

The *Saeima*¹ has adopted and the President has proclaimed the following law:

On the Involvement of Employees in Decision Making in a European Commercial Company, a European Cooperative Society and in the Case of Cross-Border Merger of Capital Companies

Chapter I General Provisions

Section 1. Terms Used in this Law

The following terms are used in this Law:

- 1) **involvement of employees** – the way through which employees or representatives thereof may exercise an influence on decisions to be taken within a European commercial company, a European cooperative society or – in the case of cross-border merger of capital companies – in an acquiring company, including information, consultation and participation (representation);
- 2) **information** — the informing of the representative committee of employees or the employees’ representatives on questions which concern the relevant European commercial company, European cooperative society or – in the case of cross-border merger of capital companies – an acquiring company and any of its subsidiary or branch at a time, in a manner and with a content which allows the representative committee or the employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the executive body (the administrative body) of the company;
- 3) **consultation** — a dialogue and exchange of views between the representative committee of employees or the employees’ representatives and the executive body (the administrative body) of the European commercial company, the European cooperative society or – in the case of cross-border merger of capital companies – of the acquiring company at a time, in a manner and with a content which allows the representative committee of employees or the employees’ representatives, on the basis of the information received, to express their opinion regarding the measures envisaged by the executive body (the administrative body), which may be taken into account in the decision-making process of the company;
- 4) **participation (representation)** — the influence of the representative committee of employees or the employees’ representatives on the processes in the European commercial company, the European cooperative society or – in the case of cross-border merger of capital companies – in the acquiring company. Such influence is implemented by exercising the right to elect or appoint the members of the executive body (the administrative body) or supervisory body of the company or the right to recommend the candidates for the members of such institutions or to oppose their election or appointment;
- 5) **employees’ representatives** – the trade union of the employees on behalf of which an institution or official of the trade union authorised in its articles of association is acting, or representatives authorised by the employees which are elected in accordance with the Labour Law; and
- 6) **Member State** – a European Union Member State, the Republic of Iceland, the Kingdom of Norway or the Principality of Liechtenstein.

Section 2. Purpose of the Law

The purpose of this Law is to prescribe the procedure by which employees shall be involved in the decision making in a European commercial company, a European cooperative society and – in the

case of cross-border merger of capital companies – in an acquiring company (hereinafter also – acquiring company).

Section 3. Scope of Application of this Law

(1) This Law shall apply if:

- 1) it is intended to register a European commercial company or European cooperative company in Latvia;
- 2) a legal address of a European commercial company or European cooperative company is transferred to Latvia; or
- 3) in the case of cross-border merger of capital companies – an acquiring company is or will be registered in Latvia and the rules regarding employee participation are in force in at least one of the capital companies involved in the cross-border merger.

(2) The provisions of this Law regarding creation of the special negotiating body shall be applied if:

- 1) a commercial company or cooperative society registered in Latvia (hereinafter – a participating company) participates in the foundation of a European commercial company or a European cooperative society; or
- 2) a capital company registered in Latvia (hereinafter – a company to be reorganised) participates in the process of cross-border merger of capital companies.

(3) If a European cooperative society is established exclusively by natural persons or by a single legal entity and natural persons, this Law shall be applied only in such case when the founders of the relevant European cooperative society together employ at least 50 employees in at least two Member States.

(4) If a European cooperative society is established exclusively by natural persons or by a single legal entity and natural persons, which together employ less than 50 employees, or employ 50 employees in only one Member State, this Law shall be applied in the case when:

- 1) it is requested by at least one third of the employees of the European cooperative society and the subsidiaries thereof in at least two Member States; or
- 2) after the registration of the European cooperative society it employs at least 50 employees in at least two Member States.

Chapter II **Conducting Negotiations and Special Negotiating Body**

Section 4. Duty of Conducting Negotiations

(1) When developing a draft contract of establishment, also draft regulations of merger or transformation of the European commercial company or European cooperative society (hereinafter – a draft contract of establishment) or - in the case of cross-border merger of capital companies – a draft contract of reorganisation, the participating companies or companies to be reorganised shall conduct negotiations with the employees or representatives thereof regarding the further involvement of employees in decision making. Negotiations shall be commenced immediately after the notification of a draft contract of establishment or a draft contract of reorganisation.

(2) During the course of negotiations the participating companies or companies to be reorganised shall inform the employees or representatives thereof regarding the provisions of a draft contract of establishment or a draft contract of reorganisation and the course of implementation thereof, regarding all the participating companies or companies to be reorganised and the number of the employees of such companies, as well as regarding measures to be taken in relation to the involvement of employees in the decision making.

Section 5. Creation of the Special Negotiating Body

- (1) For conducting negotiations, the special negotiating body representing the employees of the participating companies or companies to be reorganised and subsidiaries thereof shall be created. The special negotiating body may include the representatives of trade unions irrespective of whether they are the employees of the participating companies or companies to be reorganised.
- (2) The number of the members of the special negotiating body shall be determined in proportion to the number of employees of the participating companies or companies to be reorganised and the subsidiaries thereof in each Member State.
- (3) Employees employed in a Member State in which a participating company or a company to be reorganised has been registered and which form 10% (or a smaller part of the employees if there are less than full 10%) of the total number of the employees employed in all Member States shall be represented in the special negotiating body by one employees' representative.
- (4) The number of employees shall be calculated from the average number of employees within a period of six months prior to the notification of the draft contract of establishment or a draft contract of reorganisation. When calculating the number of employees, also those employees with whom a contract of employment for a specified period is concluded shall be taken into account.
- (5) If the number of the employees of participating companies or companies to be reorganised changes and this affects the composition of the special negotiating body, the composition of this body shall change accordingly.
- (6) The special negotiating body shall be regarded as created when all its members are elected.
- (7) The special negotiating body shall inform the participating companies or companies to be reorganised regarding its composition.

Section 6. Additional Representatives

- (1) If a European commercial company or European cooperative society is established by way of a merger, additional representatives from each Member State shall be included in the special negotiating body so that there is at least one representative of each participating company or company to be reorganised in such a negotiating group. Additional representatives shall not be included in the special negotiating group, if by their inclusion the relevant employees would be represented twice.
- (2) The number of additional representatives shall not exceed 20% of the number of members of the special negotiating body that has been elected pursuant to Section 5, Paragraph two of this Law.
- (3) If the number of the participating companies or companies to be reorganised is higher than the number of additional seats available in the special negotiating body, these additional seats shall be allocated to the employees' representatives of the participating companies or companies to be reorganised registered in different Member States, starting with the employees' representatives of those participating companies or companies to be reorganised in which a greater number of employees is employed.
- (4) The provisions of this Section shall also be applied in the case of cross-border merger of capital companies.

Section 7. Election of the Members of the Special Negotiating Body in Latvia

- (1) The interests of the employees of a participating company or company to be reorganised in the special negotiating body shall be represented by the already existing employees' representatives, unless otherwise decided by the employees.
- (2) If there are no employees' representatives in a participating company or a company to be reorganised or employees have taken a decision to elect other representatives thereof in the special negotiating body, employees shall, pursuant to the procedures specified in the Labour Law, elect representatives which will represent their interests in the special negotiating body. A member of the special negotiating body shall be elected also if the number of the employees of a participating company or a company to be reorganised is smaller than the number necessary for the election of

the employees' representatives.

(3) If the employees of participating companies or companies to be reorganised are represented both by a trade union of the employees and the authorised employees' representatives, such employees shall authorise their representatives to select the members of the special negotiating body in proportion to the number of the employees represented but not less than one member of the special negotiating body for each participating company or company to be reorganised.

(4) At least one employees' representative from each participating company or company to be reorganised registered in Latvia shall be included in the special negotiating body. The number of members of the special negotiating body nominated from Latvia shall not exceed the number of the representatives determined for Latvia in accordance with Section 5 of this Law and the number of additional representatives determined for Latvia in accordance with Section 6 of this Law.

(5) If the number of participating companies or companies to be reorganised registered in Latvia exceeds the number of the representatives determined for Latvia for the inclusion in the special negotiating body, all the representatives of the participating companies or companies to be reorganised shall agree regarding a joint representative of the employees in the special negotiating body. If such agreement is not reached, the employees employed in Latvia shall be represented by the representative of the participating company or company to be reorganised having the greater number of employees.

Section 8. Decision making in the Special Negotiating Body

(1) The special negotiating body shall take decisions by a simple majority which conforms to the majority of all the employees of participating companies or companies to be reorganised, unless the greater number of votes is provided for in this Law.

(2) Each member of the special negotiating body shall have one vote in the decision making.

Section 9. Decision Regarding Reduction of Participation Rights

(1) The provisions of this Section shall be applied:

1) if a European commercial company or European cooperative society is established by way of merger and if participation rights have been provided for at least 25% of the overall number of the employees of the participating companies;

2) if a European commercial company or European cooperative society is established as a holding company or as a subsidiary and if participation rights have been provided for at least 50% of the overall number of the employees of the participating companies; or

3) in the case of cross-border merger of capital companies.

(2) Participation rights shall be reduced if the participation of employees in a European commercial company, European cooperative society or acquiring company is smaller than the participation in one of the participating companies or companies to be reorganised.

(3) The special negotiating body may take a decision regarding the reduction of participation rights if voted by at least two thirds of the members of the special negotiating body, who represent at least two thirds of the employees from at least two Member States where the participating companies or companies to be reorganised are registered.

Section 10. Invitation of Experts

The special negotiating body has the right to invite experts. Experts shall participate in the meetings of the special negotiating body and participating companies or companies to be reorganised in an advisory capacity.

Section 11. Duration of Negotiations

- (1) Negotiations shall be opened immediately after the special negotiating body is established and shall continue for a period not exceeding six months.
- (2) The special negotiating body and participating companies or companies to be reorganised upon mutual agreement may extend the time period referred to in Paragraph one of this Section up to one year from the day of establishment of the special negotiating body.

Section 12. Decision Regarding the Application of Provisions of a Member State in a European Commercial Company or European Cooperative Society

- (1) If at least two thirds of the members of the special negotiating body who represent at least two thirds of employees from at least two Member States, in which participating companies have been registered, vote for application of provisions of a Member State in a European commercial company or European cooperative society, the special negotiating body may decide not to open the negotiations referred to in Section 4, Paragraph one of this Law or to terminate the negotiations already opened and decide that the provisions of the regulatory enactments that regulate information and consultation, which are in force in the relevant Member States, in which the European commercial company or European cooperative society employ the employees, shall be applied in the European commercial company or European cooperative society.
- (2) Taking of the decision referred to in Paragraph one of this Section shall suspend any measures which are directed to entering into the agreement referred to in Section 15 of this Law. In such case the standard rules for the involvement of employees specified in Chapter IV of this Law shall not be applied.
- (3) The provisions of Paragraph one of this Section shall not be applied, if a European commercial company or European cooperative society is established by way of transformation and the rules relating to employee participation are in force in the company to be transformed.

Section 13. Reconvening of the Special Negotiating Body

- (1) The special negotiating body shall be reconvened if this has been requested in writing by at least 10% of the employees of the European commercial company or European cooperative society and its subsidiaries or their representatives, however, not earlier than two years after the taking of the decision referred to in Section 12 of this Law, unless the parties have agreed on a shorter time period.
- (2) If the special negotiating body takes a decision to reopen negotiations with the executive body (administrative body) of a European commercial company or European cooperative society, but no definite agreement is reached during these negotiations, the standard rules for the involvement of employees referred to in Chapter IV of this Law shall not be applied.

Section 14. Decision Regarding Application of Standard Rules Relating to Employee Participation in an Acquiring Company

An executive body (administrative body) of a company to be reorganised may decide not to open the negotiations referred to in Section 4, Paragraph one of this Law and decide that the standard rules relating to employee participation referred to in Section 21 of this Law shall be applied in the acquiring company.

Chapter III **Agreement on Rules for the Involvement of the Employees**

Section 15. Agreement on Rules by which Employees are Involved in Decision making

- (1) The special negotiating body and participating companies or companies to be reorganised shall

agree in writing regarding rules by which the employees are involved in decision making. For the verification of the circumstances referred to in Article 12 (2) of the Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) (hereinafter – Regulation 2157/2001) or Article 11 (2) of the Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (hereinafter — Regulation No 1435/2003), the agreement on rules by which the employees are involved in the decision making shall be submitted to the Register of Enterprises.

(2) The special negotiating body and participating companies or companies to be reorganised may not agree regarding such rules for the the involvement of the employees (especially participation rules), which are not compatible with the type of the company.

(3) A consent of the meeting of participants, the meeting of shareholders or the general meeting of members of the company is necessary for the executive body (administrative body) of the participating company or company to be reorganised in order to enter into the agreement referred to in Paragraph one of this Section, if it is provided for in the Statute of the company.

Section 16. Content of the Agreement

(1) The agreement referred to in Section 15 of this Law shall include the following:

- 1) the scope of the agreement;
- 2) provisions for the implementation of participation rights if, during negotiations, the parties agree on participation rights of the employees, as well as the number of members in the executive body (administrative body) or supervisory body of the European commercial company, European cooperative society or acquiring company which the employees will be entitled to elect, appoint, recommend or oppose, and the procedure as to how these members of the referred to bodies may be elected, appointed, recommended or opposed by the employees;
- 3) the date of entry into force and duration thereof, cases where the agreement should be renegotiated and the procedure for its renegotiation; and
- 4) other information if the parties regard it as necessary.

(2) In addition to the information referred to in Paragraph one of this Section a European commercial company and European cooperative society shall specify the following in the agreement:

- 1) the composition, number of members and allocation of seats of the representative committee – the negotiations partner of a European commercial company or European cooperative society;
- 2) the functions and the procedure for the information and consultation of the representative committee;
- 3) the frequency of meetings of the representative committee;
- 4) the financial and material resources to be allocated to the representative committee; and
- 5) the measures for the establishment of one or several information and consultation mechanisms, if, during negotiations, the parties agree on the establishment of such a mechanism instead of the representative committee.

(3) The agreement shall not, unless the parties agree otherwise, be subject to the standard rules for the involvement of employees referred to in Chapter IV of this Law.

(4) If a European commercial company or European cooperative society is established by transformation, at least the same level of the involvement of employees as specified in the participating company shall be retained in the agreement.

(5) The agreement may specify the terms and conditions for the entitlement of employees to participate in the general meeting of the European cooperative society or in a meeting of another type, if any, in accordance with Section 24 of this Law and Article 59 (4) of Regulation No 1435/2003.

Chapter IV

Standard Rules for Involvement of Employees

Section 17. Application of Standard Rules for Involvement of Employees

(1) The provisions of this Chapter shall be applied if a special negotiating body and participating companies or companies to be reorganised:

- 1) agree regarding it; or
- 2) the agreement referred to in Section 15 of this Law regarding rules by which the employees are involved in the decision making has not been reached within the time period specified in Section 11 of this Law, and the executive body (administrative body) of each participating company or company to be reorganised agrees to the application of standard rules.

(2) In order to verify the circumstances referred to in Article 11 (2) of Regulation No 1435/2003 and Article 12 (2) of Regulation No 2157/2001, in the case referred to in Paragraph one, Clause 1 of this Section, the agreement of the participating companies or companies to be reorganised and the special negotiating body regarding the application of standard rules, but in the case referred to in Paragraph one, Clause 2 of this Section - confirmation of the implementation of the referred to conditions, shall be submitted to the Register of Enterprises.

(3) The standard rules for involvement of employees referred to in Sections 19, 20, 21, 22 and 23 of this Law shall be applied in a European commercial company or European cooperative society.

(4) The participation rules referred to in Section 21 and 24 of this Law shall be applied in an acquiring company.

Section 18. Application of Standard Rules for Participation

Section 21, 22, 23 and 24 of this Law shall be applied if:

- 1) a European commercial company or European cooperative society is established by way of transformation and rules for participation of the employees are referable to the participating company which is being transformed into a European commercial company or European cooperative society;
- 2) a European commercial company or European cooperative society is established by way of merger and rules for participation of employees are in force in at least one of the participating companies, participation rights are provided for at least 25% of the total number of the employees of the participating companies or participation rights are provided for less than 25% of the total number of the employees of the participating companies and the special negotiating body takes a decision to apply standard rules for participation;
- 3) a European commercial company or European cooperative society is established as a holding company or subsidiary in such case when participation of employees existed in at least one of the participating companies, participation rights were provided for at least 50% of the total number of the employees of the participating companies or participation rights were provided for less than 50% of the total number of the employees of the participating companies and the special negotiating body takes a decision to apply standard rules for participation; or
- 4) in case of cross-border merger of capital companies - participation of employees existed in at least one of the companies to be reorganised, participation rights were provided for at least 33,3% of the total number of the employees of the companies to be reorganised or participation rights were provided for less than 33,3% of the total number of the employees of the companies to be reorganised and the special negotiating body takes a decision to apply standard rules for participation.

Section 19. Establishment of the Representative Committee and Operation Thereof

- (1) The representative committee shall include the employees of the European commercial company or European cooperative society and its subsidiary companies which are elected by the trade union of the employees if it represents at least 50% of the employees of the European commercial company or European cooperative company, or by the authorised employees' representatives if the employees are not represented by the trade union.
- (2) If there are no employees's representatives in a European commercial company or European cooperative society, the members of the representative committee shall be elected by all the employees of the company pursuant to the procedures for election of authorised employee's representatives specified in the Labour Law.
- (3) If the representative committee is large enough, a select committee comprising not more than three members shall be elected from among its members.
- (4) The number of the members of the representative committee shall be determined in proportion to the number of the employees of participating companies and subsidiary companies in each Member State.
- (5) Employees employed in a Member State in which a participating company has been registered and which form 10% (or a smaller part of the employees if there are less than full 10%) of the total number of the employees employed in all Member States shall be represented in the representative committee by one employees' representative.
- (6) The European commercial company or European cooperative society shall once a year inform the representative committee regarding the changes which affect the allocation of seats in such a committee. The composition of the representative committee shall be adjusted so that it conforms to the changes which have occurred.
- (7) The internal working regulations of the representative committee shall be included in the rules of procedure adopted by the representative committee.
- (8) The representative committee shall inform the European commercial company or European cooperative society of its composition.
- (9) The representative committee shall, not later than four years after its establishment, decide by a simple majority whether to open negotiations with the executive body (administrative body) of the European commercial company or European cooperative society regarding the entering into an agreement referred to in Section 15 of this Law or to apply standard rules for involvement of employees referred to in Chapter IV of this Law also in future. If the representative committee decides to open negotiations regarding the entering into the agreement, it has the same rights and obligations as the special negotiating body. If after the opening of new negotiations no agreement is reached within the time period specified in Section 11 of this Law, the standard rules for involvement of employees referred to in Chapter IV of this Law shall continue to be applied.

Section 20. Standard Rules for Information and Consultation of Employees

- (1) The representative committee shall participate in the solving of the issues related to the European commercial companies or European cooperative societies and its subsidiary companies, as well as in the solving of such issues which are not in the competence of the meeting of participants or shareholders or general meeting of members in any of Member States.
- (2) Meetings of the representative committee and the executive body (administrative body) of the European commercial company or European cooperative society shall take place at least once a year. The purpose of such meetings shall be, on the basis of annual reports, to inform the representative committee and consult with it regarding the operation of the European commercial company or European cooperative society and further development.
- (3) The executive body (administrative body) of the European commercial company or European cooperative society shall inform the representative committee regarding the issues on the agenda of the meetings of the executive body (administrative body) and supervisory body of the European commercial company or European cooperative society and shall provide the representative committee with the copies of those documents which are submitted for examination in the meeting

of shareholders or participants or general meeting of members.

(4) An executive body (administrative body) of a European commercial company or European cooperative society shall prepare the agenda of the meeting referred to in Paragraph two of this Section and inform the representative committee thereof.

(5) The following issues shall be examined in the meeting:

- 1) the structure of a company, the economic and financial situation thereof;
- 2) the probable development of activities, production and sales;
- 3) the situation in the area of employment and its probable development;
- 4) investments (investment programmes);
- 5) substantial organisational changes;
- 6) the introduction of new working methods or production processes;
- 7) the transfer of the property or important part thereof (also units) of a company to another location;
- 8) the re-organisation of a company;
- 9) the liquidation of a company or the closure of its units; and
- 10) collective redundancies.

(6) The issue regarding initiatives related to corporative social responsibility shall be examined in the European cooperative society in addition to the issues referred to in Paragraph five of this Section .

(7) If other circumstances arise that essentially concern the interests of the employees (including the transfer of the property of a company or important parts thereof (also units) to another location, the liquidation of a company or the closure of its units, collective redundancies), the executive body (administrative body) of the European commercial company or European cooperative society shall in due time inform the representative committee thereof. In such case the representative committee has the right to request that a meeting with the executive body (administrative body) of the European commercial company or European cooperative society is organised with a view to acquire information and engage in consultations regarding the measures to be performed in the company, which essentially concern the interests of the employees.

(8) If the executive body (administrative body) of the European commercial company or European cooperative society does not take into account the opinion provided by the representative committee, the representative committee has the right to request that additional meeting is organised in order to reach an agreement. If a meeting with the select committee is being organised, the members of the representative committee, who represent the employees directly affected by the relevant measures, are also entitled to participate therein. Such meetings shall not affect the powers of the executive body (administrative body) of the European commercial company or European cooperative society.

(9) The appointment of the Chairperson of the meeting referred to in Paragraph eight of this Section, upon mutual agreement, shall be decided by the members of the executive body (administrative body) of the European commercial company or European cooperative society and the members of the representative committee.

(10) Prior to any meeting with the executive body (administrative body) of the European commercial company or European cooperative society and the representative committee, the members of the representative committee are entitled to meet each other without the presence of the members of the executive bodies (administrative bodies) of the company.

(11) The representative committee shall inform the employees' representatives of the European commercial company or European cooperative society and its subsidiary companies regarding the process of information and consultation.

(12) Where necessary, a representative committee shall use the assistance of experts selected on the basis of their own judgement.

Section 21. Standard Rules for Employee Participation

- (1) A representative committee (in a European commercial company or European cooperative society) or employees' representatives (in the acquiring company) have the right to elect or appoint the members of the executive body (administrative body) or supervisory body of the company or recommend the candidates for members of these bodies or oppose to their appointment or election.
- (2) If different types of participation exist in participating companies or companies to be reorganised, the special negotiating body shall decide which type of participation to use in a European commercial company, European cooperative society or acquiring company. The special negotiating body shall inform the participating companies or companies to be reorganised regarding such a decision.
- (3) If a decision referred to in Paragraph two of this Section is not taken, the type of participation existing in the participating company or company to be reorganised having the largest number of employees shall be used in a European commercial company, a European cooperative society or acquiring company, unless the parties agree regarding reduction of participation rights pursuant to the procedures specified in this Law.
- (4) The number of members of the executive body (administrative body) or supervisory body of the European commercial company, European cooperative society or acquiring company shall comply with the highest participation level (number of seats) in the participating companies or companies to be reorganised.
- (5) The representative committee (in a European commercial company or European cooperative society) or employees' representatives (in the acquiring company) shall decide regarding the allocation of seats in the executive body (administrative body) or supervisory body of the company according to the proportion of the employees in each Member State or regarding the way in which the employees may recommend the candidates for members of the executive body (administrative body) or supervisory body or oppose to their appointment.
- (6) Every member of the executive body (administrative body) or supervisory body of the company, who has been elected, appointed or recommended by the representative committee or employees' representatives, shall be a full member of the executive body (administrative body) or supervisory body of the company and he or she has the same rights (also the right to vote) and obligations as the members of the executive body (administrative body) or supervisory body of the company who represent shareholders, participants or members.
- (7) Within limits it shall be ensured that employees' representatives of each Member State – especially of the Member State where a European commercial company, European cooperative society or acquiring company is registered – shall be included in the composition of the executive body (administrative body) or supervisory body of the European commercial company, European cooperative society or acquiring company.

Section 22. Standard Rules for Employee Participation in a European Commercial Company or European Cooperative Society Established by Transformation

If a European commercial company or European cooperative society is established by way of transformation and rules for participation are referable to the participating company before transformation, such participation rules shall be continued to be applied in all aspects also after the registration of the European commercial company or European cooperative society.

Section 23. Rules for Employee Participation in Case of Transfer of a Registered Office of a European Commercial Company or European Cooperative Company

If a registered office of the European commercial company or European cooperative society is transferred to Latvia and the rules for participation are referable to the European commercial company or European cooperative society before transfer of the registered office, such participation rules shall be continued to be applied in all aspects also after the transfer of the registered office of the European commercial company or European cooperative society to Latvia.

Section 24. Standard Rules for Employee Participation in the Case of Cross-border Merger of Capital companies

Within three years after the registration of cross-border merger of capital companies the acquiring capital company where the rules for employee participation have been introduced shall ensure the application thereof in relation to the inland reorganisation of the relevant capital company.

Chapter V **Special Rules for Employee Participation in a European Cooperative Society**

Section 25. Participation of the Employees of the European Cooperative Society in the General Meeting

In accordance with the limitations specified in Article 59 (4) of Regulation No 1435/2003, the employees of a European cooperative society or their representatives shall participate, with the right to vote, in the general meeting of members or a meeting of another type (if such exists) of the European cooperative society if:

- 1) the special negotiating body and participating companies have agreed thereon in accordance with the procedures referred to in Section 15 of this Law;
- 2) a cooperative society, in which the right to vote of the employees in the general meeting of members or in a meeting of another type (if such exists) of such company has been determined, is transformed into a European cooperative society; or
- 3) a European cooperative society has been established by way other than transformation and the right to vote of the employees in the general meeting of the members or in a meeting of another type (if such exists) of the cooperative society is specified in the participating company, but the special negotiating body and the participating companies cannot reach the agreement specified in Section 15 of this Law within the period provided for in Section 11 of this Law. In such case Section 17, Paragraph one, Clause 2 and Sections 22 and 23 of this Law shall be applied.

Chapter VI **Final Provisions**

Section 26. Commercial Secret

- (1) The members of the special negotiating body or representative committee and employees' representatives, as well as experts and interpreters who provide them with their services, may not disclose to third persons the acquired information, which is a commercial secret.
- (2) The prohibition specified in Paragraph one of this Section with regard to the provision of information containing a commercial secret to third parties shall be valid regardless of whether the relevant person is fulfilling or has ceased to fulfil his or her duties.
- (3) The members of the executive body (administrative body) or supervisory body of a company may refuse to provide information, the disclosure or use of which, having regard to its character and objective reasons, may cause substantial harm or losses to the participating companies, companies to be reorganised, the European commercial company, the European cooperative society and the acquiring company.
- (4) If the executive body (administrative body) or supervisory body of the participating companies, companies to be reorganised, a European commercial company, a European Cooperative Society or an acquiring company requests not to disclose a commercial secret or does not provide the relevant information, the employees' representatives have the right to ask for the revision of such decisions and apply to a court. In the time period when the revision or judicial review of the referred to decision takes place, the information shall be regarded as a commercial secret.

Section 27. Expenses for Ensuring Operation of the Special Negotiating Body and Representative Committee

(1) Expenses related to the establishment and operation of the special negotiating body, also to the election of its members, organising of negotiations (premises, materials, staff, and interpretation), as well as insurance and business trips of the members of the special negotiating body (travelling and accommodation expenses), shall be covered by the participating company or company to be reorganised upon mutual agreement. If the agreement is not reached, the expenses shall be covered by the participating company or company to be reorganised in proportion to their number of employees.

(2) Expenses related to the establishment and operation of the representative committee, also to the election of its members, organising of negotiations (premises, materials, staff, and interpretation), as well as business trips of the members of the committee (travelling and accommodation expenses), shall be covered by the European commercial company, European cooperative society or acquiring company.

(3) If expertas are invited, the company has an obligation to cover expenses for the work of at least one expert.

Section 28. Rights, Duties and Social Guarantees of the Members of the Special Negotiating Body, the Members of the Representative Committee and the Employees' Representatives

(1) The same rights and obligations as specified for the employees' representatives in the Labour Law shall be applied to the members of the special negotiating body and the members of the representative committee.

(2) The member of the representative committee shall be granted a study leave so as to enable him or her to acquire the knowledge necessary for the performance of his or her duties, retaining the average salary for this period of time, but if a piecework salary has been determined for him or her - the average earnings shall be paid.

(3) In respect of the members of the special negotiating body, the members of the representative committee and the employees' representatives the parties may agree on more favourable terms than provided for in this Section.

Section 29. Liability for Failure to Comply with this Law

For violation of the provisions of this Law persons shall be subject to liability in accordance with the law.

Transitional Provision

With the coming into force of this Law, the Law On the Involvement of Employees in a European Cooperative Society is repealed (*Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 2006, No.24).

Informative Reference to European Union Directives

This Law contains legal norms arising from:

- 1) Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees;
- 2) Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees; and
- 3) Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on

cross-border mergers of capital companies.

This Law has been adopted by the *Saeima* on 21 January 2010.

Acting for the President, the Chairperson of the *Saeima*,

G. Daudze

Rīga, 10 February 2010