

Issuer: Riigikogu
Type: act
In force from: 01.02.2023
In force until: In force
Translation published: 31.01.2023

Community-scale Involvement of Employees Act¹

[RT I 2007, 22, 112 - entry into force 23.03.2007]

Passed 12.01.2005
RT I 2005, 6, 21
Entry into force 11.02.2005

Amended by the following acts

Passed	Published	Entry into force
14.02.2007	RT I 2007, 22, 112	23.03.2007
21.11.2007	RT I 2007, 65, 405	15.12.2007
17.12.2008	RT I 2009, 5, 35	01.07.2009
22.04.2010	RT I 2010, 22, 108	01.01.2011 enters into force on the date determined by the Decision of the Council of the European Union on abrogation of a derogation established in respect of the Republic of Estonia on the basis of Article 140(2) of the Treaty on the Functioning of the European Union, Council Decision No. 2010/416/EU of 13 July 2010 (OJ L 196, 28.07.2010, pp. 24–26).
16.06.2011	RT I, 04.07.2011, 1	14.07.2011
19.06.2014	RT I, 12.07.2014, 1	01.01.2015
15.02.2017	RT I, 01.03.2017, 2	11.03.2017, in part 10.10.2017
12.04.2017	RT I, 28.04.2017, 1	08.05.2017
09.12.2020	RT I, 29.12.2020, 2	08.01.2021
07.12.2022	RT I, 23.12.2022, 2	01.02.2023

Chapter 1 GENERAL PROVISIONS

§ 1. Scope of application of Act

This Act provides for the legal grounds for:

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

[RT I 2007, 22, 112 – entry into force 23.03.2007]

3) informing and consulting employees and for their participation in the management of a company in the event of the company's cross-border transformation, division and merger.

[RT I, 23.12.2022, 2 – entry into force 01.02.2023]

§ 2. Purpose of Act

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

1) informing and consulting employees of activities of a Community-scale undertaking or a Community-scale group of undertakings, or
2) informing and consulting employees, and their participation in the activities of an SE and SCE;

[RT I 2007, 22, 112 – entry into force 23.03.2007]

3) informing and consulting employees and their participation in the management of a company in the event of the company's cross-border transformation, division and merger.

[RT I, 23.12.2022, 2 – entry into force 01.02.2023]

§ 3. Basic definitions

In this Act, the following basic definitions are used:

1) 'informing' means provision of information to the employees' representatives on an appropriate level in a manner which allows the employees to receive, in due course, a clear and sufficiently detailed overview of the structure, and economic and employment situation of the undertaking, and the possible development thereof and other circumstances affecting the interests of employees, also to understand the impact of the situation and other circumstances on the employees and to prepare for consultation, where necessary;

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

2) 'consulting' means exchange of views and a dialogue between the employees' representatives and the undertaking on an appropriate level and in an appropriate manner which allows the employees' representatives to express opinions, within a reasonable time on the planned measures which are the subject of consultation, which the undertaking may consider in the decision-making process, and to receive reasoned responses from the undertaking to the submitted opinions;

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

3) for the purposes of this Act, a 'Member State' means a state which has acceded to the Agreement on the European Economic Area.

Chapter 2 INVOLVEMENT OF EMPLOYEES ON LEVEL OF COMMUNITY-SCALE UNDERTAKING OR COMMUNITY-SCALE GROUP OF UNDERTAKINGS

Subchapter 1 General Provisions

§ 4. Application of this Chapter

(1) This Chapter is applied in the following cases:

1) the central management of a Community-scale undertaking or of a controlling undertaking of a Community-scale group of undertakings is located in Estonia;

2) the central management of a Community-scale undertaking or of a controlling undertaking of a Community-scale group of undertakings is not located in a Member State but a representative of the central management appointed therefor, where necessary, is located in Estonia, or

3) the central management of a Community-scale undertaking or of a controlling undertaking of a Community-scale group of undertakings is not located in a Member State and a representative of the central management has not been appointed in Member States but its enterprise employing the largest number of employees as compared to other Member States or its controlled undertaking employing the largest number of employees is located in Estonia.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

(2) [Repealed – RT I, 01.03.2017, 2 – entry into force 10.10.2017]

(3) Regardless of the provisions of subsection 1 of this section, the provisions of § 9 of this Act are applied to the determination of the number of employees in Estonia, and the provisions of §§ 17 and 25 of this Act are applied to the election of members representing Estonian employees in the special negotiating body and a European Works Council.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 4¹. Establishment of informing and consulting

For promoting involvement of employees on the level of a Community-scale undertaking or a Community-scale group of undertakings, a European Works Council or another procedure for informing and consulting must be established. A procedure for informing and consulting must be established and applied in a manner which guarantees the effectiveness of the procedure for informing and consulting, and of the decision-making process of a Community-scale undertaking or a Community-scale group of undertakings.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

§ 5. Undertaking

The provisions of this Act concerning an undertaking are also applied to other legal persons, except for the state and a local government.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 6. Enterprise

[Repealed – RT I, 04.07.2011, 1 – entry into force 14.07.2011]

§ 7. Community-scale undertaking

A Community-scale undertaking is an undertaking which employs in the Member States in total of at least 1,000 employees, out of whom there are in at least two Member States at least 150 employees in each Member State.

§ 8. Community-scale group of undertakings

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

- 1) a total of at least 1,000 employees in the Member States;
- 2) at least two undertakings, belonging to the group, in different Member States;
- 3) at least one undertaking, belonging to the group, with at least 150 employees in one Member State and at least one undertaking, belonging to the group, with at least 150 employees in another Member State.

§ 9. Determination of number of employees in Estonia

Determination of the number of employees in an undertaking belonging to a Community-scale group of undertakings and in enterprises of a Community-scale undertaking located in Estonia must be based on the average number of those employees who have been in an employment relationship with the undertaking during the previous two years as of commencement of negotiations for the establishment of a European Works Council or for the establishment of another procedure for informing and consulting.

§ 10. Controlling undertaking

(1) For the purposes of this Act, controlling undertaking is an undertaking which belongs to a group of undertakings and which exercises a dominant influence over one or more undertakings belonging to the group of undertakings (the controlled undertaking) by virtue of ownership or financial holding, on the basis of a contract or articles of association or in another manner by which it is possible to influence, directly or indirectly, another undertaking.

(2) Until proven otherwise, a dominant influence of one undertaking over another undertaking is presumed if the undertaking directly or indirectly:

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

(3) Exercise of dominant influence is not deemed performance of functions in liquidation proceedings, in recovery of arrears in payments or in other analogous cases.

(4) Where several undertakings belonging to a group of undertakings concurrently meet one or more of the conditions specified in subsection 2 of this section, the controlling undertaking must be deemed to be the undertaking which meets the conditions provided in clause 3 of subsection 2. If no undertaking belonging to a group of undertakings meets the conditions provided in clause 3 of subsection 2, the controlling undertaking must be deemed to be the undertaking which meets the conditions provided in clause 2 of subsection 2, unless it can be proven that the other undertaking exercises a dominant influence.

(5) Notwithstanding the provisions of subsections 1 and 2 of this section, an undertaking must not be deemed to be a controlling undertaking with regard to another undertaking in which the undertaking has holdings if the former undertaking is a company provided in Article 3(5)(a) or (c) of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 24, 29.01.2004, pp 1–22).

(6) In determining the controlling undertaking, the law of that Member State under which the undertaking operates is applied. If the undertaking does not operate under the law of a Member State, then in determining the controlling undertaking, the law of that Member State where the undertaking's representative, or in the absence of the latter, the directing body of the undertaking, belonging to the group of undertakings, with the largest number of employees is located is applied.

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

§ 11. Central management and management

(1) Central management is the directing body of a Community-scale undertaking or the directing body of a controlling undertaking of a Community-scale group of undertakings.

(2) Management is the directing body of a controlled undertaking of 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, articles of association or partnership agreement of the undertaking.

§ 12. Responsibility of central management

(1) The central management is required to guarantee the conditions and measures necessary for the establishment of a European Works Council of a Community-scale undertaking or a group of undertakings, or for the establishment of another procedure for informing and consulting.

(2) Where a Community-scale group of undertakings comprises one or more Community-scale undertakings or Community-scale groups of undertakings, a European Works Council is established only at the level of the group, unless the agreement on informing and consulting provides otherwise.

(3) If the central management is not situated in a Member State, the central management determines, where necessary, its representative in Estonia who assumes the responsibilities specified in subsection 1 of this section. In the absence of such a representative, the responsibilities are assumed by the management of an enterprise of a Community-scale undertaking or of a controlled undertaking of a Community-scale group of undertakings in that Member State where the most employees are employed as compared to other Member States.

(4) The representative or representatives specified in subsection 3 of this section or, in the absence thereof, the management performs the functions of the central management arising from this Act.

§ 13. European Works Council

A European Works Council is the body representing employees established according to an agreement specified in § 21 of this Act or pursuant to the provisions of Division 3 of Subchapter 2 of this Chapter, for the purposes of informing and consulting employees of a Community-scale undertaking and a Community-scale group of undertakings.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 13¹. Competence of European Works Council or extent of another procedure for informing and consulting

(1) The competence of a European Works Council in informing and consulting or another procedure for informing and consulting is limited to transnational matters.

(2) Transnational matters concern a Community-scale undertaking or a group of undertakings as a whole, or at least two enterprises or undertakings belonging to a group of undertakings in different Member States.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

§ 14. Cooperation between central management and European Works Council

The central management and a European Works Council cooperate under mutual trust, proceeding from the interests of both employees and undertakings. The same principle is applied to the cooperation between the central management and employees' representatives in the framework of a procedure for informing and consulting.

Subchapter 2 Establishment of European Works Council and Procedure for Informing and Consulting Employees

Division 1 Negotiations on Informing and Consulting Employees

§ 15. Opening of negotiations

(1) The central management opens negotiations for the establishment of a European Works Council or another information and consultation procedure on its own initiative or at the written request of at least 100 employees or their representatives of at least two Member States. In the case of several simultaneous requests, the employees or the signatures of employees indicated in the submitted requests are added together.

(2) In order to decide whether to request the opening of negotiations, employees or their representatives have the right to obtain from the central management information on, above all, the number of employees and their distribution in Member States between undertakings and enterprises, and also to obtain information on the structure of an undertaking or a group of undertakings.
[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

(3) In addition to the provisions of subsection 2 of this section, employees or their representatives and also undertakings belonging to a group of undertakings have the right to obtain from enterprises, undertakings and undertakings belonging to a group of undertakings information which is necessary for verification of a Community-scale undertaking or of belonging to a group of undertakings and to ascertain the person performing the functions of the central management. Information covers, above all, the information specified in subsection 2 of this section.
[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

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

§ 16. Composition of special negotiating body

(1) Special negotiating body is the body established for the purposes of negotiating with the central management regarding the establishment of a European Works Council or another procedure for informing and consulting.

(2) [Repealed – RT I, 04.07.2011, 1 – entry into force 14.07.2011]

(3) The special negotiating body comprises 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 in proportion to the number of employees employed in each Member State by a Community-scale undertaking or a group of Community-scale undertakings, by allocating in respect of each Member State additionally one seat per portion of employees employed in that Member State amounting to 10% of the number of employees employed in all the Member States taken together.
[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

(5) The special negotiating body and the central management may agree that representatives of employees of other states also have the right to participate in the body, determining 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 who represent employees of an undertaking or enterprise specified in subsection 3 of § 16 of this Act are elected by the general meeting of employees. The procedure for the election of a member or members of the special negotiating body is approved by the general meeting of employees. The election procedure must ensure that all employees have the possibility to participate in the elections.

(2) If several undertakings or enterprises specified in subsection 3 of § 16 of this Act are located in Estonia, a member or members of the special negotiating body are elected by a joint representation formed of the employees' representatives. The joint representation comprises, from each relevant undertaking or enterprise, three employees' representatives who have been elected from among the employees themselves pursuant to the procedure for the election of a member or members of the special negotiating body provided in subsection 1 of this section.

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

§ 18. Informing of members of special negotiating body

(1) The special negotiating body immediately informs the central management and relevant associations of European employees and employers of the opening of negotiations and of its members, indicating their names

and contact information, and also the undertaking or enterprise whose employees the member represents. A list of relevant associations of European employees and employers is disclosed by the European Commission.
[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

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

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

(1) The special negotiating body negotiates with the central management in a spirit of cooperation and mutual trust for the purposes of reaching a written agreement which determines the establishment of a European Works Council or another procedure for informing and consulting.

(2) The central management provides, in due course, the special negotiating body with information and documents which the body needs to perform its functions.

(3) For the conclusion of an agreement specified in subsection 1 of this section, the central management convenes a foundation meeting with the special negotiating body immediately after the composition of the body has been decided, and the managements must 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. The decision stops the procedure to conclude the agreement provided in subsection 1 of this section. In this case, the provisions of Division 3 of this Subchapter are not applied. The decision not to open or to terminate negotiations must be formalised in writing together with the voting results. The decision must be signed by an authorised member of the special negotiating body. A copy of the decision must be sent to the central management.

(5) After the adoption of the decision specified in subsection 4 of this section, a new request for opening negotiations may not be submitted before two years have passed, unless the parties lay down a shorter period.

§ 20. Work organisation and expenses of special negotiating body

(1) The special negotiating body and the central management may establish, by agreement, the rules of negotiations. If the rules are not established, the special negotiating body and the central management may determine at the beginning of the foundation meeting how further negotiations are conducted.

(2) The special negotiating body adopts decisions by a simple majority, except in the case specified in subsection 4 of § 19 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 in negotiations experts at its choice who participate in the negotiations in an advisory capacity. Experts may include, among other things, representatives of Community-level trade unions.
[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

(5) Before and after meeting with the central management, the special negotiating body is entitled to organise a meeting of its members without representatives of the central management being present, and invite participants at its own choice and use any necessary means for communication.
[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

(6) The central management compensates for any reasonable expenses which are brought about by the establishment and work of the special negotiating body, including negotiations with the central management, and which enable the special negotiating body to carry out its tasks in an appropriate and unhindered manner. If an expert is involved on the initiative of the special negotiating body, the central management compensates for the expenses of inviting at least one expert.

Division 2 International Agreement on Informing and Consulting

§ 21. European Works Council Agreement

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

- 1) the undertakings belonging to the Community-scale group of undertakings or the enterprises of the Community-scale undertaking which are covered by the agreement;
- 2) the composition, the number of the members and the term of office of the European Works Council, the allocation of seats, taking into account, where possible, the need for balanced representation of employees with regard to their activities, category and gender;
- 3) the functions and the procedure for information and consultation of the European Works Council;

- 4) the coordination of the procedure for information and consultation of the European Works Council with the representative bodies of Estonian employees, taking into account their competence and activities, and also that the information and consultation must take place on a relevant level and cover matters of transnational nature;
- 5) the venue, frequency and duration of meetings of the European Works Council;
- 6) where necessary, the composition, the appointment procedure, the functions and the rules of procedure of the steering committee set up within the European Works Council;
- 7) the financial and material resources to be allocated to the European Works Council;
- 8) the date of entry into force of the agreement, the duration of the agreement, the arrangements for amending or terminating the agreement, and the procedure and conditions for renegotiation, including in case there are any changes in the structure.

(2) The coordination specified in clause 4 of subsection 1 of this section must not restrict national provisions concerning information and consultation of employees.

(3) In the absence of the coordination specified in clause 4 of subsection 1 of this section, the European Works Council and the representative bodies of Estonian employees must be informed and consulted if there are plans to adopt decisions significantly altering the work organisation or contractual relations.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

§ 22. Agreement on information and consultation procedure

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

- 1) by what method the employees' representatives have the right to obtain 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.

§ 22¹. Obligation to open renegotiations

(1) If the structure of a Community-scale undertaking or of a Community-scale group of undertakings is changed significantly and if the agreement lacks provisions on opening of renegotiations or if the provisions of two or more agreements are in conflict, the central management opens negotiations pursuant to subsection 1 of § 15 of this Act.

(2) In addition to members appointed according to subsection 4 of § 16 of this Act, the special negotiating body comprises three members from an operating European Works Council or from each operating European Works Council.

(3) During negotiations, an operating European Works Council continues its activity in conformity with agreements to be concluded between the European Works Council and the central management.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

§ 22². Informing local employees' representatives

Having regard to the provisions of § 38 of this Act, a European Works Council or, where necessary, the members of the steering committee inform the representatives of employees or in the absence thereof, the employees of enterprises of Community-scale undertakings or of undertakings belonging to a group of undertakings of the contents and results of information and consultation.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

Division 3

Lawful European Works Council and Informing and Consulting

Subdivision 1

European Works Council

§ 23. Establishment of lawful European Works Council

A European Works Council is established according to this Division where:

- 1) the central management and the special negotiating body so decide;

- 2) the central management refuses to open negotiations within six months as of the submission of a request specified in subsection 1 of § 15 of this Act, or
- 3) after three years from the submission of the request, an agreement specified in § 21 or § 22 of this Act has not been concluded and the special negotiating body has not adopted the decision specified in subsection 4 of § 19.

§ 24. Composition of European Works Council

(1) A European Works Council comprises 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) [Repealed – RT I, 04.07.2011, 1 – entry into force 14.07.2011]

(3) A European Works Council comprises 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 employees' representatives in the European Works Council are allocated in proportion to the number of employees employed in each Member State by a Community-scale undertaking or a group of Community-scale undertakings, by allocating in respect of each Member State additionally one seat per portion of employees employed in that Member State amounting to 10% of the number of employees employed in all the Member States taken together.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

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

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

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

(1) The term of powers of members of a European Works Council is four years, unless the powers terminate 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, and so on).

(2) In every two years as of the establishment of the European Works Council, the central management verifies whether the number of employees in Member States has significantly changed and whether it is necessary to make changes in the composition of the European Works Council to bring it into conformity with the composition of the European Works Council provided in § 24 of this Act. The central management informs 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 terminates the powers of previous members.

§ 27. Opening of negotiations for conclusion of agreement

(1) Four years after the establishment of a European Works Council the European Works Council ascertains whether to open negotiations with the central management for the conclusion of the agreement specified in subsection 1 of § 19 of this Act or to continue to apply the provisions of this Division.

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

§ 28. Informing of composition of European Works Council

(1) A European Works Council and the special negotiating body immediately inform the central management of the members of the Works Council, indicating their names and contact information, and also the undertaking or enterprise which the member represents.

(2) The central management communicates the received information to the managements of the enterprises of a Community-scale undertaking or of 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 organises a foundation meeting where the European Works Council adopts its rules of procedure and elects the chairman and, where necessary, a substitute for them from among its members.

§ 30. Steering committee

(1) A European Works Council elects from among its members a steering committee, with up to five members, which directs the day-to-day operation of the European Works Council. Necessary conditions for the operation of the steering committee must be created.

(2) The steering committee comprises the chairman of the European Works Council, and also up to four elected members who represent undertakings or enterprises from different Member States.

(3) The steering committee adopts the rules of procedure.

(4) If a steering 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. [RT I, 04.07.2011, 1 – entry into force 14.07.2011]

§ 31. Meetings of European Works Council

(1) A 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 involve ancillary experts.

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

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

(5) Meetings of the European Works Council are closed.

(6) Upon existence of a steering committee, the rights specified in this section are also applied to the steering committee.

§ 32. Compensation for operating expenses of European Works Council

The central management compensates for reasonable expenses which are related to the operation of the European Works Council and of the steering committee and which enable the European Works Council and the steering committee to carry out their tasks in an appropriate and unhindered manner. The central management primarily compensates for the following expenses:

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

Subdivision 2 Informing and Consulting

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

(1) A European Works Council has the right to inform and consult, taking into account the provisions of § 13¹ of this Act. [RT I, 04.07.2011, 1 – entry into force 14.07.2011]

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

§ 34. Annual informing and consulting

(1) A European Works Council has the right to meet with the central management at least once a year to obtain information from the central management and to consult with the central management on the basis of a report submitted by the central management on the development and future prospects of a Community-scale undertaking or Community-scale group of undertakings.

(2) With regard to the development and future prospects of the activity, the meeting is to relate particularly to the following matters:

- 1) the structure, economic and financial situation of the undertaking;
- 2) the possible developments of the business, production and sales;
- 3) the situation and possible trend of employment;
- 4) investments;
- 5) substantial changes in the work organisation;
- 6) introduction of new working methods or production processes;
- 7) transfer of production;
- 8) mergers, dissolutions or cut-backs of undertakings or parts thereof;
- 9) collective lay-offs.

§ 35. Informing and consulting if exceptional circumstances become evident

(1) A steering committee has the right to timely information on circumstances or decisions affecting to a significant extent the interests of employees, above all, about relocation and dissolution of enterprises or undertakings or about collective lay-offs.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

(2) The steering committee has the right to request a meeting with the central management or the management or another person or persons, having independent decision-making powers, of the level of management within a Community-scale undertaking or group of undertakings, and to obtain information and consultation.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

(3) Those members of the European Works Council who have been elected by the employees of Community-scale undertakings or enterprises who are directly affected by the circumstances or decisions in question may participate in the meetings together with the steering committee.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

(4) A meeting for the purposes of information and consultation takes 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 steering committee has the right to submit 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 steering committee, the rights provided in this section are exercised by the European Works Council.

§ 36. Informing local employees' representatives

The local employees' representatives must be informed on the contents and results of informing and consulting under the provisions of this Sub-division pursuant to the provisions of § 22² of this Act.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

§ 36¹. Coordination of informing European Works Council and of consulting Works Council with representative bodies of Estonian employees

The procedure for informing a European Works Council and consulting the Works Council must be coordinated with the representative bodies of Estonian employees, taking into account the provisions of clause 4 of subsection 1 of § 21 and subsections 2 and 3 of § 21 of this Act.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

Subchapter 3 Specific Provisions

§ 37. Prohibition on hindering international informing and consulting

(1) It is prohibited to restrict the rights of a European Works Council and the special negotiating body, including to hinder and influence their establishment and operation, and also 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 participating in a procedure for informing and consulting through the restriction of their rights or allowing preferences.

§ 38. Confidential information

(1) Members of a European Works Council are prohibited from revealing to third parties or from using in any other manner in conflict with this Act any information which has expressly been communicated to them

in confidence upon performance of the duties of a member of a European Works Council. The obligation to maintain the confidentiality of information applies to members also after the expiry of their powers.

(2) To the obligation provided in subsection 1 of this section are also bound:

- 1) members of the special negotiating body;
- 2) employees' representatives who according to the agreement provided in § 22 of this Act participate in a procedure for informing and consulting;
- 3) experts and translators or interpreters.

(3) If the persons specified in clauses 1 and 2 of subsections 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 a member of a European Works Council and other members of the corresponding Works Council and representatives of undertakings and enterprises if, according to an agreement provided in § 21 of this Act or pursuant to § 36, they must be informed of the content and results of a procedure for informing and consulting, and also to the communication with translators or interpreters and experts who assist the European Works Council in its work.

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

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

(6) The central management may refuse to provide information if by deciding based on objective criteria disclosure of information of such nature significantly harms or may harm the functioning of an undertaking. This right does not extend to the information on the number of employees. If provision of information is refused, the central management is required to give, based on objective criteria, a justification as to why disclosure of the information significantly harms or may harm the functioning of the undertaking.

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

An employees' representative specified in subsection 3 of § 38 of this Act has the right of recourse to courts in order to resolve a dispute arising from the confidentiality of information and refusal to provide information.

§ 39¹. Participation of members of crew of ships used for merchant shipping in international informing and consulting

(1) A member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a ship used for merchant shipping, is entitled to participate in a meeting of the special negotiating body or of the European Works Council, or in any other meeting under a procedure for informing and consulting, where that member or alternate is not at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting takes place.

(2) Meetings are, where practicable, scheduled to facilitate the participation of a member or alternate, who is a member of the crew of a ship used for merchant shipping.

(3) In cases where a member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a ship used for merchant shipping, is unable to attend a meeting, the possibility of using, where possible, information and communication technologies must be considered.

[RT I, 01.03.2017, 2 – entry into force 10.10.2017]

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

(1) With regard to the guarantees of members of the special negotiating body, members of a European Works Council, 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 they are employed in Estonia, the provisions of the Employment Contracts Act concerning guarantees prescribed for employees' representatives are applied.

(2) Employees' representatives specified in subsection 1 of this section are granted time off to represent employees to the extent necessary for the performance of their duties arising from this Act. Average wages must be retained for the employees' representatives for the time off.

(3) Members of a European Works Council must be guaranteed measures which are necessary for the performance of their duties arising from this Act, including for collective representation of the interests of employees of a Community-scale undertaking or a Community-scale group of undertakings.
[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

§ 40¹. Right to training of member of special negotiating body and European Works Council

A member of the special negotiating body and of a European Works Council must be guaranteed training of such contents and to such an extent which is necessary for the performance of their duties at the international level. Average wages must be retained for the time of participation in training.
[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

Chapter 3 INVOLVEMENT OF EMPLOYEES AT EUROPEAN COMPANY AND EUROPEAN COOPERATIVE SOCIETY LEVEL

[RT I, 23.12.2022, 2 - entry into force 01.02.2023]

Subchapter 1 General Provisions

[RT I 2007, 22, 112 - entry into force 23.03.2007]

§ 41. Application of this Chapter

(1) This Chapter is applied if the registered office of an SE and SCE being founded will be Estonia.

(2) Regardless of the provisions of subsection 1 of this section, the provisions of §§ 54 and 66 of this Act are applied to the election of the members, representing Estonian employees, of the special negotiating body and the representative body of employees of an SE or SCE.

(3) If an SE or SCE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings for the purposes of §§ 7 and 10 of this Act, this Chapter is applied to the SE and SCE and their controlled undertakings. If the special negotiating body of the SE or SCE decides, according to § 60, not to open negotiations or to terminate negotiations already opened, Chapter 2 of this Act is applied.

(4) Application of this Act does not restrict the right of employees, prescribed by another Act, to be informed and consulted.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 41¹. Specifications for application of this Chapter with regard to European cooperative society

(1) Subchapter 2 of this Chapter is applied:

1) to an SCE established by at least two legal persons or by way of transformation;
2) with regard to an SCE, established exclusively by natural persons or by a single legal person and natural persons, which employs in total at least 50 employees in at least two Member States.

(2) In an SCE, established exclusively by natural persons or by a single legal person and natural persons, which employs in total less than 50 employees or which employs 50 or more employees in only one Member State, involvement of employees is organised as follows:

1) with regard to the SCE, the legal provisions of the Member State of its registered office, and with regard to the SCE's controlled undertakings and enterprises, the legal provisions of the Member State of their registered office, which are in that Member State applicable to legal persons of the same type and to their controlled undertakings and enterprises are applied;

2) if the registered office of an SCE implementing participation of employees is transferred from one Member State to another, the participation rights of the employees continue to apply at least at the same level.

(3) If, after the registration of an SCE specified in subsection 2 of this section, at least one third of the employees of the SCE and of its controlled undertakings and enterprises located in at least two Member States so requests, Subchapter 2 of this Chapter is applied with regard to the SCE, deeming the SCE as the participating legal person and the SCE's controlled undertaking or enterprise as the concerned controlled undertaking or enterprise.

(4) If, after the registration of an SCE specified in subsection 2 of this section, the overall number of employees thereof in at least two Member States amounts to 50 or exceeds this number, Subchapter 2 of this Chapter is applied with regard to the SCE, deeming the SCE as the participating legal person and the SCE's controlled undertaking or enterprise as the concerned controlled undertaking or enterprise.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 41². Participation of employees in management of company in case of cross-border merger of companies

[Repealed – RT I, 23.12.2022, 2 – entry into force 01.02.2023]

§ 42. European company and European cooperative society

(1) A European company (SE) is a company established in accordance with Council Regulation (EC) No 1575/2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, pp 1–21).

(2) A European cooperative society (SCE) is a cooperative established in accordance with Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE) (OJ L 207, 18.08.2003, pp 1–24).
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 43. Companies participating in foundation of European company and legal persons participating in foundation of European cooperative society

(1) For the purposes of this Act, companies participating in the foundation of an SE are companies which directly participate in the foundation of an SE (hereinafter *legal persons participating in the foundation of an SE*).

(2) For the purposes of this Act, legal persons participating in the foundation of an SCE are companies specified in Article 48(2) of the Treaty establishing the European Union, including commercial associations, and other legal persons which have been formed pursuant to the law of a Member State and with regard to which that law is applied and which directly participate in the foundation of an SCE.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 44. Concerned controlled undertaking and enterprise

For the purposes of this Chapter, a concerned controlled undertaking or enterprise is an undertaking or enterprise controlled by a legal person participating in the foundation of an SE or SCE and which will become the SE's or SCE's controlled undertaking or enterprise as a result of the foundation of the SE or SCE.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 45. Extent of informing employees' representatives

An SE's and SCE's competent bodies inform the representative body of employees or the employees' representatives of issues which are related to the SE or SCE and its controlled undertakings and enterprises located in Member States, or which exceed the competence of a body of an enterprise operating in one Member State. Informing must take place at such a time, in such a manner and with such a content which allows the employees' representatives to thoroughly examine the possible effect of the decisions and, where necessary, prepare for consultations with an SE's or SCE's competent body.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 46. Participation of employees

For the purposes of this Chapter, participation of employees means the influence of the representative body of employees or of the activity of an SE or SCE by the employees by way of exercise of the following rights:

- 1) the right to elect or appoint some of the members of the supervisory, administrative or management board of an SE or SCE, or
- 2) the right to recommend or oppose the appointment of all or some of the members of the supervisory, administrative or management board of an SE or SCE.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 47. Special negotiating body of European company and European cooperative society

An SE's or SCE's special negotiating body (hereinafter *special negotiating body*) is a body which is formed for the purposes of holding negotiations with the competent bodies of legal persons participating in the foundation of an SE or SCE on the establishment of a procedure for the involvement of employees in the SE or SCE.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 48. Representative body of employees

A representative body is the body representing employees which is formed by the agreement specified in § 62 of this Act or in accordance with the provisions of Division 3 of Subchapter 2 of this Chapter, with the purpose of informing and consulting the employees of an SE or SCE and of its controlled undertakings and enterprises situated in the Member States and, where necessary, of exercising the right of participation of employees in the SE or SCE.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 49. Cooperation between representative body of employees and competent body of European company or European cooperative society

(1) The representative body of employees and the competent body of an SE or SCE must cooperate in a spirit of mutual trust, having regard to their reciprocal rights and obligations.

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

[RT I 2007, 22, 112 – entry into force 23.03.2007]

Subchapter 2 Foundation of Representative Body of Employees and Procedure for Involvement of Employees

[RT I 2007, 22, 112 - entry into force 23.03.2007]

Division 1 Negotiations on Involvement of Employees

[RT I 2007, 22, 112 - entry into force 23.03.2007]

§ 50. Measures for opening negotiations

(1) If the managements or administrative boards of the legal persons participating in the foundation of an SE or SCE (hereinafter *participating legal persons*) draw up a plan for the establishment of an SE or SCE, they must immediately after the conclusion of a merger agreement or of a memorandum of association for founding a holding company, or after the approval of a plan to found a controlled enterprise or of a plan to transform a company into an SE or a legal person into an SCE, take the necessary measures, including provide information about the names of the participating legal persons and their controlled undertakings and enterprises, and about the number of their employees, to open negotiations with the representatives of the employees of the participating legal persons on arrangements for the involvement of employees in the SE or SCE.

(2) Information on the number of employees is presented by each Member State, indicating information on all concerned undertakings and enterprises separately.

(3) If employees have the right to participate in participating legal persons, then in addition to the information provided in subsection 1 of this section, information must also be provided on the form and extent of the participation of employees, indicating the proportion of employees' representatives of the overall number of employees in all the participating legal persons.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 51. Formation and composition of special negotiating body

(1) In order to hold negotiations specified in § 50 of this Act, a special negotiating body is formed from the representatives of the employees of participating legal persons and of concerned controlled undertakings or enterprises.

(2) Members of a special negotiating body are elected or appointed in proportion to the number of employees employed in each Member State where the participating legal persons and the concerned undertakings or enterprises are located, by allocating in respect of a Member State one seat per portion of employees employed in that Member State amounting to 10% of the number of employees employed by the participating legal persons and concerned undertakings or enterprises in all the Member States taken together. Members are elected in each Member State in accordance with the rules for election or appointment prescribed in the Member State.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

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

(1) If the members of a special negotiating body are elected or appointed according to subsection 2 of § 51 of this Act and an SE or SCE is formed by way of merger, additional members are elected or appointed pursuant to the law of the corresponding Member State if the participating legal person 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 must correspond to the number of participating legal persons not represented in the special negotiating body. The total number of such additional members must not exceed 20% of the number of members appointed according to subsection 2 of § 51 of this Act.

(3) If, according to subsection 2 of § 51 of this Act, the number of participating legal persons not represented through a member in a special negotiating body is less than 20% of the number of members in the special negotiating body, each participating legal person not represented presents one additional member.

(4) If, according to subsection 2 of § 51 of this Act, the number of participating legal persons not represented through a member in a special negotiating body is more than 20% of the number of members in the special negotiating body, the additional seats are divided between participating legal persons not represented. The division is made pursuant to the number of employees in the participating legal persons. The division of additional seats is commenced from the largest participating legal person and is continued in decreasing order pursuant to the number of employees.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 53. Change of composition of special negotiating body

If, during a period prescribed for negotiations, the number of employees of participating legal persons changes significantly or if there are changes in the structure of the participating legal persons and these changes affect the division of seats allocated for Member States, the seats are reallocated.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

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

(1) A member or members of a special negotiating body representing the employees of a participating legal person and of a concerned controlled undertaking or enterprise located in Estonia are elected in accordance with the rules provided in § 17 of this Act, taking into account the specifications arising from this section.

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

1) where possible, each participating legal person is represented in the special negotiating body through at least one member;

2) if the number of Estonian members in the special negotiating body is smaller than the number of participating legal persons located in Estonia upon foundation of the SE or SCE, the participating legal person employing the largest number of employees is taken into account first.

(3) If Estonia has the right to elect additional members to a special negotiating body, these members are elected in accordance with the rules provided in this section.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 55. Representation of Estonian employees in special negotiating body

If the number of represented employees is of determinative importance upon voting in a special negotiating body, the number of members elected from Estonia who represent employees is calculated by dividing the overall number of employees of all participating legal persons and of concerned undertakings or enterprises located in Estonia by the number of Estonian representatives in the special negotiating body.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 56. Conclusion of agreement and informing special negotiating body

(1) A special negotiating body and the competent bodies of participating legal persons determine, by a written agreement, the procedure for the involvement of employees in the SE or SCE. For that purpose the competent bodies of the participating legal persons inform the special negotiating body of a plan to found the SE or SCE and of the actual process of foundation thereof until the SE or SCE 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 or SCE, to its controlled undertakings and enterprises located in the Member States and to their employees.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 57. Decision-making in special negotiating body

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

(2) Should the result of the negotiations lead to a reduction of the participation rights of employees, the majority required for a decision to approve such an agreement is 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 or SCE is to be established by way of merger and if participation covers at least 25% of the overall number of employees of the participating legal persons;
- 2) an SE is to be established by way of creating a holding company or forming a controlled undertaking and if participation covers at least 50% of the overall number of employees of the participating legal persons, or
- 3) an SCE is to be established by any other way than merger, if participation covers at least 50% of the overall number of employees of the participating legal persons.

(3) Reduction of the participation rights of employees means a proportion of members of the supervisory, administrative or management board of the SE or SCE, which is lower than the highest proportion existing within the participating legal persons.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 58. Involvement of experts in negotiations

(1) For the purposes of the negotiations, the special negotiating body may involve experts of its choice to assist the special negotiating body with its work. Among other things, representatives of appropriate Community-level trade union organisations may be involved as experts.

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

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 59. Duration of negotiations

(1) Negotiations continue for up to six months as of the formation of the special negotiating body.

(2) The special negotiating body informs the relevant trade unions and other third parties of opening of negotiations.

(3) The parties may decide, by agreement, to extend negotiations up to a total of one year from the formation of the special negotiating body.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

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

(1) A special negotiating body may decide by the majority provided 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 that Member State where the SE or SCE has employees. Such a decision stops the procedure to conclude the agreement provided in § 62 of this Act. In such a case, the provisions of Division 3 of this Subchapter are not applied.

(2) The majority required to make a decision specified in subsection 1 of this section is 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.

(3) In an SE or SCE is established by way of transformation, this section is not applied if the employees have a participation right in the legal person to be transformed.

(4) The special negotiating body is reconvened on the written request of at least 10% of the employees of the SE or SCE, of its controlled undertakings or enterprises, 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 special negotiating body decides to reopen negotiations but no agreement is reached as a result of those negotiations, the provisions of Division 3 of this Subchapter are not applied.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 61. Expenses relating to special negotiating body

Participating legal persons compensate for any expenses relating to the formation or functioning of the special negotiating body, including to negotiations held with them, pursuant to subsection 6 of § 20 of this Act.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

Division 2

Agreement on Involvement of Employees

[RT I 2007, 22, 112 - entry into force 23.03.2007]

§ 62. Agreement on involvement of employees

(1) The competent bodies of participating legal persons and a special negotiating body negotiate in a spirit of cooperation and mutual trust with the purpose of reaching an agreement on a procedure for the involvement of the employees of an SE or SCE.

(2) Taking into consideration the specifications provided in subsection 4 of this section, the written agreement referred to in subsection 1 between the competent bodies of the participating legal persons and the special negotiating body specifies:

- 1) the scope of the agreement;
- 2) the composition, number of members and allocation of seats of the representative body, and who will be the discussion partner of the competent body of the SE or SCE in connection with the procedure for information and consultation of the employees of the SE or SCE, and of its controlled undertakings and enterprises;
- 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 allocated to the representative body;
- 6) if, during negotiations, the parties decide to establish a procedure for information and consultation instead of forming a representative body, then the procedure for the implementation thereof;
- 7) if, during negotiations, the parties decide to establish a procedure for the participation of employees, then the substance of that procedure, including, where necessary, the number of members in the SE's or SCE's supervisory, administrative or management board whom the employees will be entitled to elect, appoint, recommend or oppose, and the procedure for electing, appointing, recommending or opposing those members, and the rights of the members;
- 8) the date of entry into force of the agreement and the duration of the agreement, and also the circumstances upon occurrence of which the agreement must be renegotiated, and the procedure for the renewal of the agreement.

(3) In the application of clause 8 of subsection 2 of this section with regard to an SCE, new negotiations may be opened in the case when the structure of the SCE or its controlled undertaking or enterprise changes after the foundation of the SCE.

(4) If an SE or SCE has been established by way of transformation, the agreement must guarantee that the involvement of employees continues at least at the same level as in the legal person which is being transformed into an SE or SCE, taking into account, among other things, the provisions of subsection 4 of § 41 of this Act.

(5) An agreement must be signed by the representatives of participating legal persons 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 special negotiating body must be appended to the agreement.

(6) An agreement concluded in conflict with subsection 2 of this section is void. In such a case, the provisions of Division 3 of this Subchapter are applied.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

Division 3

Lawful Representative Body of Employees and Involvement of Employees

[RT I 2007, 22, 112 - entry into force 23.03.2007]

Subdivision 1

General Provisions

[RT I 2007, 22, 112 - entry into force 23.03.2007]

§ 63. Foundation of lawful representative body of employees

The representative body of employees is founded as of the date of registration of an SE or SCE in Estonia according to this Division if:

- 1) the parties so agree, or
 - 2) within the term provided in § 59 of this Act no agreement has been concluded, and the competent body of each of the participating legal persons decides to continue with its registration of the SE or SCE, and the special negotiating body has not taken the decision provided in subsection 1 of § 60.
- [RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 64. Application of provisions governing employee participation

- (1) The provisions of this Subchapter governing employee participation are applied if an SE is established by way of transformation and merger and by way of foundation of a holding company or a controlled undertaking or if an SCE is established by any other way.
 - (2) The provisions governing employee participation are applied in establishment of an SE or SCE by way of transformation, if the rules of a Member State relating to employee participation in the supervisory, administrative or management board were applied with regard to a legal person transformed into an SE or SCE.
 - (3) The provisions governing employee participation are applied in establishment of an SE or SCE by way of merger if:
 - 1) before registration of the SE or SCE, one or more forms of participation were applied in one or more of the participating legal persons covering at least 25% of the overall number of employees employed by all the participating legal persons, or
 - 2) before registration of the SE or SCE, one or more forms of participation were applied in one or more of the participating legal persons covering less than 25% of the overall number of employees employed by all the participating legal persons, and if the special negotiating body so decides.
 - (4) The provisions governing employee participation are applied in establishment of an SE by way of setting up a holding company or establishing a controlled undertaking if:
 - 1) before registration of the SE, one or more forms of participation were applied in one or more of the participating legal persons covering at least 50% of the overall number of employees employed by all the participating legal persons, or
 - 2) before registration of the SE, one or more forms of participation were applied in one or more of the participating legal persons covering less than 50% of the overall number of employees employed by all the participating legal persons, and if the special negotiating body so decides.
 - (5) The provisions governing employee participation are applied in establishment of an SE by any other way than by way of transformation or merger if:
 - 1) before registration of the SCE, one or more forms of participation were applied in one or more of the participating legal persons covering at least 50% of the overall number of employees employed by all the participating legal persons, or
 - 2) before registration of the SCE, one or more forms of participation were applied in one or more of the participating legal persons covering less than 50% of the overall number of employees employed by all the participating legal persons, and if the special negotiating body so decides.
 - (6) The special negotiating body informs the competent bodies of the participating legal persons of any decisions taken pursuant to clause 2 of subsection 3, clause 2 of subsection 4 and clause 2 of subsection 5 of this section.
 - (7) If with regard to any of the participating legal persons the provisions concerning employee participation were not applied before the registration of an SE or SCE, the SE or SCE is not required to establish provisions governing employee participation.
- [RT I 2007, 22, 112 – entry into force 23.03.2007]

Subdivision 2 Representative Body of Employees

[RT I 2007, 22, 112 - entry into force 23.03.2007]

§ 65. Composition of representative body of employees

- (1) The representative body of employees is composed of employees of an SE or SCE and of its controlled undertakings and enterprises 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 legal persons and concerned controlled undertakings and enterprises, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which amounts to up to 10% of the number of employees employed by the participating legal persons and concerned undertakings and enterprises in all the Member States taken together.
- (3) The competent body of an SE or SCE must be informed of the composition of the representative body.

(4) If the number of employees of participating legal persons changes significantly or there are other changes in the structure of the participating legal persons and these changes affect the allocation of seats and the number of members, the allocation and number of the seats of the representative body must be brought into conformity with the changes.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

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

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

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 67. Steering committee and rules of procedure

(1) The representative body may form a steering committee with up to three members.

(2) The representative body adopts its rules of procedure.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 68. Opening negotiations for conclusion of agreement

(1) Four years after the representative body of employees is established, the representative body ascertains whether to open negotiations for the conclusion of the agreement specified in subsection 1 of § 62 of this Act or to continue to apply the provisions of this Division.

(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. If by the due date by which the negotiations come to an end no agreement has been concluded, the arrangements initially adopted continue to apply in accordance with this Division.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

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

An SE or SCE compensates for expenses relating to the activities of the representative body of employees and the steering committee pursuant to the provisions of § 32 of this Act.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

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

A member of the representative body has the right to time off for participation in training with retention of wages if the training is necessary for the fulfilment of the functions of a member of the representative body. At least 14 calendar days a year must be ensured for training together with retention of average wages.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

Subdivision 3 Involvement of Employees

[RT I 2007, 22, 112 - entry into force 23.03.2007]

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

The competence of the representative body upon informing and consulting is limited to matters which concern the SE or SCE itself and any of its controlled undertakings or enterprises situated in another Member State, or to matters which exceed the powers of the decision-making bodies in a single Member State.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

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

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

(2) The competent body of an SE or SCE must provide the representative body with the agenda for a meeting of the administrative, management and supervisory board, and with copies of all documents submitted to the general meeting of shareholders or members of an SCE.

(3) The meeting must relate in particular to the structure, economic and financial situation, the possible development of the business and of production and sales of the undertakings and enterprises, the situation of employment and the possible trend thereof, investments, substantial changes concerning work organisation, introduction of new working methods and production processes, transfer of production, merger, division, transformation and dissolution of undertakings, and also transfer of enterprises or important parts thereof, and collective termination of employment contracts.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 72. Informing and consulting if exceptional circumstances become evident

(1) The representative body of employees has the right to information on circumstances affecting the interests of employees to a considerable extent, particularly on dissolution, relocation and transfer of undertakings, and on collective termination of employment contracts.

(2) The representative body of employees has the right to request a meeting with the competent body of an SE or SCE or with persons responsible for management having independent decision-making powers on any level of management of the SE or SCE in order to receive information on measures significantly concerning the interests of employees and to hold consultations on these matters. In urgent matters, the steering committee has the right to request a meeting on the basis of a decision of the representative body of employees.

(3) If the competent body decides not to act in accordance with the opinion expressed by the representative body, the representative body has the right to request a new meeting with the competent body of the SE or SCE. At the new meeting, the parties must attempt to seek agreement.

(4) Also those members of the representative body who represent employees who are directly affected by the measures to be implemented have the right to participate in the meetings with the steering committee.

(5) The provisions of this section do not affect the rights of a competent body.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 73. Organisation of information and consultation meetings

(1) Before a meeting with the competent body of an SE or SCE, the members of such a representative body of employees or steering committee, the composition of which has been enlarged pursuant to subsection 4 of § 72 of this Act, where necessary, have the right to meet in private without the representatives of the competent body being present.

(2) The representative body or the steering committee may use the assistance of experts of their choice.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 74. Informing employees' representatives of results of meetings

Members of the representative body of employees must inform the representatives of the employees of an SE or SCE and its controlled undertakings and enterprises of the content and results of a procedure for informing and consulting.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 75. Employee participation in European company and European cooperative society

(1) If an SE or SCE has been established by way of transformation and before the registration of the SE or SCE the provisions of the legislation of a Member State were applied to employee participation in the supervisory, administrative or management board, the application of all the provisions concerning employee participation must continue with regard to the SE or SCE. Subsections 2–6 of this section are applied to employee participation, taking into account the specifications arising from the foundation of the SE or SCE.

(2) If an SE or SCE has been established by a way other than transformation, the employees of the SE or SCE, its controlled undertakings and enterprises or their representative body have the right to elect, appoint, recommend or reject some of the members of the supervisory, administrative or management board of the SE or SCE, taking into account that the number of members must be equal to the highest ratio of the participating legal persons before the registration of the SE or SCE.

(3) If in the participating legal persons there are several forms of employee participation, the special negotiating body decides which form to establish in the SE or SCE. The special negotiating body must inform the competent bodies of the participating legal persons of the decision made according to this subsection.

(4) The representative body decides on the allocation of seats within the supervisory, administrative or management board among the members representing the employees from different Member States, or on the way in which the SE's or SCE's employees may give recommendations or express opposition in the appointment of the members of these boards, in proportion to the number of the SE's or SCE's employees in each Member State.

(5) If, as a result of allocation of seats, employees of a Member State do not have a representative in the supervisory, administrative or management board, the representative body of employees must give one of the seats allocated according to subsection 4 of this section to that Member State, preferring the Member State which is the registered office of the SE or SCE. If a seat has already been allocated for the representative of the Member State of the registered office of the SE or SCE, the seat must be given to the Member State employing the greatest number of employees.

(6) Every member of the supervisory, administrative or management board of an SE or SCE who has been elected, appointed or recommended by the representative body of employees or by the employees is a full member with the same rights and obligations as the members representing shareholders or members of an SCE, including the right to vote.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 76. Election of member of supervisory, administrative or management board of European company or European cooperative society who represents Estonian employees

If one or several seats have been allocated for Estonia in the supervisory, administrative or management board of an SE or SCE, a member or members representing employees are elected in accordance with the rules provided in § 54 of this Act, taking into account the specifications for the election of a member or members of the supervisory, administrative or management board of an SE or SCE.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

Subchapter 3 Specific Provisions

[RT I 2007, 22, 112 - entry into force 23.03.2007]

§ 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 also the establishment and conduct of a procedure for informing, consulting and participating.

(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 participating, through the restriction of their rights or allowing preferences.

[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 78. Confidential information

(1) Members of the special negotiating body, members of the representative body of employees, involved experts and translators or interpreters and employees' representatives participating in a procedure for informing and consulting according to clause 6 of subsection 2 of § 62 of this Act are prohibited from revealing to third parties or from using in any other manner in conflict with this Act any information which has expressly been communicated to them in confidence upon performance of their duties. The obligation to maintain the confidentiality of information also continues after the expiry of the powers of the said persons.

(2) If the persons specified in subsection 1 of this section, except for experts and translators or interpreters, do not agree with the confidentiality of the communicated information, the SE or SCE or the supervisory, administrative or management board of the participating legal person are 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 a member of the representative body of employees and other members of the corresponding representative body and representatives of the employees of an SE or SCE, its controlled undertakings and enterprises if, according to an agreement provided in § 62 of this Act or pursuant to § 74, they must be informed of the content and results of a procedure for informing and consulting, and also to the communication with translators or interpreters and experts who assist the representative body in its work.

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

1) the communication between a member of the special negotiating body and experts and translators or interpreters;

2) an employees' representative who according to the agreement specified in clause 6 of subsection 2 of § 62 of this Act communicates with translators or interpreters and experts and representatives of the employees of the SE or SCE located in Estonia, its controlled undertakings and enterprises in the course of a procedure for

informing and consulting if, according to the agreement provided in clause 6 of subsection 2 of § 62 of this Act, they must be informed of the content and results of the procedure for informing and consulting.

(5) An SE or SCE or the supervisory, administrative or management board of a participating legal person may refuse to provide information if by deciding based on objective criteria disclosure of information of such nature significantly harms or may harm the functioning of the participating legal person, the SE or SCE or its controlled undertakings and enterprises. This right does not extend to the number of employees. If provision of information is refused, the SE or SCE or the supervisory, administrative or management board of the participating company are required to give, based on objective criteria, a justification as to why disclosure of the information significantly harms or may harm the functioning of the undertaking or enterprise.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

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

An employees' representative specified in subsection 2 of § 78 of this Act has the right of recourse to courts in order to resolve a dispute arising from the confidentiality of information and refusal to provide information.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 80. Guarantees of employees' representatives participating in involvement

The provisions of § 40 of this Act are applied with regard to the guarantees of members of the 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, administrative or management board of an SE or SCE, who are the employees of the SE or SCE or its controlled undertaking or enterprise or a participating legal person.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 81. Misuse of European company and European cooperative society

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

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

- 1) after the registration of the SE or SCE, the participating legal persons are deemed to be the SE or SCE and its controlled undertakings and enterprises, respectively;
- 2) the special negotiating body is, after the registration of the SE or SCE, deemed to be the representative body of employees;
- 3) the period preceding the registration of the SE or SCE provided in subsections 3–5 of § 64 of this Act is deemed to be a period preceding failure of the negotiations.

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

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

(5) If an SE or SCE was founded with a purpose of denying employees the right of involvement or restrict that right, holding of the negotiations provided in subsection 1 of this section is not restricted by the changes following the foundation of the SE or SCE.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

§ 82. Resolution of dispute related to misuse of European company and European cooperative society in court

(1) A member of the representative body of employees and a representative of the employees of an SE's or SCE's new controlled undertakings and enterprises has the right of recourse to courts to resolve a dispute arising from the misuse of an SE or SCE 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 a representative of the employees of an SE's or SCE's new controlled undertakings and enterprises becomes or should have become aware of the significant changes in the SE or SCE.
[RT I 2007, 22, 112 – entry into force 23.03.2007]

Chapter 3¹

INVOLVEMENT OF EMPLOYEES IN CASE OF CROSS-BORDER MERGER, SUBDIVISION AND TRANSFORMATION OF COMPANIES

[RT I, 23.12.2022, 2 - entry into force 01.02.2023]

§ 82¹. Informing and consulting employees in case of cross-border merger, Subdivision and transformation

(1) Upon cross-border merger, division and transformation of companies the right of employees to informing and consulting must be ensured according to the provisions of the Employees' Trustee Act and this Act.

(2) A private limited company or a public limited company entered in the Estonian commercial register that participates in a cross-border merger, division or transformation is to inform and consult employees before adoption of draft cross-border merger or division agreement, or draft transformation resolution, or merger, division or transformation report, whichever is earlier. A reasoned response to opinions presented and proposals made by the employees in the course of consulting must be given before adoption of the draft cross-border merger or division agreement or the draft transformation resolution at a meeting of shareholders or general meeting of shareholders.

(3) The provisions of subsections 1 and 2 of this section do not limit the application of provisions more favourable for the employees.

[RT I, 23.12.2022, 2 – entry into force 01.02.2023]

§ 82². Participation of employees in management of company in case of cross-border merger of companies

(1) Where a private limited company or a public limited company entered in the Estonian commercial register participates in a cross-border merger as the acquiring company for the purposes of subsection 1 of § 433¹ of the Commercial Code, the employees will participate in the management of the company being created as a result of the merger through the exercise of the rights provided in § 46 of this Act. In determining the right of employees to participate in the management of the company the provisions of Article 12(2)–(4) of Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE) and also the provisions of subsections 1 and 3 of § 41, §§ 50–59 and 61, subsection 1 and clauses 1, 7 and 8 of subsection 2 and subsections 3, 5 and 6 of § 62, § 63, subsection 1, clause 1 of subsection 3 and subsections 6 and 7 of § 64, subsection 2 of § 75, and §§ 76–80 and 83–88 of this Act are applied.

(2) Subsection 1 of this section is applied in the event a private limited company or a public limited company entered in the Estonian commercial register participates in a cross-border merger as the acquiring company and within six months prior to the disclosure of the draft cross-border merger agreement the average number of employees of at least one company participating in the cross-border merger was equal to four fifths of the applied threshold as provided by the law of the contracting state which is the registered office of the merging company starting from which a participation right corresponding to § 46 of this Act arises for the employees.

(3) Instead of the percentage provided in clause 1 of subsection 3 of § 64 of this Act, the percentage of 33 ⅓ is applied.

(4) In the event of a cross-border merger specified in subsection 2 of this section where an employee participation system corresponding to § 46 of this Act is applied in one of the merging companies, the management boards of the companies may decide that as of the entry of the merger in the register the procedure for the employees to participate in the management of the company will be applied pursuant to the law of the contracting state which is the registered office of the acquiring company.

(5) In the event of a cross-border merger specified in subsection 2 of this section the special negotiating body specified in § 51 of this Act may, by two thirds of the votes of the members who represent two thirds of the employees of the merging companies, including the votes of those members who represent employees in at least two different contracting states, decide not to open negotiations for the purposes of § 50 of this Act or to terminate negotiations already opened, and to apply to the participation of the employees in the management of the company the law of the contracting state which is the registered office of the acquiring company.

(6) If a private limited company or a public limited company entered in the Estonian commercial register as a result of a cross-border merger implements the employee participation system arising from § 46 of this Act, said company must, within four years as of the entry of the merger in the register, guarantee implementation of an

equivalent employee participation system in the case of both domestic and cross-border merger, division and transformation.

(7) A company is to inform its employees or their representatives of whether it decides to apply the provisions of subsection 2 of § 75 of this Act or whether it will open negotiations in a special negotiating body formed under subsection 1 of § 51 of this Act. In the latter case the company is to inform its employees or their representatives of the results of negotiations at the first opportunity.

[RT I, 23.12.2022, 2 – entry into force 01.02.2023]

§ 82³. Participation of employees in management of company in case of cross-border Subdivision of company

(1) Where a private limited company or a public limited company entered in the Estonian commercial register participates in a cross-border division as a recipient company for the purposes of subsection 1 of § 477¹ of the Commercial Code, the employees will participate in the management of the company being created as a result of the division through the exercise of the rights provided in § 46 of this Act. In determining the right of employees to participate in the management of the company the provisions of Article 12(2) and (4) of Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE) and also the provisions of subsections 1 and 3 of § 41, §§ 50–51 and 53–56, subsection 1 of § 57, §§ 58, 59 and 61, subsection 1, clauses 1, 7 and 8 of subsection 2 and subsections 4–6 of § 62, § 63 (except for the requirement for lack of a decision of the special negotiating body specified in clause 2), and §§ 75–88 of this Act are applied.

(2) Subsection 1 of this section is applied in the event a private limited company or a public limited company entered in the Estonian commercial register participates in a cross-border division as a recipient company and within six months prior to the disclosure of the cross-border division agreement the average number of employees of the company being divided was equal to four fifths of the applied threshold as provided by the law of the contracting state which is the registered office of the company being divided starting from which a participation right corresponding to § 46 of this Act arises for the employees.

(3) In the event of a cross-border division specified in subsection 2 of this section the special negotiating body specified in § 51 of this Act may, by two thirds of the votes of the members who represent at least two thirds of the employees, decide not to open negotiations for the purposes of § 50 of this Act or to terminate negotiations already opened, and to apply to the participation of the employees in the management of the company the law of every contracting state which is the registered office of a recipient company.

(4) In the event of a cross-border division specified in subsection 2 of this section the law of the contracting state which is the registered office of the company being divided, governing employee participation, applied before the division of the company, is applied until the date of application of new rules on employee participation to be agreed upon or, where there are no rules to be agreed upon, until the rules on employee participation are applied according to subsection 1 of § 75 of this Act.

(5) If a private limited company or a public limited company entered in the Estonian commercial register that participates in a cross-border division as a recipient company implements the employee participation system arising from § 46 of this Act, said companies must, within four years as of the entry of the cross-border division in the register, guarantee the implementation of an equivalent employee participation system in the case of both domestic and cross-border merger, division and transformation.

(6) A company is to inform its employees or their representatives of the results of negotiations dealing with employee participation at the first opportunity.

[RT I, 23.12.2022, 2 – entry into force 01.02.2023]

§ 82⁴. Participation of employees in management of company in case of cross-border transformation of company

(1) Where a private limited company or a public limited company entered or being entered in the Estonian commercial register participates in a cross-border transformation as transformed company for the purposes of subsection 1 of § 491¹ of the Commercial Code, the employees will participate in the management of the company being created as a result of the transformation through the exercise of the rights provided in § 46 of this Act. In determining the right of employees to participate in the management of the company the provisions of Article 12(2) and (4) of Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE) and also the provisions of subsections 1 and 3 of § 41, §§ 50–51 and 53–56, subsection 1 of § 57, §§ 58, 59 and 61, subsection 1, clauses 1, 7 and 8 of subsection 2 and subsections 4–6 of § 62, § 63 (except for the requirement for lack of a decision of the special negotiating body specified in clause 2), and §§ 75–88 of this Act are applied.

(2) Subsection 1 of this section is applied in the event a private limited company or a public limited company is entered in the Estonian commercial register as a result of cross-border transformation and within six months prior to the disclosure of draft cross-border transformation resolution the average number of employees of the company being transformed was equal to four fifths of the applied threshold as provided by the law of the contracting state which is the registered office of the company being transformed starting from which a participation right corresponding to § 46 of this Act arises for the employees.

(3) In the event of a cross-border transformation specified in subsection 2 of this section the special negotiating body specified in § 51 of this Act may, by two thirds of the votes of the members who represent at least two thirds of the employees of the transformed company, decide not to open negotiations for the purposes of § 50 of this Act or to terminate negotiations already opened, and to apply to the participation of the employees in the management of the company the law of the contracting state which is the registered office of the transformed company.

(4) In the event of a cross-border transformation specified in subsection 2 of this section the law of the contracting state which is the registered office of the company being transformed, governing employee participation, applied before the transformation of the company, is applied until the date of application of new rules on employee participation to be agreed upon or, where there are no rules to be agreed upon, until the rules on the employee participation are started to be applied according to subsection 1 of § 75 of this Act.

(5) If a private limited company or a public limited company entered in the Estonian commercial register as a result of cross-border transformation implements the employee participation system arising from § 46 of this Act, it must, within four years as of the entry into force of the cross-border transformation, guarantee the implementation of an equivalent employee participation system in the case of both domestic and cross-border merger, division and transformation.

(6) A company is to inform its employees or their representatives of the results of negotiations dealing with employee participation at the first opportunity.
[RT I, 23.12.2022, 2 – entry into force 01.02.2023]

Chapter 4

STATE SUPERVISION

[RT I 2007, 22, 112 - entry into force 23.03.2007]

§ 83. Exercise of state supervision

(1) Regardless of the location of the central management of a Community-scale undertaking or of a controlling undertaking of a Community-scale group of undertakings or the registered office of the SE or SCE, state supervision over compliance with the requirements of this Act is exercised by the Labour Inspectorate.
[RT I, 28.04.2017, 1 – entry into force 08.05.2017]

(2) [Repealed – RT I, 28.04.2017, 1 – entry into force 08.05.2017]

(3) In order to exercise the state supervision provided by this Act, the Labour Inspectorate may apply the special measures of state supervision provided in §§ 30–32 and 49–51 of the Law Enforcement Act on the grounds and in accordance with the rules provided in the Law Enforcement Act.
[RT I, 28.04.2017, 1 – entry into force 08.05.2017]

§ 84. Challenge proceedings concerning precept

[Repealed – RT I, 28.04.2017, 1 – entry into force 08.05.2017]

Chapter 5

LIABILITY

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

(1) Hindering international informing and consulting or involvement of employees is punishable by a fine of up to 300 fine units.
[RT I, 29.12.2020, 2 – entry into force 08.01.2021]

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.
[RT I, 29.12.2020, 2 – entry into force 08.01.2021]

§ 85¹. Violation of obligation to maintain confidentiality of information

Violation of the obligation to maintain the confidentiality of information by a member of the special negotiating body, a member of a European Works Council and of the representative body of employees, an expert and

translator and interpreter involved in informing and consulting, and employees' representatives participating in a procedure for informing and consulting pursuant to § 22 and clause 6 of subsection 2 of § 62 of this Act is punishable by a fine of up to 300 fine units.

[RT I, 29.12.2020, 2 – entry into force 08.01.2021]

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

(1) Failure to provide information on the number of employees or their distribution in the Member States or provision of incomplete or false information is punishable by a fine of up to 300 fine units.

[RT I, 29.12.2020, 2 – entry into force 08.01.2021]

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

[RT I, 29.12.2020, 2 – entry into force 08.01.2021]

§ 87. Violation of obligation of annual and extraordinary informing and consulting

(1) Failure to perform the obligation of annual informing and consulting, or informing and consulting under exceptional circumstances, provision of incomplete or false information is punishable by a fine of up to 300 fine units.

[RT I, 29.12.2020, 2 – entry into force 08.01.2021]

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

[RT I, 29.12.2020, 2 – entry into force 08.01.2021]

§ 88. Proceedings

(1) [Repealed – RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(2) The body conducting extra-judicial proceedings pertaining to the misdemeanours provided in §§ 85–87 of this Act is the Labour Inspectorate.

Chapter 6 IMPLEMENTATION OF ACT

§ 89. Valid agreements

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

(1¹) Chapter 2 of this Act, except for § 22¹ of this Act, is not applied to a Community-scale undertaking or group of undertakings where:

1) on the basis of Article 13(1) of 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, pp 64–72) or Article 3(1) of Council Directive 97/74/EC extending, to the United Kingdom of Great Britain and Northern Ireland, 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 10, 16.01.1998, pp 22–23) an agreement which covers the informing and consulting of employees of a Community-scale undertaking or a group of undertakings has been concluded, or

2) an agreement concluded under Article 6 of 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, pp 64–72) has been signed or reviewed during the period from 5 June 2009 to 4 June 2011.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

(1²) Undertakings specified in clause 2 of subsection 1¹ of this section are subject to the provisions in force at the time the agreement was signed or reviewed.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

(2) Upon expiry of an agreement specified in subsections 1 and 1¹ of this section, the parties may extend the agreement. If the parties fail to extend the agreement, this Act is applied.

[RT I, 04.07.2011, 1 – entry into force 14.07.2011]

¹Directive 2009/38/EC of the European Parliament and of the Council on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings

for the purposes of informing and consulting employees (OJ L 122, 16.05.2009, pp 28–44); Directive 2005/56/EC of the European Parliament and of the Council on cross-border mergers of limited liability companies (OJ L 310, 25.11.2005, pp 1–9); Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees (OJ L 207, 18.08.2003, pp 25–36); 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, pp 22–32). References to directives repealed by Directive 2009/38/EC are deemed references to Directive 2009/38/EC. [RT I, 04.07.2011, 1 – entry into force 14.07.2011] Directive (EU) 2015/1794 of the European Parliament and of the Council amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers (OJ L 263, 08.10.2015, pp 1–5). [RT I, 01.03.2017, 2 – entry into force 10.10.2017]