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### The European works councils act (in English)

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Understanding Society

## The European Works Councils Act (in English)

*JAN CREMERS (TLS)  
JANUARY 2018*

*The Dutch European Works Councils Act (WEOR) of 7 November 2011 after the transposition of Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 recasting Council Directive 94/45/EC (including amendments over the period 1997-2017).*

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**ACT OF 23 JANUARY 1997**  
**for the implementation of 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**  
**(European Works Councils Act)<sup>1</sup>**

We Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc. etc.  
etc.

Greetings to all who shall see or hear these presents! Be it known:

Whereas we have considered it necessary to implement 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;

We, therefore, having heard the Council of State and in consultation with the States-General [Parliament], have approved and decreed as we hereby approve and decree:

## **CHAPTER 1 GENERAL PROVISIONS**

### **Article 1**

1. In this Act:

- a. "Involved State" means a Member State of the European Union or another State, which is party to the Agreement on the European Economic Area;
- b. "Directive" means Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 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 (OJ L 122/2009);
- c. "Community-scale undertaking" means an undertaking, which for two years has had an average of at least 150 employees in at least two Involved States and an average of at least 1,000 employees in the Involved States taken together, unless it belongs to a Community-scale group;
- d. "Community-scale group" means a combination of undertakings consisting of a controlling undertaking as referred to in Article 2 and the undertaking or undertakings over which it exercises control, in which:
  - 1°. at least two undertakings are situated in different Involved States, and
  - 2°. for two years at least one undertaking has had an average of at least 150 employees in one Involved State and another undertaking has had an average of at least 150 employees in another Involved State, and

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<sup>1</sup> The WEOR was modified over a period of 20 years, as a result of European and/or national changes in legislation. This version, compiled by the author, includes all modifications in the period 1997-2017 as published in the Dutch *Staatsblad* (the Bulletin of Acts and Decrees). The original first text of the WEOR was published on 4 February 1997. The revision, following the recast, was published in the *Staatsblad* of 14 November 2011.

3°. all the undertakings taken together have for two years had an average of at least 1,000 employees in the Involved States;

e. "Cross-border matters" means matters of importance to the entire Community-scale undertaking or the entire Community-scale group of undertakings, or at least two undertakings or establishments of a Community-scale undertaking or Community-scale group of undertakings in two different involved States;

f. "Central management" means, in the case of a Community-scale undertaking, the management of such an undertaking, and in the case of a Community-scale group, the management of the controlling undertaking as referred to in Article 2;

g. "Provision of information" means the transmission of information concerning cross-border issues by the central management or any more appropriate level of management to employees' representatives at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the impact and, where appropriate, to prepare for consultations with the central management or any more appropriate level of management;

h. "Consultation" means the establishment of dialogue and exchange of views between the central management or any more appropriate level of management and employees' representatives at such time, in such fashion and with such content enabling employees' representatives to express an opinion on the basis of the information provided about proposed measures concerning cross-border issues to which the consultation relates within a reasonable time, which may be taken into account when a decision is taken.

2. Where the domicile or headquarters of a Community-scale undertaking is not situated in an involved State, the central management shall be deemed to be:
  - a. a person appointed by the Community-scale undertaking and actually in charge of managing one of its establishments in an involved State, or failing that:
  - b. the person or persons actually in charge of the establishment employing the greatest number of employees in any one Involved State.
3. Where the domicile or headquarters of the controlling undertaking as referred to in Article 2 is not situated in an Involved State, the controlling undertaking may designate as its representative the management of a group undertaking having its domicile or headquarters in an Involved State. Failing such a designation, the management of the group undertaking which has its domicile or headquarters in an Involved State and which employs the greatest number of employees in any one Involved State will be deemed to be such.
4. Action or failure to take action by the central management as referred to in article 1, sub 1.e, respectively sub 3 shall be the responsibility of the natural or legal person maintaining the Community-scale undertaking or controlling undertaking or the group undertaking as referred to in article 3.

## **ARTICLE 2**

1. In this Act, "controlling undertaking" means the undertaking within a Community-scale group, which can directly or indirectly exercise a dominant influence over another undertaking and over which no other undertaking exercises a dominant influence directly or indirectly. Unless otherwise shown to be the case, an undertaking shall be presumed to be the controlling undertaking if it:
  - a. can appoint more than half of the members of the other undertaking's administrative, management or supervisory body, or

- b. can exercise over half of the voting rights at the general meeting of that other undertaking, or
  - c. holds over 50 % of another undertaking's subscribed capital.
- 2. For the purposes of Article 2, sub 1.a controlling undertaking's rights as regards capital, voting and appointment shall include:
  - a. the corresponding rights of other undertakings over which it exercises a dominant influence;
  - b. the corresponding rights of any person or body acting in his or its own name but for account of the controlling undertaking or of one or more of its group undertakings.
- 3. For the purposes of subsection 1, the rights concerning capital and voting shall not be attributed to an undertaking which holds them for account of others.
- 4. For the purposes of subsection 1, voting rights attached to pledged shares shall be attributed to the creditor if he is authorised to decide how these rights are to be exercised. However, if the shares have been pledged as collateral for a loan, which the creditor has provided in the usual course of his business, the voting rights shall only be attributed to him if he has exercised them on his own behalf.
- 5. No undertaking as referred to in article 3(5) at (a) or (c) of Council Regulation (EEC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings<sup>2</sup> (OJ L 24/2004) shall be deemed to be a controlling undertaking.
- 6. The law applicable to an undertaking shall determine whether that undertaking is a controlling undertaking as referred to in subsection 1. If such law is not the law of an Involved State, this matter shall be determined by the law applying to the group undertaking whose management represents the controlling undertaking pursuant to subsection 1(3).
- 7. If several undertakings within a group meet with one or more of the criteria laid down in subsection 1:
  - a. the undertaking which satisfies the criterion laid down in subsection 1, point a shall be deemed to be the controlling undertaking, with the right of appointment regarding the management body taking priority;
  - b. where point a. does not lead to an undertaking being deemed to be the controlling undertaking, the criterion laid down in subsection 1, point b shall take priority over that set out in subsection 1, point c;
 without prejudice to proof that another undertaking is able to exercise a dominant influence.

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<sup>2</sup> "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."

### **ARTICLE 3**

1. In this Act the term "employees" means, insofar as persons working in the Netherlands are concerned, persons working under an employment contract in the Community-scale undertaking or the Community-scale group and, where it applies to persons working in other Involved States, the persons defined as such under the law of the relevant Involved State.
2. For the purposes of Article 4 eighth to tenth subsections, Article 7, Article 8 second subsection and Article 11, third subsection (e), sixth subsection and eighth subsection, "employees' representatives" means those persons defined as such under the law of the Involved State in which the employees are working; in the case of the Netherlands it means works councils.

### **ARTICLE 4**

1. Subsections 2 to 7 shall apply to employees working in the Netherlands who are members of a special negotiating body or of a European Works Council or act as representatives under alternative arrangements for informing and consulting employees.
2. Such employees shall retain their entitlement to payment for the period of absence from work necessary to attend a meeting of the special negotiating body or the European Works Council or under the alternative information and consultation arrangements.
3. Insofar as is reasonably necessary for the exercise of their duties they shall be afforded the possibility - during working hours and without loss of pay - of taking part in mutual consultations and deliberations with other persons on matters concerning the performance of their duties, and of undergoing education and training. They shall be provided with such facilities, which they reasonable need for the performance of their duties.
4. They must maintain confidentiality on all business and company secrets which come to their knowledge in their capacity as representatives as well as on all matters designated confidential or whose confidential nature they ought to appreciate in the light of the confidentiality requirement imposed. This also applies to persons who are not employees but perform a function as referred to in subsection 1.
5. The duty of confidentiality shall not apply to anyone brought in for consultation or as an expert as referred to in Articles 12 and 20, provided that the central management or the person who has imposed the confidentiality requirement has given due approval beforehand and the person involved has declared in writing that he undertakes to observe confidentiality on the matter concerned. In such cases the duty of confidentiality shall apply to the person in question.
6. The duty of confidentiality shall not cease upon the termination of a person's function as referred to in subsection 1 or the termination of a person's employment at the undertaking.
7. The employer shall ensure that persons standing, or who have stood, as candidates for a function as referred to in subsection 1, as well as those exercising or having exercised such a function, shall not suffer any disadvantage in their position within the undertaking for that reason.
8. Notwithstanding any of their obligations of confidentiality, employees who are members of a European Works Council or act as representatives under any other procedure for informing and consulting employees shall inform the employee representatives within the Community-scale undertaking or group of undertakings or, if these do not exist, all the employees about

the content and results of the information and consultation procedure carried out under this Act.

9. Any employee or employee representative working in the Netherlands may require the employer to provide information which is required to open negotiations as referred to in Article 8 first subsection. This information shall in any case include an overview of the number of employees working in the Community-scale undertaking or group of undertakings, and the distribution of these employees between the various involved States.
10. The employer of an employee who is working in the Netherlands and who is appointed or elected as a member of a special negotiating body or of a European Works Council shall report such appointment or election to the central management.

## **ARTICLE 5**

1. Any interested person may request the Enterprise Chamber of the Amsterdam Court of Appeal to order implementation of the provisions of this Act, with the exception of Article 4, in so far as the second subsection does not determine otherwise, or of an agreement as referred to in Article 11 or 24. A special negotiating body or the members thereof and a European Works Council established under this Act may not be ordered to pay the costs of such proceedings. Articles 429a to 429t of the Code of Civil Procedure shall apply.
2. The special negotiating body or its members and the European Works Council may request the Enterprise Chamber of the Amsterdam Court to:
  - a. remove the prescribed confidentiality, based on article 4, subsections 4 and 5, article 11, subsection 7 or article 19, subsection 6, on the ground that the person who has prescribed the confidentiality, should not have decided to the prescription of confidentiality, in all fairness, in the weighing up of all involved interests;
  - b. oblige the person who refused to provide such information, based on article 11, subsection 7, or article 19, subsection 6, to provide this information on the ground that the person should not have decided, in all fairness, in the weighing up of all involved interests, to refuse the information.

**CHAPTER 2 INFORMING AND CONSULTING EMPLOYEES IN DUTCH  
COMMUNITY-SCALE UNDERTAKINGS AND GROUPS**

**PARAGRAPH 1. GENERAL PROVISIONS**

**ARTICLE 6**

1. This chapter shall apply to Community-scale undertakings and controlling undertakings with their domicile or headquarters in the Netherlands.
2. Where the domicile or headquarters of a Community-scale undertaking or controlling undertaking is not situated in an involved State, this chapter shall apply if the domicile or headquarters of the establishment or group undertaking as referred to in Article 1(2) and (3) is situated in the Netherlands.

**ARTICLE 7**

1. A Community-scale undertaking or the controlling undertaking shall provide employees or their representatives with information which is required to open negotiations as referred to in Article 8 first subsection. This information shall in any case include an overview of the number of employees working in the Community-scale undertaking or group of undertakings, and the distribution of these employees between the various involved States.
2. Where the information as referred to the first subsection changes significantly after the establishment of the special negotiating body, a Community-scale undertaking or the controlling undertaking shall, as quickly as possible after such change, provide an revised overview to the special negotiating body and, where appropriate, to the employees or the representatives of employees of a Community-scale undertaking or group of undertakings from an involved State who are not yet represented in the special negotiating body.

**PARAGRAPH 2. AGREEMENTS ON THE PROVISIONS OF INFORMATION AND  
CONSULTATION**

**ARTICLE 8**

1. The central management may set up a special negotiating body for the purpose of entering into negotiations with it concerning an agreement on establishing a European Works Council, whether or not in accordance with paragraph 3, or on making other arrangements for providing information to and consulting employees or their representatives on transnational matters.
2. The central management shall be obliged to set up a special negotiating body as referred to in subsection 1 if a written request to this end has been received from at least 100 employees or their representatives in at least two undertakings or establishments in at least two different involved States. If such a request is received by an establishment or undertaking belonging to a Community-scale undertaking or group, the central management shall ensure that the request is transmitted to it without delay and that the persons who made the request are informed of this.
3. Where the special negotiating body has taken a decision as referred to in Article 11(2), the obligation referred to in subsection 2 above shall not apply during the two years following the



taking of such a decision, unless the central management and the special negotiating body have agreed otherwise.

#### **ARTICLE 9**

1. The number of employee representatives from the Community-scale undertaking or group of undertakings sitting in the special negotiating body shall be such as to ensure that for each involved State one member shall be appointed for each portion of employees employed in that State amounting to 10%, or a fraction thereof, of the total number of employees working in the Community-scale undertaking or group of undertakings in all the involved States taken together.
2. Each member shall be elected or appointed pursuant to the law of the Involved State in which he works.
3. The number of members of the special negotiating body and the allocation of seats shall be in accordance with the provisions of the first subsection. Where the number of members from a involved State changes without any new election or appointment taking place with respect to these seats, the sitting members representing that State shall, for the purposes of Article 13, together have as many votes as correspond to the number of members determined for the involved State in accordance with the first subsection, and shall together represent the employees of the Community-scale undertaking or group of undertakings in the involved State in ratios to be determined by them or, if no agreement can be reached, in proportion to the number of workers whom they represented before such change occurred.

#### **ARTICLE 10**

1. With regard to Dutch establishments and undertakings, the members of the special negotiating body shall be appointed, or their appointment terminated, by the works councils set up at such establishments or undertakings.
2. If, in respect of works councils as referred to in subsection 1, one or more central works councils have been established, the said appointment or termination shall be effected by the latter council or councils.
3. If no central works council has been set up, but there are one or more group works councils, the said appointment or termination shall be effected by the latter council or councils.
4. If not all works councils or group works councils are represented in a central works council or group works council, the said appointment or termination shall be effected jointly by the central or group works council or councils and the non-represented works councils.
5. If no works council has been set up, the members of the special negotiating body shall be elected by the entire body of employees working in the Netherlands for the Community-scale undertaking or group. The election shall be by secret written ballot, each employee having one vote. An association of employees having aforementioned employees as its members, with a constitution defining its aim as promoting the interests of its members as employees, active in this manner within the undertaking or group involved and also enjoying full legal capacity, may present a list of candidates for the aforementioned election, provided that it has consulted its members within the undertaking or group on the composition of the list of candidates.
6. For the purposes of subsections 1 to 4, employees of Dutch establishments or undertakings who are not represented in a works council, group works council or central works council will

be given the opportunity to express an opinion about the persons to be appointed as members of the special negotiating body.

#### **ARTICLE 11**

1. After the special negotiating body has been set up, the central management shall convene a meeting with it in order to negotiate an agreement as referred to in Article 8(1). It shall give the negotiating body the opportunity to meet before and after this meeting.
2. As long as no agreement as referred to in Article 8(1) has been concluded, the special negotiating body may decide not to enter into negotiations or to terminate negotiations already in progress.
3. If the central management and the special negotiating body agree to set up a European Works Council, agreement shall also be reached on the Council's rules of procedure. Unless otherwise agreed by the central management and the special negotiating body, the rules of procedure shall at least regulate the following:
  - a) the establishments or undertakings of the Community-scale undertaking or group for which the European Works Council is being set up;
  - b) the size and composition of the Council, with as balanced a representation of workers as possible, and the period of appointment of its members;
  - c) the Council's scope and competence;
  - d) the arrangements for informing and consulting the Council;
  - e) how the information and consultation of the Council and the information and consultation of employee representatives, as referred to in Article 3 second subsection, are linked together, taking into account their responsibilities;
  - f) the frequency, duration and venue of Council meetings;
  - g) the financial and material resources to be placed at the Council's disposal;
  - h) if a select committee is set up within the Council: its composition, appointment procedure, terms of reference and rules of procedure.
4. If the central management and the special negotiating body agree on a different information and consultation procedure for employees or their representatives not involving the establishment of a European Works Council, the corresponding arrangements shall also be laid down in an agreement. This must include at least the following:
  - a) the establishments or undertakings of the Community-scale undertaking or group to which the procedure applies;
  - b) the way in which the employees or their representatives are to be informed and consulted on transnational questions which significantly affect employees' interests;
  - c) the manner in which employees or their representatives may meet to discuss the questions referred to in point b);
  - d) the financial and material resources made available to implement the procedure.

5. The central management and the special negotiating body may agree to set up separate European Works Councils for different parts of the Community-scale undertaking or group, or to apply separate procedures. They may also agree to set up one or more European Works Councils for one or more parts of the Community-scale undertaking or group and introduce one or more procedures for other parts.
6. The agreement between the central management and the special negotiating body shall contain provisions on the date of entry into force, the duration of the agreement, how the agreement may be amended or terminated, when and how to negotiate a new agreement and for adapting the agreement to changes in the structure or size of the Community-scale undertaking or group and in the numbers of employees working in the Involved States. If such provisions do not specify that employees (or their representatives) of undertakings or establishments joining the Community-scale undertaking or group after the conclusion of the agreement shall be involved within two years in the replacement or amendment thereof, or shall be represented in the European Works Council or the alternative information and consultation procedure within two years, the central management shall be obliged to set up a new special negotiating body if at least 100 such employees or their representatives so request.
7. The central management shall not be obliged to provide information which would plausibly cause serious harm to or be prejudicial to the functioning of the Community-scale undertaking or group. With respect to the provision of information, the central management may impose a requirement of confidentiality if there are reasonable grounds to do so; a statement shall be issued as early as possible prior to the matter in question being dealt with, indicating the grounds for imposing the requirement, what written or oral information is covered, for how long it applies and whether there are any persons with regard to whom such confidentiality doesn't need to be maintained.
8. If the agreement contains no provisions as mentioned in the third subsection (e), and decisions are considered which are likely to entail significant changes in work organisation or contractual relations, the information and consultation of the Council and the information and consultation of employee representatives, as referred to in Article 3 second subsection, shall as far as possible, begin at the same time.
9. The central management shall ensure compliance with the rights and obligations set out in the agreement.

## **ARTICLE 12**

1. The special negotiating body may be assisted in the negotiations by one or more experts of their choice, including representatives of authorised and recognised employee organisations at Community level, as provided for in Article 154 of the Treaty on the Functioning of the European Union. These experts may, at the request of the special negotiating body, attend the meetings referred to in Article 11 first subsection in an advisory capacity.
2. The expenses reasonably necessary for the special negotiating body to exercise its function shall be borne by the Community-scale undertaking or the controlling undertaking. This shall apply to the cost of consulting one or more experts or of taking legal action only if the Community-scale undertaking or the controlling undertaking has been notified in advance of the expense involved.

### **ARTICLE 13**

1. Without prejudice to Article 9(3), each member of the special negotiating body shall have one vote. The special negotiating body's decisions shall be adopted by an absolute majority of the number of votes cast.
2. A decision as referred to in Article 11(2) must be adopted by a two-thirds majority of the number of votes cast.
3. A decision on concluding an agreement as referred to in Article 11(1) must be adopted by at least the number of votes corresponding to a majority of all the votes that can be cast at a plenary meeting of the special negotiating body.

### **ARTICLE 14**

1. The central management shall ensure that the composition of the special negotiating body and the time of any meeting as referred to in Article 11 are made known within the Community-scale undertaking or group.
2. The central management shall also notify the authorised and recognised employee and employers' organisations at Community level, as provided for in Article 154 of the Treaty on the Functioning of the European Union, about the composition of the special negotiating body, and about the start of negotiations as referred to in Article 8, first subsection.

### **ARTICLE 14a**

1. If the structure of the Community-scale undertaking or group of undertakings is significantly altered and the relevant agreements contain no relevant provisions, or conflicting provisions, the central administration shall, on its own initiative or at the written request of at least 100 employees or their representatives in at least two companies or establishments in at least two different relevant States, start the negotiations referred to in Article 8 first subsection and shall set up a special negotiating body for this purpose.
2. In addition to the members of the special negotiating body elected or appointed in accordance with Article 9, at least three members of the existing European Works Council, or of each of the existing European Works Councils, shall be members of the special negotiating body.
3. During the negotiations as referred to in the first subsection, the existing European Works Council(s) shall function in accordance with the applicable agreement or agreements, or another procedure for informing and consulting workers shall apply if this has been agreed upon.

### **PARAGRAPH 3. SUBSIDIARY PROVISIONS GOVERNING THE PROVISION OF INFORMATION AND CONSULTATION IN THE ABSENCE OF AN AGREEMENT**

### **ARTICLE 15**

The central management shall be obliged to set up a European Works Council in accordance with this paragraph:

- a) if there are indications that the central management will not enter into negotiations with a special negotiating body within six months of the receipt of a request as referred to in Article 8(2);
- b) if the central management and the special negotiating body have not concluded an agreement as referred to in Article 8(1) within three years after the receipt of a request as referred to in Article 8(2) or, if the central management has established a special negotiating body of its own accord, within three years of its doing so, unless a decision as referred to in Article 11(2) is in force.

## **ARTICLE 16**

1. The number of employee representatives from the Community-scale undertaking or group of undertakings sitting on the European Works Council shall be such as to ensure that, in respect of each involved State, one member shall be appointed for each portion of employees employed in that State amounting to 10 %, or a fraction thereof, of the number of employees working in all the involved States taken together.
2. Each member shall be elected or appointed pursuant to the law of the Involved State in which he works.
3. The number of members of the European Works Council and the allocation of seats shall be in keeping with the provisions of the first subsection. Where the number of members from an involved State changes without any new election or appointment taking place with respect to these seats, the sitting members representing that State shall, for the purposes of the relevant provisions concerning the voting weights within the European Works Council, together have as many votes as correspond to the number of members determined for the involved State in accordance with the first subsection, and shall together represent the employees of the Community-scale undertaking or group of undertakings in the involved State in ratios to be determined by them or, if no agreement can be reached, in proportion to the number of workers whom they represented before such change occurred.

## **ARTICLE 17**

1. Members of European Works Councils of Dutch establishments and undertakings shall be appointed or elected, or their appointment terminated, in accordance with Article 10, with the proviso that a member's term of office shall last four years.
2. Only employees of the Community-scale undertaking or group may be appointed or elected as members. Membership shall automatically end when a member ceases to be an employee.
3. A member of the special negotiating body or of the European Works Councils and his/her deputy, who is seafarer in the merchant navy, has the right to attend the meetings of the special negotiating body or the European Works Council or any other consultation that is organised, if the member or deputy are not offshore or in an harbour in another State than the State of establishment of the shipping company. As far as possible, the meeting will be planned in such a manner that the member or the deputy can easily attend. In case the member or deputy cannot attend the meeting, an effort will be made to receive input of the member or deputy by other means.

## ARTICLE 18

1. The European Works Council shall elect a chairperson and one or more deputy chairpersons from among its members. The chairperson, or if he is not available the deputy chairperson, shall represent the European Works Council in law.
2. The European Works Council may elect from among its members a select committee consisting of five members at most.
3. The European Works Council shall lay down its own rules of procedure. Before these are adopted the central management shall be given the opportunity to state its view. If a select committee is elected, the competences of that committee shall be set out in the rules of procedure, which shall also establish the resources necessary to enable it to pursue its activities.

## ARTICLE 19

1. The information supplied to the European Works Council shall in all events relate to:
  - a the structure, economic and financial situation, probable development of activities, and production and sales of the Community-scale undertaking or group of undertakings;
  - b the situation and probable trend of employment, investments, and any substantial changes concerning organisation, introduction of new working methods or production processes, environmental concerns, mergers or downsizing of undertakings, establishments or important parts thereof.
2. The central management inform the European Works Council or the select committee as quickly as possible about any exceptional circumstances or planned decisions which seriously affect the interests of the employees, particularly with respect to the relocation or closure of undertakings, establishments or significant parts thereof, or collective redundancies.
3. The consultation of the European Works Council shall be conducted in such a way that the employees' representatives can meet with the central management or any more appropriate level of management within the Community-scale undertaking or group of undertakings with its own decision-making powers, and can obtain a reasoned response to the opinions they express. Consultation shall in all events relate to the subjects referred to in the first subsection (b) and the second subsection.
4. The central management and the European Works Council shall meet at least once per calendar year. At such meeting, the European Works Council shall be informed and consulted, on the basis of a written 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. The central management shall ensure that this annual meeting is publicised within the Community-scale undertaking or Community-scale group of undertakings.
5. If the European Works Council or the select committee so requests, it shall meet the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings with its own decision-making powers, so as to be informed and consulted on the basis of a written report drawn up by the Community-scale undertaking or group of undertakings and relating to the circumstances or decisions referred to in the second subsection. The members of the European Works Council who are also elected or appointed by the employees of the establishments or undertakings directly affected

by the circumstances or decisions concerned shall also be invited to attend a meeting with the select committee. The meeting shall not affect the powers of the central management.

6. The central management shall not be required to provide information as far as it may reasonably be assumed that this would seriously harm the functioning of the undertakings concerned or would be prejudicial to them. If justifiable reasons exist, the central management may impose confidentiality requirements on the provision of information. It shall, as far as possible, be stated with respect to the specific matter what reasons exist for treating it confidentially, what written or verbal information is covered by the confidentiality requirement, how long it will apply, and whether there are any persons who are not required to maintain such confidentiality.
7. The central management shall give the European Works Council or the select committee the opportunity to meet before and after each meeting with the central management.
8. Unless otherwise agreed, meetings as referred to in the fourth or fifth subsections shall be chaired alternately by the central management and the European Works Council.

#### **ARTICLE 20**

1. The European Works Council and the select committee may be assisted by experts of their choice insofar as this is necessary for the performance of their duties.
2. The expenses reasonably necessary for the European Works Council and the select committee to exercise their functions shall be borne by the Community-scale undertaking or the controlling undertaking. The obligation to bear the costs of the experts called in by the European Works Council shall be limited to one expert per agenda item, unless the European Works Council and the Community-scale undertaking or the controlling undertaking agree otherwise.
3. The first sentence of subsection 2 shall also apply to the cost of taking legal action, but only under the condition that the Community-scale undertaking or the controlling undertaking has been notified in advance of the expense involved.

#### **ARTICLE 21**

1. At the latest, four years after being established the European Works Council shall decide, in response to a proposal from the central management or otherwise, whether it is desirable to enter into negotiations with the central management on concluding an agreement as referred to in Article 8(1).
2. Articles 11(3) to (6) and 13(1) and (3) shall apply *mutatis mutandis*, with the proviso that the European Works Council shall replace the special negotiating body.

#### **ARTICLE 22**

The central management shall ensure that the composition of the European Works Council and the time of any meeting as referred to in Article 19 are made known within the Community-scale undertaking or group.

## **CHAPTER 3 INFORMING AND CONSULTING EMPLOYEES IN NON-DUTCH COMMUNITYSCALE UNDERTAKINGS AND GROUPS OF UNDERTAKINGS**

### **ARTICLE 23**

If, for the purposes of implementing the Directive in an involved State other than the Netherlands, a special negotiating body or a European Works Council as referred to in the annex to the Directive is set up in a Community-scale undertaking or group, Articles 10 and 17 shall apply *mutatis mutandis* to Dutch establishments or undertakings in that Community-scale undertaking or group.



## **CHAPTER 4 FINAL PROVISIONS**

### **ARTICLE 24**

1. This Act shall not apply, with the exception of the provisions of Articles 5 and 14a, to any Community-scale undertaking or group of undertakings which was a party to one or more agreements which entered into force before 5 February 1997, provided that such agreements made provision for information and consultation of employees regarding cross-border issues, and were concluded with employee representatives whom the Community-scale undertaking or group of undertakings could reasonably consider representative of the employees in the involved States.
2. This Act, as applicable on the day before the entry into force of the Act of 7 November 2011 amending the European Works Councils Act in conjunction with the implementation of Directive 2009/38/EC of the European Parliament and the Council of the European Union of 6 May 2009 (OJL 122/2009) recasting Council Directive 94/45/EC 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, shall remain applicable with the exception of the provisions of Articles 5 and 14a, to a Community-scale undertaking or group of undertakings which is a party to an agreement as referred to in Article 8, first subsection, relating to the entire workforce, and which was signed or revised in the period from 5 June 2009 to 5 June 2011.
3. Article 11(9) shall apply *mutatis mutandis*.
4. This article shall apply *mutatis mutandis* to a Community-scale undertaking or group of undertakings, which as of 15 December 1999 would fall under the application of the Act on account solely of the entry into force of the Directive in the United Kingdom, but was at that date already party to one or more agreements, referred to in the first subsection, that have come into effect.

### **ARTICLE 25**

1. For the purposes of Article 9, account need be taken only of those involved States in which the Community-scale undertaking or group has employees and whose legislation implementing the Directive is in force.
2. If an agreement as referred to in Article 8 does not specify that employees (or their representatives) of undertakings or establishments of the Community-scale undertaking or group in involved States, which - in accordance with subsection 1 - were not taken into account when setting up the special negotiating body, shall be involved in the replacement or amendment of that agreement within two years of such an involved State's legislation implementing the Directive coming into force or shall be represented in the European Works Council or the alternative information and consultation procedure within the said period, that agreement shall be reviewed, taking Article 9 into account.

**(ARTICLE 26 – repealed per 15-11-2011)**

### **ARTICLE 27**

This Act shall enter into force on 22 September 1996. If this Act is published in the *Staatsblad* after 21 September 1996, it shall enter into force on the day following the date of publication of the *Staatsblad* containing it.

## ARTICLE 28

This Act shall be cited as the European Works Councils Act.

We order and command that this Act shall be published in the *Staatsblad* and that all ministries, authorities, bodies and officials whom it may concern shall diligently implement it.

Signed in The Hague, 23 January 1997

Beatrix

The Minister of Social Affairs and Employment,

A.P.W. Melkert