, 11 and 12, the first paragraph of Article 13 and Articles 14, 15, 16 and 17 of this Act shall apply *mutis mutandis* thereto. If an agreement is concluded on the informing and consulting of employees pursuant to Article 15 of this Act, the term of the European Works Council shall terminate on its conclusion.

V. PRINCIPLES OF COOPERATION AND PROVISIONS FOR PROTECTION

Article 33

(Cooperation on the Basis of Mutual Trust)

The central management and the European Works Council shall cooperate on the basis of mutual trust to the benefit of the employees and undertaking or group of undertakings. The same shall apply to cooperation between the central management and the employees' representatives within the framework of the information and consultation procedure.

Article 34
(Respect for Confidentiality)

(1) The central management shall be obliged to provide information on matters agreed pursuant to Articles 16 and 17 or matters from Article 28 and from the first and second paragraphs of Article 29 of this Act.

(2) Members of the European Works Council shall be obliged to respect the confidentiality of all business information that they are provided with as members of a European Works Council that the central management expressly designates as confidential and it shall not be permitted to publish or make use thereof. This provision shall also apply to former members of a European Works Council.

(3) The previous paragraph shall not apply to contacts with other members of the European Works Council and to contacts with employees' representatives in affiliates or undertakings, if these persons must be informed of the content of information and the results of consultations pursuant to the agreements from Articles 16 and 30 of this Act, to contacts with employees' representatives on the supervisory committee, or with translators or experts that assist a European Works Council.

(4) The obligation to respect confidentiality set out in the previous paragraph shall apply to:

- members of a Special Negotiating Body;
- employees' representatives in the framework of the informing and consulting procedure (Article 17);
- experts and translators;
- employees' representatives in affiliates and undertakings in the Republic of Slovenia.

(5) Exceptions to the obligation to respect confidentiality from the third paragraph of this article shall apply *mutis mutandis* to:

- a Special Negotiating Body with regard to experts and translators;
- employees' representatives in the framework of the informing and consulting procedure with regard to experts and translators that assist them in the framework of the agreement, and in contacts with employees' representatives in affiliates and undertakings in the Republic of Slovenia, if these persons must be informed of the content of information on the results of consultations pursuant to agreement (Article 17).

Article 35
(Protection of Employees' Representatives in the Republic of Slovenia)

(1) With regard to protection, Article 67 of the Employees' Participation in Management Act (*Uradni list RS*, 42/93 and 56/2001) and Article 113 of the Employment Act (*Uradni list RS*, 42/2002) shall apply *mutis mutandis* to members of a European Works Council that are employed in the Republic of Slovenia.

(2) Pursuant to the previous paragraph protection shall also be provided for the deputies of members of a European Works Council, members of a Special Negotiating Body and employees' representatives in the framework of the informing and consulting procedure.

VI. SETTLEMENT OF DISPUTES

Article 36 (Disputes)

Any disputes that arise in relation to the implementation of the provisions of this Act shall fall under the jurisdiction of a labour court.

VII. PENAL PROVISIONS

Article 37

(1) A monetary fine of at least 1,000,000 toolars shall be imposed on a legal person for a violation if:

1. in breach of Article 5 of this Act the central management does not provide information, provides false or incomplete information or does not provide information within a reasonable time;
2. in breach of the first paragraph of Article 28 and the first paragraph of Article 29 of this Act the central management does not annually and in exceptional circumstances inform and consult, or if it provides false or incomplete information or does not provide information within a reasonable time.

(2) A monetary fine of at least 80,000 toolars shall be imposed on the responsible person of a legal person that commits a violation from the previous paragraph.

VIII. FINAL PROVISIONS

Article 38 (Entry into Force)

This Act shall enter into force fifteen days after its publication in the Official Gazette of the Republic of Slovenia; it shall apply from the day of accession of the Republic of Slovenia to the European Union.

No. 300-01/02-33/1
Ljubljana, 20 June 2002

President
of the National Assembly
of the Republic of Slovenia
Borut Pahor