

Involvement of Employees in Activities of Community-scale Undertakings, Community-scale Groups of Undertakings and European Companies Act¹

Passed 12 January 2005

(RT² I 2005, 6, 21),

entered into force 11 February 2005.

Chapter 1

General Provisions

§ 1. Scope of Act

This Act provides for the legal bases for:

- 1) the establishment of the European Works Council or a procedure for informing and consulting on the level of Community-scale undertakings and Community-scale groups of undertakings;
- 2) the involvement of employees in the affairs of European companies (*Societas Europaea*, hereinafter SE).

§ 2. Purpose of Act

The purpose of this Act is to promote involvement of employees which means:

- 1) provision of information and consultation to employees of activities of Community-scale undertakings and Community-scale groups of undertakings or
- 2) provision of information and consultation to employees and their participation in the activities of an SE.

§ 3. Basic definitions

In this Act, the following basic definitions are used:

- 1) "information" means the informing of the employees' representatives and the employees on an appropriate level which allows the employees to receive a clear and sufficiently detailed overview of the structure and economic and employment situation of an undertaking on time, and the possible development of the structure and situation and other circumstances affecting the interests of employees, and to understand the impact of the situation and other circumstances on the employees;
- 2) "consultation" means the establishment of dialogue and exchange of views between the employees' representatives and an undertaking on an appropriate level which allows the employees' representatives to express opinions and receive reasoned responses to the submitted opinions from the undertaking;
- 3) for the purposes of this Act, "Member State" is a state party to the Agreement of the European Economic Area.

Chapter 2

Involvement of Employees on Level of Community-scale Undertakings and Community-scale Groups of Undertakings

Division 1

General Provisions

§ 4. Application of this Chapter

- (1) This Chapter applies in the following cases:
 - 1) the central management of an undertaking controlled by a Community-scale undertaking or a Community-scale group of undertakings is located in Estonia;
 - 2) the central management of an undertaking controlled by a Community-scale undertaking or a Community-scale group of undertakings is not located in a Member State but a representative of the central management appointed therefor, if necessary, is located in Estonia, or
 - 3) the central management of an undertaking controlled by a Community-scale undertaking or a Community-scale group of undertakings is not located in a Member State and representatives of the central management have not been appointed in Member States but the enterprise employing the

largest number of employees as compared to other Member States or its controlled undertaking is located in Estonia.

(2) This Chapter does not apply to the crew members of ships used for merchant shipping.

(3) Regardless of the provisions of subsection (1) of this section, the provisions of § 9 of this Act apply to determination of the size of workforce in Estonia and the provisions of §§ 19 and 27 of this Act apply to the selection of members representing Estonian employees in the special negotiating body and the European Works Council.

§ 5. Undertaking

The provisions of this Act concerning enterprises apply to all persons engaged in business, except the state and local governments.

§ 6. Enterprise

In this Act, the definition “enterprise” is used within the meaning provided for in the Commercial Code (RT I 1995, 26–28, 355; 1998, 91–93, 1500; 1999, 10, 155; 23, 355; 24, 360; 57, 596; 102, 907; 2000, 29, 172; 49, 303; 55, 365; 57, 373; 2001, 34, 185; 56, 332 and 336; 89, 532; 93, 565; 2002, 3, 6; 35, 214; 53, 336; 61, 375; 63, 387 and 388; 96, 564; 102, 600; 110, 657; 2003, 4, 19; 13, 64; 18, 100; 78, 523; 88, 591; 2004, 86, 582; 89, 613), taking account of the specifications arising from § 5 of this Act.

§ 7. Community-scale undertakings

A Community-scale undertaking is an undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States.

§ 8. Community-scale groups of undertakings

A community-scale group of undertakings is a group of undertakings with:

- 1) at least 1 000 employees within the Member States;
- 2) at least two group undertakings in different Member States;

- 3) 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.

§ 9. Determination of size of workforce in Estonia

Determination of the size of the workforce in an undertaking belonging to a Community-scale group of undertakings located in Estonia and undertakings of a Community-scale undertaking shall be based on the average number of employees employed during the previous two years as of commencement of negotiations for the establishment of a European Works Council or for the establishment of a procedure for the purposes of informing and consulting.

§ 10. Controlling undertaking

(1) For the purposes of this Act, “controlling undertaking” means an undertaking which belongs to a group of undertakings and which can exercise a dominant influence over another undertaking (the controlled undertaking) by virtue, for example, of ownership, financial participation or the rules which govern it or by any other means by which it is possible to exercise direct or indirect influence on the other undertaking.

(2) The ability to exercise a dominant influence shall be presumed, without prejudice to proof to the contrary, when, in relation to another undertaking directly or indirectly:

- 1) holds a majority of that undertaking's subscribed capital,
- 2) controls a majority of the votes attached to that undertaking's issued share capital,
- 3) can appoint or remove more than half of the members of that undertaking's directing body.

(3) A dominant influence shall not be presumed to be exercised solely by virtue of the fact that functions are exercised in liquidation proceedings, recovery of payment debts or analogous proceedings.

(4) Where two or more undertakings from a group of undertakings satisfy one or more of the criteria specified in subsection (2) of this section, the undertaking which satisfies the criterion provided for in clause (2) 3) shall be regarded as the controlling undertaking. If no undertaking belonging to a group of undertakings satisfies the criterion provided for in clause (2) 3), the undertaking which satisfies the criterion provided for in clause (2) 2) is deemed to be the controlling undertaking without prejudice to proof that another undertaking is able to exercise a dominant influence.

(5) Notwithstanding the provisions of subsections (1) and (2), an undertaking is not deemed to be a controlling undertaking with respect to another undertaking in which it has holdings where the former undertaking is a company provided for in Article 3 (5) (a) or (c) of Council Regulation 139/2004/EC on the control of concentrations between undertakings (OJ L 24, 29.01.2004, p. 1–22).

(6) 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 that 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 greatest number of employees is situated.

(7) The controlling undertaking and the undertakings controlled thereby form a group of undertakings.

§ 11. Central management and management

(1) "Central management" means the directing body of a Community-scale undertaking or, in the case of a Community-scale group of undertakings, of a controlling undertaking.

(2) "Management" means the directing body of an undertaking controlled by a Community-scale group of undertakings or a person or persons responsible for the management of an enterprise of a Community-scale undertaking pursuant to the decision, the articles of association or statutes or the partnership agreement of the undertaking.

§ 12. Responsibility of central management

(1) The central management is responsible for creating the conditions and means necessary for the setting up of a European Works Council or an information and consultation procedure in a Community-scale undertaking and a Community-scale group of undertakings.

(2) Where a Community-scale group of undertakings comprises one or more undertakings or groups of undertakings which are Community-scale undertakings or Community-scale groups of undertakings, a European Works Council shall be established at the level of the group unless the agreements on informing and consulting provide otherwise.

(3) Where the central management is not situated in a Member State, the central management's representative in Estonia, to be designated if necessary, shall take on the responsibility specified in subsection (1) of this section. In the absence of such a representative, the management of an

enterprise of a Community-scale undertaking or an undertaking controlled by a Community-scale group of undertakings in the Member State, employing the greatest number of employees in any one Member State shall take on the responsibility.

(4) The representative or representatives specified in subsection (3) of this section or, in the absence of any such representatives, the management shall be perform the functions of the central management arising from this Act.

§ 13. European Works Council

A European Works Council means the body representative of the employees set up by the agreements specified in § 22 of this Act or pursuant to the provisions of Subdivision 3 of Division 2 of this Chapter, with the purpose of informing and consulting employees of Community-scale undertakings or Community-scale groups of undertakings.

§ 14. Cooperation between central management and European Works Council

The central management and the European Works Council shall work in a spirit of cooperation and mutual trust with due regard to the interests of employees and undertakings. The same applies to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure.

Division 2

Establishment of European Works Council and Procedure for Informing and Consulting Employees

Subdivision 1

Negotiations on Informing and Consulting Employees

§ 15. Initiation of negotiations

(1) The central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure on its own initiative or at the written request of

at least 100 employees or their representatives in at least two different Member States. In the case of several simultaneous requests, the employees or the signatures of employees indicated in the submitted requests shall be added together.

(2) In order to decide whether to request the initiation of negotiations, employees or their representatives have the right to receive from the central management information on the number of employees and their distribution between the undertakings and enterprises of Member States and to receive information on the structure of an undertaking or group of undertakings.

(3) In addition to the provisions of subsection (2) of this section, employees or their representatives and undertakings belonging to a group of undertakings have the right to receive from undertakings and undertaking belonging to a group of undertakings information which is necessary in order to verify whether they belong to a Community-scale undertaking or a Community-scale group of undertakings and to ascertain the person who performs the functions of the central management.

(4) If a request is submitted to the management of an undertaking controlled by a Community-scale group of undertakings located in Estonia or an enterprise of a Community-scale undertaking, the latter shall communicate the request immediately to the central management and inform the employees who submitted the request or their representatives of communication of the request.

§ 16. Composition of special negotiating body

(1) The special negotiating body means the body established to negotiate with the central management regarding the establishment of a European Works Council or another procedure for informing and consulting.

(2) The special negotiating body shall have a minimum of three and a maximum of 29 members.

(3) The special negotiating body shall comprise at least one employees' representative from each Member State where a Community-scale undertaking, its enterprise or a controlling undertaking or controlled undertaking of a Community-scale group of undertakings is located.

(4) In addition to the provisions of subsection (3) of this section, the seats of employees' representatives in the special negotiating body are allocated as follows:

1) one representative from each Member State where at least 25 per cent of the employees of a Community-scale undertaking and a Community-scale group of undertakings are employed;

2) two representatives from each Member State where at least 50 per cent of the employees of a Community-scale undertaking and a Community-scale group of undertakings are employed;

3) three representatives from each Member State where at least 75 per cent of the employees of a Community-scale undertaking and a Community-scale group of undertakings are employed.

(5) The special negotiating body and the central management may agree that employees' representatives of other states also have the right to participate in the body and shall determine their number and the status for participation in the work of the body.

§ 17. Election of members of special negotiating body who represent Estonian employees

(1) A member or members of the special negotiating body representing employees of an undertaking or enterprise specified in subsection 16 (3) of this Act shall be elected by the general meeting of employees. The procedure for the election of a member or members of the special negotiating body shall be approved by the general meeting of employees. The election procedure shall ensure that all employees have the possibility to participate in the elections.

(2) If several undertakings or enterprises specified in subsection 16 (3) of this Act are located in Estonia, a joint representation formed of the employees' representatives shall elect a member or the members of the special negotiating body. Three employees' representatives elected from among the employees pursuant to the procedure for the election of a member or member of the special negotiating body provided for in subsection (1) of this section shall belong to the joint representation in each concerned undertaking or enterprise.

(3) The joint representation shall be convened by the eldest employees' representative of an undertaking or enterprise which employs the greatest number of employees. The number of votes of a member of the joint representation shall be determined in proportion to the number of employees in an undertaking or enterprise represented thereby. Employees' representatives of the same undertaking or enterprise shall each have the same number of votes.

§ 18. Informing of composition of special negotiating body

(1) The special negotiating body shall immediately inform the central management of its members and indicate their names and contact details and also the undertaking or enterprise represented by a member.

(2) The central management shall communicate the received information to the managements of the enterprises of a Community-scale undertaking or undertakings belonging to a group of undertakings.

§ 19. Conclusion of agreement between special negotiating body and central management

- (1) The special negotiating body shall negotiate with the central management in a spirit of cooperation and mutual trust in order to reach a written agreement which determines the establishment of the European Works Council or another procedure for informing and consulting.
- (2) The central management shall, on time, supply the special negotiating body with information and documents which the body needs to perform its functions.
- (3) With a view to the conclusion of an agreement specified in subsection (1) of this section, the central management shall convene a foundation meeting with the special negotiating body immediately after the composition of the body has been decided and the managements shall also be informed of the meeting.
- (4) The special negotiating body may decide, by at least two-thirds of the votes, not to open negotiations or to terminate the negotiations already opened. Such a decision shall stop the procedure to conclude the agreement provided for in subsection (1) of this section. In this case, the provisions of Subdivision 3 of this Division do not apply. The decision not to open negotiations or to terminate negotiations shall be formalised in writing together with the voting results. The decision shall be signed by an authorised member of the special negotiating body. A copy of the decision shall be sent to the central management.
- (5) A new request to initiate negotiations may be made at the earliest two years after the decision specified in subsection (4) of this section unless the parties concerned lay down a shorter period.

§ 20. Working procedures and expenses of special negotiating body

- (1) Upon agreement, the special negotiating body and the central management may establish the rules of negotiations. If the rules are not established, the special negotiating body and the central management may decide in the beginning of the foundation meeting how further negotiations are conducted.
- (2) The special negotiating body may adopt decisions by a simple majority, except in the case specified in subsection 19 (4) of this Act.
- (3) The special negotiating body may elect a chairman from among its members.
- (4) In order to perform its functions more effectively, the special negotiating body may involve at its discretion experts who assist in the negotiations.
- (5) Before a meeting with the central management, the special negotiating body has the right to

organise a preparatory meeting for its members, in which the representatives of the central management do not participate and invite participants to the meeting at its own discretion.

(6) Any reasonable expenses relating to the establishment and work of the special negotiating body, including negotiations with the central management shall be borne by the central management so as to enable the special negotiating body to carry out its task in an appropriate and unhindered manner. If an expert is involved on the initiative of the special negotiating body, the central management shall compensate for the expenses of inviting of at least one expert.

Subdivision 2

International Agreement on Informing and Consulting

§ 21. European Works Council Agreement

The agreement between the central management and the special negotiating body on the establishment of a European Works Council shall be in writing and contain at least the following conditions:

- 1) the undertakings of the Community-scale group of undertakings or the enterprises of the Community-scale undertaking which are covered by the agreement;
- 2) the composition of the European Works Council, the number of members, the allocation of seats and the term of office;
- 3) the functions and the procedure for informing and consulting of the European Works Council;
- 4) the venue, frequency and duration of meetings of the European Works Council;
- 5) the financial and material resources to be allocated to the European Works Council;
- 6) the duration of the agreement, the amendment of the agreement in the case of structural changes and the procedure for renegotiation if the agreement expires and structural changes take place.

§ 22. Agreement on information and consultation procedures

The agreement between the central management and the special negotiating body to establish another procedure for informing and consulting instead of the European Works Council shall be in writing and contain at least the following conditions:

- 1) by what method the employees' representatives have the right to receive information from the central management on transnational questions which significantly affect the employees' interests and hold consultations on these questions;
- 2) by what method the employees' representatives meet with the central management in order to hold common consultations on the basis of the information communicated by the central management.

Subdivision 3

Lawful European Works Council and Informing and Consulting

Sub-subdivision 1

European Works Council

§ 23. Lawful establishment of European Works Council

The European Works Council shall be established according to this Division:

- 1) where the central management and the special negotiating body so decide;
- 2) where the central management refuses to commence negotiations within six months of the request specified in subsection 15 (1) of this Act or
- 3) where, after three years from the date of this request, an agreement specified in §§ 21 or 22 of this Act has not been concluded and the special negotiating body has not taken the decision specified in subsection 19 (4) of this Act.

§ 24. Composition of European Works Council

- (1) The European Works Council shall be composed of employees of a Community-scale

undertaking or Community-scale group of undertakings elected or appointed in each Member State pursuant to the procedure prescribed therefor.

(2) The European Works Council shall have a minimum of three members and a maximum of 30.

(3) The European Works Council shall comprise at least one representative from each Member State where a Community-scale undertaking, its enterprise or a controlling undertaking or controlled undertaking of a Community-scale group of undertakings is located.

(4) In addition to the provisions of subsection (3) of this section, the seats of representatives in the European Works Council are divided as follows:

- 1) one representative from each Member State where at least 25 per cent of the employees of a Community-scale undertaking and a Community-scale group of undertakings are employed;
- 2) two representatives from each Member State where at least 50 per cent of the employees of a Community-scale undertaking and a Community-scale group of undertakings are employed;
- 3) three representatives from each Member State where at least 75 per cent of the employees of a Community-scale undertaking and a Community-scale group of undertakings are employed.

§ 25. Election of members of European Works Council who represent Estonian employees

The provisions of § 17 of this Act apply to the election of the members of the European Works Council who represent Estonian employees.

§ 26. Term of authority of members of European Works Council and appointment of new members

(1) The term of authority of members of the European Works Council is four years unless the authority terminates prematurely on the initiative of the member or for other reasons (inability to perform duties, refusal to perform duties, long-term illness, violation of the requirements arising from this Act etc).

(2) In every two years as of the establishment of the European Works Council, the central management shall monitor whether the number of employees in Member States has significantly changed and whether it is necessary to change the composition of the European Works Council to bring it into conformity with the composition of the European Works Council provided for in § 24 of this Act. The central management shall inform the European Works Council of the results.

(3) If the composition of the European Works Council needs to be changed, the European Works Council invites the competent bodies to elect or appoint new members from Member States where the number of employees' representatives needs to be changed as compared to the previous period. Appointment of new members shall terminate the authority of previous members.

§ 27. Initiation of negotiations for conclusion of agreement

(1) Four years after the European Works Council is established it shall examine whether to open negotiations with the central management for the conclusion of the agreement specified in subsection 19 (1) of this Act or to continue to apply the provisions of this Subdivision.

(2) If the European Works Council decides to initiate negotiations for the conclusion of the agreement, the Council has the same rights and obligations as the special negotiating body.

§ 28. Informing of composition of European Works Council

(1) The European Works Council and the special negotiating body shall immediately inform the central management of the members of the Works Council and indicate their names and contact details and also of the undertakings or enterprises represented by the members.

(2) The central management shall communicate the received information to the managements of the enterprises of a Community-scale undertaking and undertakings belonging to a group of undertakings.

§ 29. Foundation meeting of European Works Council

Immediately after the composition of the European Works Council has been decided, the central management shall organise a foundation meeting where the European Works Council adopt its rules of procedure and elects the chairman and, if necessary, a substitute for him or her from among its members.

§ 30. Select committee

(1) The European Works Council may form a select committee with up to three members, which directs the day-to-day operation of the European Works Council.

(2) A select committee comprises the chairman of the European Works Council and two elected members who represent undertakings or enterprises from different Member States.

(3) If a select committee is not formed, the day-to-day operation of the European Works Council is directed by the chairman of the European Works Council or another member designated by the European Works Council.

§ 31. Meetings of European Works Council

(1) The European Works Council has the right to hold meetings on the basis of the information received from the central management.

(2) The European Works Council may be assisted by experts of its choice.

(3) The European Works Council shall adopt decisions by a simple majority.

(4) Before any meeting with the central management, members of the European Works Council where necessary enlarged in accordance with subsection 35 (3) of this Act, shall be entitled to meet without the representatives of the central management and management being present.

(5) Meetings of the European Works Council shall be closed.

(6) Upon existence of a select committee, the rights specified in this section also apply to the select committee.

§ 32. Compensation for operation expenses of European Works Council

Any reasonable operation expenses of the European Works Council and the select committee shall be borne by the central management so as to enable the European Works Council and the select committee to carry out their task in an appropriate and unhindered manner. The central management shall primarily compensate for the following expenses:

- 1) expenses related to the organisation of meetings;
- 2) expenses related to the provision of the translation services;
- 3) travel and accommodation expenses incurred by members;
- 4) expenses related to inviting at least one expert.

Sub-subdivision 2

Informing and Consulting

§ 33. Competence of European Works Council upon informing and consulting

(1) The competence of the European Works Council shall be limited to information and consultation on the matters which concern a Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its enterprises or group undertakings situated in different Member States.

(2) If the central management is not located in a Member State, the competence of the European Works Council shall be limited to those matters concerning all their enterprises or group undertakings situated within the Member States or concerning at least two of their enterprises or group undertakings situated in different Member States.

§ 34. Annual informing and consulting

(1) The European Works Council has 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.

(2) Within regard to the progress of the business and its prospects, the meeting shall relate particularly to the following matters:

- 1) the structure, economic and financial situation of undertakings;
- 2) the probable development of the business and of production and sales;
- 3) the situation and probable trend of employment;
- 4) investments;
- 5) substantial changes concerning organisation of work;
- 6) introduction of new working methods or production processes;

- 7) transfers of production;
- 8) mergers, closures or cut-backs of undertakings or parts thereof;
- 9) collective redundancies.

§ 35. Informing and consulting if exceptional circumstances become evident

- (1) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, closure of enterprises or undertakings or collective redundancies, the select committee has the right to be informed.
- (2) The select committee has the right to meet, at its request, the central management or the management or any other more appropriate level of management within a Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.
- (3) Those members of the European Works Council who have been elected by the enterprises or undertakings which are directly concerned by the measures in question also have the right to participate in the meeting organised with the select committee.
- (4) This information and consultation meeting shall take place on the basis of a written report drawn up by the central management or the management or any other appropriate person or persons of the Community-scale undertaking or group of undertakings immediately after the report is prepared. The select committee has the right to deliver an opinion on the report at the end of the meeting or within a reasonable time after the end of the meeting.
- (5) In the absence of a select committee, the European Works Council exercise the rights provided for in this section.

§ 36. Informing local employees' representatives

The members of the select committee or the European Works Council shall inform the representatives of the employees of the enterprises of a Community-scale undertaking or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with the provisions of this Subdivision.

Division 3

Specific Provisions

§ 37. Prohibition on hindering international informing and consulting

- (1) It is prohibited to restrict the rights of the European Works Council and the special negotiating body, including to hinder and influence their establishment and operation, and the establishment and conduct of a procedure for informing and consulting.
- (2) It is prohibited to influence and hinder the activities of members of the European Works Council, members of the special negotiating body and employees' representatives involved in a procedure for informing and consulting through the restriction of their rights or allowing preferences.

§ 38. Confidential information

- (1) Members of European Works Councils are not authorised to reveal any information which has expressly been provided to them in confidence upon performance of their duties as members of European Works Councils to third parties or use the information otherwise in conflict with this Act. The obligation to maintain the confidentiality of information also applies to members after the expiry of their terms of office.
- (2) The obligation provided for in subsection (1) of this section also applies to:
 - 1) members of the special negotiating body;
 - 2) employees' representatives who according to the agreement provided for in § 22 of this Act participate in a procedure for informing and consulting;
 - 3) experts and translators.
- (3) If the persons specified in clauses (1) 1) and 2) of this section (employees' representatives) do not agree with the confidentiality of the communicated information, the central management is required to justify the confidentiality of the information at the request of an employees' representative.
- (4) The obligation specified in subsection (1) of this section does not extend to the communication between members of a European Works Council and other members of a corresponding European Works Council and representatives of undertakings and enterprises if,

according to an agreement provided for in § 21 of this Act or according to § 36 of this Act, they must be informed of the content and results of a procedure for informing and consulting, and to the communication with translators and experts who assist the European Works Council in its work.

(5) Similarly as an exception provided for in subsection (4) of this section, the obligation provided for in subsection (1) does not apply to:

- 1) the communication between members of the special negotiating body and experts and translators;
- 2) employees' representatives who according to the agreement provided for in § 22 of this Act communicate with translators and experts and employees' representatives of undertakings and enterprises located in Estonia in the course of a procedure for informing and consulting if, according to the agreement provided for in § 22 of this Act, they must be informed of the content and results of the procedure for informing and consulting.

(6) The central management may refuse to transmit information when its nature is such that, according to objective criteria, it seriously harms or may harm the functioning of an undertaking. This right does not extend to the number of employees. If transmission of information is refused, the central management is required to give justification based on objective criteria why transmission of the information seriously harms or may harm the functioning of the undertaking.

§ 39. Resolution of disputes related to confidential information in court

Employees' representatives specified in subsection 38 (3) of this Act have the right of recourse to courts in order to resolve disputes arising from the confidentiality of information and refusal to transmit information.

§ 40. Guarantees of employees' representatives participating in international informing and consulting

(1) The provisions concerning the guarantees prescribed for employees' representatives in the Employment Contracts Act (RT 1992, 15/16, 241; 1993, 10, 150; RT I 1993, 26, 441; 1995, 14, 170; 16, 228; 1996, 3, 57; 40, 773; 45, 850; 49, 953; 1997, 5/6, 32; 1998, 111, 1829; 1999, 16, 276; 60, 616; 2000, 25, 144; 51, 327; 57, 370; 102, 669; 2001, 17, 78; 42, 233; 53, 311; 2002, 61, 375; 62, 377; 110, 656; 111, 663; 2003, 4, 22; 13, 69; 88, 591; 90, 601; 2004, 37, 256; 86, 584) apply to the guarantees of members of special negotiating bodies, members of European Works Councils and employees' representatives who participate in a procedure for informing and consulting according to

§ 22 of this Act and who are employees of a Community-scale undertaking or group of undertakings, provided that they are employed in Estonia.

(2) Employees' representatives specified in subsection (1) of this section shall be granted a period of absence to represent employees to the extent necessary for the performance of their duties arising from this Act. Average wages shall be continued to the employees' representatives for the period of absence.

Chapter 3

Involvement of Employees at European Company Level

Division 1

General Provisions

§ 41. Application of this Chapter

(1) This Chapter applies if the registered office of an SE which is being founded is Estonia.

(2) Regardless of the provisions of subsection (1) of this section, the provisions of §§ 54 and 66 of this Act apply to the election of the members of the special negotiating body and the representative body of employees who represent Estonian employees.

(3) If an SE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of §§ 7 and 10 of this Act, this Chapter applies to the SE or undertakings controlled thereby. Chapter 2 of this Act applies if the special negotiating body of the SE decides not to initiate negotiations or terminate the already initiated negotiations pursuant to § 60.

(4) Application of this Act does not restrict the right of employees to be informed and consulted which is prescribed by other Acts.

§ 42. European company

A European company (SE) means any company established in accordance with Regulation (EC) No

2157/2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, p. 1–21).

§ 43. Participating companies

For the purposes of this Act, participating companies are companies which directly participate in the foundation of an SE.

§ 44. Concerned subsidiary or establishment

For the purposes of this Act, a concerned subsidiary or establishment means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of an SE upon its formation.

§ 45. Extent of informing employees' representatives

SE competent organs shall inform the representative body of employees or the employees' representatives of issues relating to the SE and the undertakings and enterprises controlled thereby and located in Member States or which exceed the competence of an organ of an enterprise operating in one Member State. Informing shall take place at a time, in the manner and with a content which allows the employees' representatives to thoroughly examine the possible effect of the decisions and, if necessary, prepare for consultations with an SE competent organ.

§ 46. Participation of employees

For the purposes of this Act, participation of employees means the influence of the representative body of employees or the employees in the affairs of a company by way of:

- 1) the right to elect or appoint some of the members of the company's supervisory or administrative board, or
- 2) the right to recommend or oppose the appointment of some or all of the members of the company's supervisory or administrative board.

§ 47. Special negotiating body of European company

An SE special negotiating body is a body which is formed in order to hold negotiations with the competent organs of participating companies on the establishment of a procedure for the involvement of employees in the SE.

§ 48. Representative body of employees

A representative body means the body representative of the employees set up by the agreement specified in § 62 of this Act or in accordance with the provisions of Subdivision 3 of Division 2 of this Chapter, with the purpose of informing and consulting the employees of an SE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SE.

§ 49. Cooperation between representative bodies of employees and competent organs of European companies

(1) The competent organ of an SE and the representative body of employees shall cooperate in a spirit of mutual trust with due regard for their reciprocal rights and obligations.

(2) The principle provided for in subsection (1) of this section also applies to the cooperation between the supervisory or administrative board of an SE and employees' representatives in connection with a procedure for informing and consulting employees.

Division 2

Foundation of Representative Body of Employees and Procedure for Involvement of Employees

Subdivision 1

Negotiations on Involvement of Employees

§ 50. Measures for initiation of negotiations

(1) Where the management or administrative boards of the participating companies draw up a plan for the establishment of an SE, they shall as soon as possible after publishing the draft terms of

merger or creating a holding company or after agreeing a plan to form a subsidiary or to transform into an SE, take the necessary steps, including providing information about the identity of the participating companies, concerned subsidiaries or establishments, and the number of their employees, to start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE.

(2) Information on the number of employees shall be presented by each Member State and information shall be indicated concerning all relevant undertakings and enterprises separately.

(3) If employees in participating companies have the right to participate, in addition to the information provided for in subsection (1) of this section, information shall also be provided on the form and extent of participation and the proportion of employees' representatives of the total number of employees in all the participating companies shall be indicated.

§ 51. Formation and composition of special negotiating body

(1) In order to hold negotiations specified in § 50 of this Act, an SE special negotiating body shall be formed from the employees' representatives of participating companies and relevant controlled undertakings and enterprises.

(2) Members of an SE special negotiating body are elected or appointed in proportion to the number of employees employed in each Member State where the participating companies and concerned subsidiaries or establishments are located, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 per cent of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together. Members shall be elected in each Member State pursuant to the procedure for election or appointment prescribed in the Member State.

§ 52. Formation of special negotiating body of European company upon formation of European company by way of merger

(1) If the members of an SE special negotiating body are elected or appointed according to subsection 51 (2) of this Act and an SE is formed by way of merger, additional members shall be elected or appointed according to the legislation of the corresponding Member State if the participating company terminating its activities as an independent legal person as a result of the merger is not represented through its member.

(2) The number of additional members specified in subsection (1) of this section corresponds to

the number of participating companies who are not represented in the special negotiating body. The number of such additional members does not exceed 20 per cent of the number of members designated according to subsection 51 (2) of this Act.

(3) If, according to subsection 51 (2) of this Act, the number of participating companies which are not represented through a member in a special negotiating body is less than 20 per cent of the number of members in the special negotiating body, each participating company which is not represented shall present one additional member.

(4) If, according to subsection 51 (2) of this Act, the number of participating companies which are not represented through a member in a special negotiating body is more than 20 per cent of the number of members in the special negotiating body, the additional seats shall be divided between participating companies which are not represented. The division shall be made pursuant to the number of employees in participating companies. The division of additional seats shall be commenced from the largest participating company and shall be continued by decreasing order pursuant to the number of employees.

§ 53. Change of membership of special negotiating body of European company

If, during a period prescribed for negotiations, the number of employees of participating companies changes significantly or the structure of the participating companies changes and these changes affect the division of seats allocated for Member States, the seats shall be reallocated.

§ 54. Election of members of special negotiating body of European company who represent Estonian employees

(1) A member or members of an SE special negotiating body representing the employees of a participating company and a concerned subsidiary or establishment located in Estonia shall be elected pursuant to the procedure provided for in § 17 of this Act, taking account of the specifications arising from this section.

(2) The joint representation shall take the following conditions into account upon election of a representative or representatives of Estonia in an SE special negotiating body:

- 1) if possible, each participating company is represented in the SE special negotiating body through at least one member;
- 2) if the number of Estonian members in the SE special negotiating body is smaller than the number of participating companies located in Estonia upon foundation of the SE, the participating

company employing the largest number of employees is taken into account first.

(3) If Estonia has the right to elect additional members to an SE special negotiating body, these members shall be elected pursuant to the procedure provided for in this section.

§ 55. Representation of Estonian employees in special negotiating body of European company

If the number of represented employees is of determinative importance upon voting in an SE special negotiating body, the number of members elected from Estonia who represent employees shall be calculated by dividing the total number of employees of all participating companies and concerned subsidiaries or establishments located in Estonia by the number of Estonian representatives in the SE special negotiating body.

§ 56. Conclusion of agreement and informing special negotiating body of European company

(1) An SE special negotiating body and the competent organs of participating companies shall determine, by a written agreement, the procedure for the involvement of employees in the SE. Therefore, the competent organs of the participating companies shall inform the SE special negotiating body of a plan to found the SE and the actual process of foundation of the SE until the SE is entered in the register.

(2) An agreement specified in subsection (1) of this section is, after the entry into force thereof, binding to an SE, undertakings and enterprises controlled thereby and located in a Member State and the employees of the SE, undertakings and enterprises.

§ 57. Decision-making in special negotiating body of European company

(1) An SE special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each member of the SE special negotiating body has one vote.

(2) Should the result of the negotiations lead to a reduction of participation rights of employees, the majority required for a decision to approve such an agreement shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States if:

1) an SE is to be established by way of merger and participation covers at least 25 per cent of

the overall number of employees of the participating companies, or

2) an SE is to be established by way of creating a holding company or forming a subsidiary and if participation covers at least 50 per cent of the overall number of employees of the participating companies.

(3) Reduction of participation rights means a proportion of members of the supervisory or administrative boards of the SE, which is lower than the highest proportion existing within the participating companies.

§ 58. Involvement of experts in negotiations

(1) For the purpose of the negotiations, the SE special negotiating body may request experts of its choice to assist it with its work. Among others, representatives of appropriate Community level trade union organisations may be involved.

(2) Such experts may be present at negotiation meetings in an advisory capacity at the request of a member of the SE special negotiating body, where appropriate to promote coherence and consistency at Community level.

§ 59. Duration of negotiations

(1) Negotiations shall commence as soon as an SE special negotiating body is established and may continue for six months thereafter.

(2) An SE special negotiating body shall inform the relevant third persons, including trade unions, of initiation of negotiations.

(3) The parties may decide, by joint agreement, to extend negotiations beyond the period specified in subsection (1) of this section, up to a total of one year from the establishment of the special negotiating body.

§ 60. Decision of special negotiating body of European company not to open negotiations or to terminate negotiations already opened

(1) An SE special negotiating body may decide by the majority provided for in subsection (2) of this section not to open negotiations or to terminate negotiations already opened, and to rely on the

rules on information and consultation of employees in force in the Member States where the SE has employees. Such a decision shall stop the procedure to conclude the agreement provided for in § 62 of this Act. In this case, the provisions of Subdivision 3 of this Division do not apply.

(2) The majority required to make a decision specified in subsection (1) of this section shall be the votes of two thirds of the members of the SE special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States.

(3) In the case of an SE established by way of transformation, this section does not apply if there is participation of employees in the company to be transformed.

(4) The SE special negotiating body shall be reconvened on the written request of at least 10 per cent of the employees of the SE, its subsidiaries and establishments, or their representatives, at the earliest two years after a decision specified in subsection (1) of this section is made, unless the parties agree to negotiations being reopened sooner. If the SE special negotiating body decides to reopen negotiations but no agreement is reached as a result of those negotiations, none of the provisions of Subdivision 3 of this Division apply.

§ 61. Expenses relating to special negotiating body of European company

Any expenses relating to the formation or functioning of the SE special negotiating body and to negotiations with participating companies shall be borne by the participating companies pursuant to the provisions of subsection 20 (6) of this Act.

Subdivision 2

Agreement on Involvement of Employees

§ 62. Agreement on involvement of employees

(1) The competent organs of participating companies and an SE special negotiating body shall negotiate in a spirit of cooperation and mutual trust with a view to reaching an agreement on arrangements for the involvement of the employees within the SE.

(2) Unless otherwise provided for in subsection (4) of this section, the written agreement specified in subsection (1) of this section between the competent organs of participating companies

and an SE special negotiating body shall specify:

- 1) the scope of the agreement;
- 2) the composition, number of members and allocation of seats on the representative body and which will be the discussion partner of the competent organ of the SE in connection with arrangements for the procedure for information and consultation of the employees of the SE and its subsidiaries and establishments;
- 3) the functions and the procedure for information and consultation of the representative body;
- 4) the frequency of meetings of the representative body;
- 5) the financial and material resources to be allocated to the representative body;
- 6) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;
- 7) if, during negotiations, the parties decide to establish arrangements for the participation of employees, the substance of those arrangements including, if applicable, the number of members in the SE's supervisory or administrative board which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights;
- 8) the date of conclusion of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation.

(3) In the case of an SE established by means of transformation, the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the company to be transformed into an SE, taking into account, inter alia, the provisions of subsection 41 (4) of this Act.

(4) An agreement shall be signed by the representatives of participating companies and members of the special negotiating body who voted in favour of the agreement. The minutes of the meeting, which sets out the voting results of the SE special negotiating body shall be appended to the agreement.

(5) Any agreements which derogate from the provisions of subsection (3) of this section are void. In this case, the provisions of Subdivision 3 of this Division apply.

Subdivision 3

Lawful Representative Body of Employees and Involvement of Employees

Sub-subdivision 1

General Provisions

§ 63. Foundation of lawful representative body of employees

The representative body of employees shall be founded as of the date of registration of an SE in Estonia according to this Subdivision if:

- 1) the parties so agree or
- 2) within the term provided for in § 59 of this Act, no agreement has been concluded, and the competent organ of each of the participating companies decides to continue with its registration of the SE, and the special negotiating body has not taken the decision provided for in subsection 60 (1).

§ 64. Application of provisions regulating employee participation

(1) The provisions of this Division regulating employee participation apply in the case of an SE established by transformation and merger and in the case of an SE established by setting up a holding company or establishing a subsidiary.

(2) The provisions regulating employee participation apply in the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the supervisory or administrative board were applied to a company transformed into an SE.

(3) The provisions regulating employee participation apply in the case of an SE established by merger if:

- 1) before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 25 per cent of the total number of employees in all the participating companies, or
- 2) before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 25 per cent of the total number of employees in all the

participating companies and if the special negotiating body so decides.

(4) The provisions regulating employee participation apply in the case of an SE established by setting up a holding company or establishing a subsidiary if:

- 1) before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 50 per cent of the total number of employees in all the participating companies, or
- 2) before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 50 per cent of the total number of employees in all the participating companies and if the special negotiating body so decides.

(5) The special negotiating body shall inform the competent organs of the participating companies of any decisions taken pursuant to clause (3) 2) and (4) 2) of this section.

(6) If none of the participating companies was governed by participation rules before registration of an SE, the latter shall not be required to establish provisions for employee participation.

Sub-subdivision 2

Representative Body of Employees

§ 65. Composition of representative body of employees

(1) The representative body of employees shall be composed of employees of an SE and its subsidiaries and establishments elected or appointed in each corresponding Member State pursuant to the procedure prescribed therefor.

(2) Members of the representative body of employees are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 per cent of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together.

(3) The competent organ of an SE shall be informed of the composition of the representative body.

(4) If the number of employees of participating companies changes significantly or the structure of the participating companies changes and these changes affect the allocation of seats and the number of members, the allocation and number of seats of the representative body shall be brought into conformity with the changes.

§ 66. Election of members of representative body of employees who represent Estonian employees

The provisions of § 54 of this Act apply to the election of the members of the representative body of employees who represent Estonian employees.

§ 67. Select committee and rules of procedure

- (1) The representative body may form a select committee with up to three members.
- (2) The representative body shall adopt its rules of procedure.

§ 68. Initiation of negotiations for conclusion of agreement

- (1) Four years after the representative body of employees is established it shall examine whether to open negotiations for the conclusion of the agreement specified in subsection 62 (1) of this Act or to continue to apply the provisions of this Subdivision.
- (2) If a decision is made to hold negotiations for the conclusion of an agreement, the representative body has the same rights and obligations as the special negotiating body pursuant to the provisions of §§ 55-62 of this Act. Where, by the due date by which the negotiations come to an end, no agreement has been concluded, the arrangements initially adopted in accordance with this Subdivision shall continue to apply.

§ 69. Compensation for expenses relating to activities of representative body of employees

An SE shall compensate for expenses relating to the activities of the representative body of employees and the select committee pursuant to the provisions of § 32 of this Act.

§ 69¹. Right of member of representative body of employees to time off for training

In so far as this is necessary for the fulfilment of their tasks, the members of the representative body shall be entitled to time off for training without loss of wages. At least 14 calendar days a year shall be ensured for training without loss of average wages.

Sub-subdivision 3

Involvement of Employees

§ 70. Competence of representative body of employees upon informing and consulting

Upon informing and consulting, the competence of the representative body shall be limited to questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State.

§ 71. Regular informing and consulting of representative body of employees

(1) The representative body of employees has the right to be informed and consulted on the basis of regular reports prepared by the competent organ, which concern the activities and further development of an SE, and to meet the competent organ of the SE at least once a year for that purpose. Local persons responsible for management shall also be informed thereof.

(2) The competent organ of an SE shall provide the representative body with the agenda for meetings of the administrative board or the management body and supervisory board, and with copies of all documents submitted to the general meeting of its shareholders.

(3) The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales of the undertakings and enterprises, the situation and probable trend of employment, investments, and substantial changes concerning organization of work, introduction of new working methods or production processes, transfers of production, mergers, division, transformation or closures of undertakings and transfer of enterprises or important parts thereof, and collective redundancies.

§ 72. Informing and consulting if exceptional circumstances become evident

(1) Where there are exceptional circumstances affecting the employees' interests to a

considerable extent, particularly in the event of closure of enterprises or undertakings, relocations, take-overs and collective redundancies, the representative body of employees has the right to be informed.

(2) The representative body of employees has the right to meet, at its request, the SE competent organ or persons responsible for management having their own powers of decision on any level of management of the SE in order to receive information on measures significantly affecting employees' interests and hold consultations on these questions. In urgent matters, the select committee has the right to request a meeting on the basis of a decision of the representative body of employees.

(3) Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body has the right to a further meeting with the competent organ of the SE. At the further meeting, the parties attempt to seek agreement.

(4) In the case of a meeting organised with the select committee, those members of the representative body who represent employees who are directly concerned by the measures in question also have the right to participate in the meeting.

(5) The provisions of this section do not affect the rights of a competent organ.

§ 73. Organisation of information and consultation meetings

(1) Before any meeting with the competent organ of an SE, the members of the representative body of employees or the select committee, where necessary enlarged in accordance with subsection 72 (4) of this Act, shall be entitled to meet without the representatives of the competent organ being present.

(2) The representative body or the select committee may use the assistance of experts chosen thereby.

§ 74. Informing employees' representative of results of meetings

Members of the representative body of employees shall inform the employees' representatives of an SE and its subsidiaries and enterprises of the content and results of a procedure for informing and consulting.

§ 75. Employee participation in European company

- (1) In the case of an SE established by transformation, if the national provisions of a Member State relating to employee participation in the supervisory or administrative board were applied before the registration of the SE, all aspects of employee participation shall continue to apply to the SE. Subsections (2)-(6) of this section apply to employee participation, taking account of the specifications arising from the foundation of the SE.
- (2) In other cases of the foundation of an SE, the employees of the SE, its subsidiaries and establishments or their representative body have the right to elect, appoint, recommend or oppose the appointment of a number of members of the supervisory or administrative board of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE.
- (3) In the case of one or more forms of participation applied in the participating companies, the special negotiating body shall decide the form which is established in the SE. The special negotiating body shall inform the competent organs of the participating companies of the decision made according to this subsection.
- (4) The representative body shall decide on the allocation of seats within the supervisory or administrative board among the members representing the employees from the various Member States or on the way in which the SE's employees may recommend or oppose the appointment of the members of these boards according to the proportion of the SE's employees in each Member State.
- (5) If, as a result of allocation of seats, employees of one or several Member States do not have a representative in the supervisory or administrative board, the representative body of employees shall give one of the seats allocated according to subsection (4) of this section to the Member State, primarily if the Member State is a Member State of the registered office of the SE. If a seat has already been allocated for the representative of the Member State of the registered office of the SE, the seat shall be given to the member State employing the greatest number of employees.
- (6) Every member of the supervisory or administrative board of an SE who has been elected, appointed or recommended by representative body of employees or the employees shall be a full member with the same rights and obligations as the members representing shareholders, including the right to vote.

§ 76. Election of members of supervisory or administrative board of European company who represent Estonian employees

If one or several seats have allocated for Estonia in the supervisory or administrative board of an SE,

a member or members representing employees shall be elected pursuant to the procedure provided for in subsections 54 (1)-(3) of this Act, taking account of the specifications for the election of a member or members of the supervisory or administrative board of an SE.

Division 3

Specific Provisions

§ 77. Prohibition on hindering involvement of employees

(1) It is prohibited to restrict the rights of the representative body of employees and the special negotiating body, including to hinder and influence their establishment and operation, and the establishment and conduct of a procedure for informing, consulting and participation.

(2) It is prohibited to influence and hinder the activities of members of the representative body of employees, members of the special negotiating body and employees' representatives involved in a procedure for informing, consulting and participation through the restriction of their rights or allowing preferences.

§ 78. Confidential information

(1) Members of the special negotiating body, members of the representative body of employees, involved experts and translators and employees' representatives participating in a procedure for informing and consulting according to clause 62 (2) 6) of this Act are not authorised to reveal any information which has expressly been provided to them in confidence upon performance of their duties to third parties or use the information otherwise in conflict with this Act. The obligation to maintain the confidentiality of information also applies after the expiry of the terms of office of the specified persons.

(2) If the persons specified in subsection (1) of this section, except experts and translators, do not agree with the confidentiality of the communicated information, the SE or the supervisory or administrative board of the participating company is required to justify the confidentiality of the information at the request of an employees' representative.

(3) The obligation specified in subsection (1) of this section does not extend to the communication between members of the representative body of employees and other members of the corresponding representative body and employees' representatives of an SE, its subsidiaries and

establishments if, according to an agreement provided for in § 62 of this Act or according to § 74, they must be informed of the content and results of a procedure for informing and consulting, and to the communication with translators and experts who assist the representative body in its work.

(4) Similarly as an exception provided for in subsection (3) of this section, the obligation provided for in subsection (1) does not apply to:

- 1) the communication between members of the special negotiating body and experts and translators;
- 2) employees' representatives who according to the agreement specified in clause 62 (2) 6) of this Act communicates with translators and experts and employees' representatives of the SE located in Estonia, its subsidiaries and establishments in the course of a procedure for informing and consulting if, according to the agreement provided for in clause 62 (2) 6) of this Act, they must be informed of the content and results of the procedure for informing and consulting.

(5) An SE or the supervisory or administrative board of a participating company may refuse to transmit information when its nature is such that, according to objective criteria, it seriously harms or may harm the functioning of the participating undertaking, the SE or its subsidiaries and establishments. This right does not extend to the number of employees. If provision of information is refused, the SE or the supervisory or administrative board of the participating company is required to give justification based on objective criteria why transmission of the information seriously harms or may harm the functioning of the undertaking.

§ 79. Resolution of disputes related to confidential information in court

Employees' representatives specified in subsection 78 (2) of this Act have the right of recourse to courts in order to resolve disputes arising from the confidentiality of information and refusal to provide information.

§ 80. Guarantees of employees' representatives participating in involvement

The provisions of § 40 of this Act apply to the guarantees prescribed for members of the SE special negotiating body employed in Estonia, members of the representative body of employees, employees' representatives connected with the performance of informing and consulting duties and employees' representatives belonging to the supervisory or administrative board of an SE, who are the employees of the SE or its subsidiaries and establishments or a participating company.

§ 81. Misuse of European company

(1) If, after the registration of an SE, significant changes are made in the SE in connection with an undertaking or enterprise controlled thereby and it may be concluded that, upon foundation of the SE, the objective was to deny employees the right of involvement or restrict the exercise of such rights, new negotiations shall be held.

(2) The negotiations specified in subsection (1) of this section shall be initiated at the written request of the representative body of employees or the employees' representatives of new undertakings and enterprises controlled by an SE. In order to hold negotiations, arrangements for negotiations on the involvement of employees prescribed upon foundation of an SE shall be applied, having regard to the following:

- 1) after the registration of the SE, the participating companies are deemed to be the SE and its subsidiaries and establishments respectively;
- 2) the special negotiating body is, after the registration of the SE, deemed to be the representative body of employees;
- 3) the period prior to the registration of the SE provided for in subsections 64 (3) and (4) of this Act is deemed to be a period preceding failure of the negotiations.

(3) The significant changes provided for in subsection (1) of this section mean changes in the structure, number of employees or registered office of an SE, its subsidiaries and establishments if these had caused different application of Subdivision 3 of Division 2 of this Chapter according to § 64 of this Act and if the circumstances specified in § 64 had become evident before the foundation of the SE and the negotiations held during the period had failed.

(4) Unless proved otherwise, it is presumed that the significant changes specified in subsection (1) of this section indicate an intention to found an SE in a manner which denies employees the right of involvement or restricts the right if the significant changes occur within a year after the registration of the SE.

(5) If an SE is founded with a purpose to deny employees the right of involvement or restrict the right, holding of the negotiations provided for in subsection (1) of this section is not restricted by the changes following the foundation of the SE.

§ 82. Resolution of disputes related to misuse of European company in court

(1) A member of the representative body of employees and an employees' representative of new undertakings and enterprises controlled by an SE has the right of recourse to courts to resolve

disputes arising from the misuse of an SE with a claim to recognise the right to negotiate.

(2) A claim specified in subsection (1) of this section expires within one year as of the date on which a member of the representative body of employees and an employees' representative of new undertakings and enterprises controlled by an SE becomes or should have become aware of the significant changes in the SE.

Chapter 4

State Supervision

§ 83. Exercise of state supervision

(1) State supervision over compliance with the requirements of this Act shall be exercised by the Labour Inspectorate. The provisions of the Administrative Procedure Act (RT I 2001, 58, 354; 2002, 53, 336; 61, 375; 2003, 20, 117; 78, 527) apply to the proceedings conducted in the course of state supervision, taking account of the specifications provided for in this Act.

(2) Upon violation of the requirements of this Act, a labour inspector or the head of a regional office of the Labour Inspectorate has the right to issue a precept which sets out:

- 1) the time and place the precept was issued;
- 2) the given name, surname and position of the person who prepares the precept and the name and address of the agency;
- 3) the given name and surname of the natural person or the name of the legal person to whom the precept is issued;
- 4) the circumstances which are the basis for the issue of the precept and a reference to the legal basis therefor;
- 5) the conclusion of the precept in which the obligations of the obligated subject arising from the precept and the terms for the performance thereof are set out;
- 6) a reference to the possibility of administrative coercive measures being applied upon failure to perform the obligations set out in the precept;
- 7) the procedure and term for contesting the precept;

- 8) the signature of the person who prepares the precept.
- (3) A precept shall be prepared in two original copies of which one shall remain with the person who prepares the precept and the other shall be given to the addressee. If it is necessary to inform a third party of the precept, a copy of the precept certified by the person who prepared the precept shall be delivered to the third party by post or by electronic means.
- (4) A precept is mandatory for an addressee. A labour inspector or the head of a regional office of the Labour Inspectorate has the right to inspect compliance with the precept within the term specified therein.
- (5) Upon failure to comply with a precept, a labour inspector or the head of a regional office of the Labour Inspectorate may impose a penalty payment pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act (RT I 2001, 50, 283; 94, 580).
- (6) The upper limit of penalty payment specified in subsection (5) of this section for each imposition thereof is 50 000 kroons.

§ 84. Procedure for challenging precepts

- (1) A challenge against a precept shall be filed, heard and settled pursuant to the procedure prescribed in the Administrative Procedure Act, taking into account the specifications provided for in this Act.
- (2) If an addressee does not agree with a precept issued by a labour inspector, the employer has the right to file a challenge with the head of the local labour inspectorate within ten calendar days after notification of the administrative act. If a precept is issued by the head of the local labour inspectorate, the addressee has the right to file a challenge with the Director General of the Labour Inspectorate within ten calendar days after the date of notification of the administrative act.
- (3) If a labour inspector who issued a precept temporarily performs, during challenge proceedings, the duties of the head of the local labour inspectorate, the challenge shall be adjudicated by the Director General of the Labour Inspectorate. In such case, the labour inspector performing the duties of the head of the regional office of the Inspectorate shall forward the challenge for adjudication to the Director General of the Labour Inspectorate.
- (4) The filing of a challenge does not release the person from the obligation to comply with the precept. At the request of a person filing a challenge or on his or her own initiative, the head of a local labour inspectorate or the Director General of the Labour Inspectorate has the right to suspend compliance with the precept until a decision concerning the challenge is made.

Chapter 5

Liability

§ 85. Violation of prohibition on international informing and consulting and involvement of employees

- (1) Violation of the prohibition on international informing and consulting and involvement of employees is punishable by a fine of up to 200 fine units.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

§ 86. Violation of obligation to provide information on number of employees and their distribution

- (1) Failure to inform of the number of employees by a Community-scale undertaking, a Community-scale group of undertakings or participating companies or of the distribution of employees between Member States on time, submission of incomplete or false information is punishable by a fine of up to 200 fine units.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

§ 87. Violation of obligation of annual informing and consulting and informing and consulting under exceptional circumstances

- (1) Failure to perform the obligation of annual informing and consulting or informing and consulting under exceptional circumstances, submission of incomplete or false information is punishable by a fine of up to 200 fine units.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

§ 88. Procedure

- (1) The provisions of the General Part of the Penal Code (RT I 2001, 61, 364; 2002, 86, 504; 82, 480; 105, 612; 2003, 4, 22; 83, 557; 90, 601; 2004, 7, 40; 46, 329; 54, 387; 56, 401; 88, 600) and of

the Code of Misdemeanour Procedure (RT I 2002, 50, 313; 110, 654; 2003, 26, 156; 83, 557; 88, 590; 2004, 46, 329; 54, 387 and 390; 56, 403; RT III 2004, 9, 96) apply to the misdemeanours provided for in § 85–87 of this Act.

(2) Extra-judicial proceedings concerning the misdemeanours provided for in §§ 85–87 of this Act shall be conducted by the Labour Inspectorate.

Chapter 6

Implementation of Act

§ 89. Valid agreements

(1) Chapter 2 of this Act does not apply to a Community-scale undertaking or group of undertakings where, during the entry into force of this Act, an agreement which covers the informing and consulting of employees of Community-scale undertakings or groups of undertakings is in force.

(2) Upon expiry of an agreement specified in subsection (1) of this section, the parties may extend the agreement. If the parties fail to extend the agreement, this Act applies.

¹ 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 (OJ L 254, 30.09.1994, p. 64–72); Council Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294, 10.11.2001, p. 22–32).

² RT = *Riigi Teataja* = *State Gazette*