

Translation from Finnish

Legally binding only in Finnish and Swedish

Ministry of Economic Affairs and Employment, Finland

Act on Employee Involvement in European Companies and European Cooperative Societies as well as on Employer Obligations and Employee Involvement in Cross-Border Restructuring of Companies

(758/2004, amendments up to 90/2023 included)

By decision of Parliament, the following is enacted:

Chapter 1

General provisions

Section 1 (90/2023)

Purpose of the Act

The purpose of this Act is to provide for the arrangement of employee involvement in European companies, European cooperative societies and cross-border mergers, divisions and transfers of registered offices of limited liability companies, as well as to ensure that employees are informed and consulted about cross-border restructurings of companies planned by the employer and to safeguard the position of employees in such restructurings.

Employee involvement in European companies and European cooperative societies shall primarily be arranged by means of negotiation and agreement in accordance with the provisions of chapters 3 and 4 of this Act or, where an agreement is not reached, in accordance with the standard rules laid down in chapter 5.

Section 2 (1334/2021)

Application of the Act to European companies and European cooperative societies

This Act applies to the arrangement of employee involvement in European companies and European cooperative societies, which will be registered in Finland. Notwithstanding, the provisions of this Act on the allocation of seats on special negotiating bodies and representative bodies in Finland and on the election of employees' representatives to special negotiating bodies, representative bodies and the administrative or supervisory organs of European companies or European cooperative societies and to the general meetings of the latter in Finland apply regardless of which Member State of the European Economic Area the European company or European cooperative society will be registered in.

Where a European cooperative society has been established by natural persons or by one legal entity and natural persons with fewer than a total of 50 employees, or with 50 or more employees in only one Member State, the provisions applicable to similar entities in the location of the registered office of the European cooperative society and to the subsidiaries and establishments of the European cooperative society in the States where they are located apply to the arrangements for employee involvement. Notwithstanding, if, following the registration of the European cooperative society, requested by at least one third of all of the employees of the European cooperative society and its subsidiaries and establishments in at least two different Member States, or where it has at least 50 employees in at least two Member States, the involvement of employees shall be arranged, as appropriate, in accordance with the provisions applicable to European cooperative societies established by legal entities or formed by transformation.

Where the registered office of a European cooperative society is transferred to another Member State, the provisions applicable to employee involvement shall be equal or higher than before such transfer.

Section 2a (90/2023)

Application of the Act to the arrangement of employee involvement, informing and consulting employees and to the continuation of employer obligations in cross-border mergers, divisions or transfers of registered offices

The arrangement of employee involvement, informing and consulting employees and the continuation of employer obligations in cross-border mergers, divisions and transfers of registered offices is provided for in chapter 5a. The said chapter applies to companies and situations subject to the provisions of the Limited Liability Companies Act (624/2006) on cross-border mergers, divisions or transfers of registered offices. The said chapter also applies to cross-border restructuring of cooperatives and savings banks referred to in chapters 20 and 21 of the Cooperatives Act (421/2013) and chapter 4 of the Savings Bank Act (1502/2001).

Section 3 (663/2006)

Definitions

For the purposes of this Act:

- 1) *European company* (*Societas Europaea*, hereinafter referred to as 'SE') means a company established in accordance with Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE);
- 2) *European cooperative society* (*Societas Cooperativa Europaea*, hereinafter referred to as 'SCE'), means a cooperative established in accordance with Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE);
- 2a) *cross-border restructuring* means a cross-border merger, division and transfer of the registered office of a limited liability company within the European Economic Area as provided for in the Limited Liability Companies Act or in the corresponding legislation of another State of the European Economic Area, and any other similar restructuring referred to in section 2a; (90/2023)
- 3) *participating companies* means the companies directly participating in the establishing of an SE or an SCE, as well as any other legal entities established in accordance with the law of a Member State and falling within its scope which are directly participating in the establishing of an SCE;
- 4) *subsidiary of a company* means an undertaking over which that company or any other legal entity exercises dominant influence defined in accordance with Article 3(2)–(7) 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 purpose of informing and consulting employees;

- 5) *concerned subsidiary or establishment* means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the SE or SCE upon its formation;
- 6) *employees' representatives* means the employees' representatives provided for by national law or practice;
- 7) *representative body* means the body representative of the employees set up by an agreement referred to in chapter 4 of this Act or established in accordance with chapter 5, with the purpose of informing and consulting the employees of an SE or SCE and its subsidiaries and establishments situated in the European Economic Area and, where applicable, of exercising participation rights in relation to the SE or SCE;
- 8) *special negotiating body* means the body established in accordance with chapter 2 of this Act to negotiate with the competent organ of the participating companies regarding the establishment of arrangements for employee involvement within the SE or SCE;
- 9) *involvement of employees* means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be made within the SE or SCE;
- 10) *information* means the informing of the body representative of the employees or employees' representatives by the competent organ of the SE or SCE on questions which concern the SE or SCE itself or any of its subsidiaries and establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State, at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare employee consultations to be carried out with the competent organ of the SE or SCE;
- 11) *consultation* means the establishment of dialogue between the body representative of the employees or the employees' representatives and the competent organ of the SE or SCE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ such that it may be taken into account in the decision-making process within the SE or SCE; and
- 12) *participation* means the influence of the body representative of the employees or the employees' representatives in the affairs of a company or other legal entity by way of the right to elect or appoint some of the members to the supervisory or administrative organ of

the company or other legal entity, or to the management groups or equivalent bodies which together cover the profit units of the company or other legal entity, or the right to recommend or oppose the appointment of some or all of the members of the supervisory or administrative organ of the company or other legal entity.

Chapter 2

Creation of a special negotiating body

Section 4 (663/2006)

Actions by participating companies and creation of a special negotiating body

Where the management or administrative organs of the participating companies draw up a plan for the establishment of an SE or SCE, they shall as soon as possible after publishing the draft terms of merger or creating a holding company or after agreeing a plan to form a subsidiary or to transform into an SE or SCE, take the necessary steps to start negotiations with the employees' representatives of the companies or other legal entities on arrangements for the involvement of employees in the SE or SCE. Such necessary steps include provision of information about the participating companies, the concerned subsidiaries and establishments of the SE and the subsidiaries and establishments of the SCE, and the number of their employees.

For the purpose of these negotiations, a special negotiating body representative of the employees of the participating companies and concerned subsidiaries or establishments shall be created.

Section 5

Allocation of seats on the special negotiating body among Member States

The members of the special negotiating body shall be elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries and establishments. For each Member State, one seat shall be allocated per portion of employees employed in that Member State which equals 10%, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries and establishments in all Member States.

Section 6

Allocation of additional seats in the case of mergers

In the case of an SE or SCE formed by way of merger, the necessary number of additional members shall be selected for the special negotiating body from each Member State so that the negotiating body includes at least one member representing each participating company which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SE or SCE. The number of additional seats shall not exceed 20% of the number of representatives elected or appointed by virtue of section 5. (663/2006)

However, the procedure referred to in subsection 1 shall not lead to certain employees having double representation in the special negotiating body.

If the number of companies referred to in subsection 1 is greater than the number of additional seats available, these additional seats shall be allocated to companies in different Member States by decreasing order of the number of employees they employ.

Section 7 (663/2006)

Allocation of seats among Finnish companies

If the number of seats on a special negotiating body allocated to Finnish participating companies in accordance with section 5 is less than or equal to the number of participating companies, these seats shall be allocated among Finnish companies and other legal entities one at a time by decreasing order of the number of employees they employ.

If the number of seats on a special negotiating body allocated to Finnish participating companies in accordance with section 5 is greater than the number of participating companies, one seat shall be allocated first to each Finnish company or other legal entity, and the remaining seats thereafter among the companies in proportion to the number of employees they employ.

However, employees may, by agreement, deviate from the provisions of subsections 1 and 2 regarding the allocation of seats among Finnish companies and other legal entities. Wherever possible, the representation of all Finnish participating companies and groups of employees shall be secured by agreement.

Section 8 (663/2006)

Selection of members of special negotiating bodies in Finland

Employees employed by an SE or SCE in Finland have the right to select a representative to the special negotiating body by agreement or election. If employees cannot reach an agreement concerning the procedure, the occupational health and safety representatives representing the greatest number of workers and salaried employees shall jointly arrange an election or other selection procedure in such a way that all employees have the right to participate therein.

Chapter 3

Negotiations on employee involvement

Section 9 (663/2006)

Objective of negotiations

The special negotiating body and the competent organs of the participating companies shall determine, by written agreement, arrangements for the involvement of employees in the SE or SCE. To this end, the arrangements for employee involvement shall be negotiated in a spirit of cooperation with a view to reaching an agreement.

Section 10 (663/2006)

The special negotiating body's right to information

The competent organs of the participating companies shall inform the special negotiating body of the plan for establishing the SE or SCE and the progress being made, up to its registration.

Section 11 (663/2006)

The special negotiating body's decision-making rules

Subject to section 13, the special negotiating body shall make decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each member shall have one vote.

However, should the agreement to be negotiated on employee involvement mean a reduction in participation rights of employees, the approval of the agreement will require at least the votes of two thirds of those members of the special negotiating body who represent at least two thirds of the employees, including the votes of members representing employees who are employed in at least two Member States. The qualified majority referred to above is, however, only required if employee participation covers at least 25% of the overall number of employees of participating companies in the case of an SE or SCE established by way of merger, or if employee participation covers at least 50% of the overall number of employees of participating companies in the case of an SE or SCE established by way of creating a holding company or forming a subsidiary.

A reduction in participation rights of employees means that the proportion of members of the organs of the SE or SCE referred to in paragraph 12 of section 3 is lower than the highest proportion existing within the participating companies.

Section 12

Commencement and duration of negotiations

Negotiations shall commence as soon as the special negotiating body is established and may continue up to six months thereafter.

However, the parties may decide to extend negotiations beyond the period referred to in subsection 1, up to a total of one year from the establishment of the special negotiating body.

Section 13

Decision to terminate or not to open negotiations

The special negotiating body may decide not to open negotiations or to terminate negotiations, and to apply the rules on informing and consulting employees in those Member States where the SE or SCE has employees. Such a decision will stop the negotiation procedure referred to in this chapter, in which case none of the provisions of chapter 5 of this Act will apply. (663/2006)

A decision not to open or to terminate negotiations requires at least a two-thirds majority of the votes representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States.

In the case of an SE or SCE established by way of transformation, this section does not apply if there has been employee participation in the company or cooperative to be transformed.
(663/2006)

Section 14

Experts

For the purpose of the negotiations, the special negotiating body may request experts of its choice, for example representatives of appropriate Community level trade union organisations, to assist it with its work. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at Community level.

Section 15 (663/2006)

Reconvening the special negotiating body

The special negotiating body shall be reconvened on the written request of at least 10% of the employees of the SE or SCE, the subsidiaries and establishments thereof, or their representatives, at the earliest two years after the decision referred to in subsection 1 of section 13, unless the parties agree to negotiations being recommenced sooner. If the special negotiating body decides to recommence negotiations with the management but no agreement is reached as a result of those negotiations, however, none of the provisions of chapter 5 of this Act apply.

Chapter 4

Agreement on employee involvement

Section 16 (663/2006)

Content of the agreement

Subject to the autonomy of the parties, and subject to section 17, the written agreement between the competent organs of the participating companies and the special negotiating body shall specify:

- 1) the scope of the agreement;
- 2) the composition, number of members and allocation of seats on the representative body of employees, which will be the partner of the competent organ of the SE or SCE, in connection with arrangements for the information and consultation of the employees of the SE or SCE and the subsidiaries and establishments thereof;
- 3) the functions of the representative body and the procedure to be followed for informing and consulting it;
- 4) the frequency of meetings of the representative body;
- 5) the financial and material resources to be allocated to the representative body;
- 6) if, during negotiations, the parties decide to adopt one or more information and consultation procedures instead of establishing a representative body, the arrangements for implementing those procedures;
- 7) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including the number of members in the administrative or supervisory organ of the SE or SCE which the employees will be entitled to elect or appoint, recommend or oppose;
- 8) the procedures as to how the employees may elect, appoint, recommend or oppose the members of the SE's or SCE's administrative organs, and the rights of these members; and
- 9) the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation.

The agreement shall not, unless provision is made otherwise therein, be subject to the standard rules referred to in chapter 5 of this Act.

Section 17 (663/2006)

Prohibition on reducing employee involvement in the case of transformations

In the case of an SE or SCE established by means of transformation, the agreement shall provide for at least the same level of all elements of employee involvement as that existing within the company or other legal entity to be transformed into an SE or SCE.

Chapter 5

Standard rules on the arrangement of employee involvement

Section 18 (663/2006)

Application of standard rules

The provisions of this chapter apply from the date of the registration of the SE or SCE where either:

- 1) the parties so agree; or
- 2) no agreement on employee involvement has been concluded by the deadline laid down in section 12 and the competent organ of each of the participating companies decides to accept the application of the standard rules and so to continue with its registration of the SE or SCE, and the special negotiating body has not made the decision referred to in subsection 1 of section 13 not to open negotiations or to terminate them.

However, the provisions laid down in sections 28–30 regarding employee participation apply only:

- 1) in the case of an SE or SCE established by transformation, if the rules relating to employee participation were applied to the company or cooperative transformed into the SE or SCE;
- 2) in the case of an SE or SCE established by merger, if:
 - a) before registration of the SE or SCE, one or more forms of participation applied in one or more of the participating companies covering at least 25% of the total number of employees in all the participating companies, or
 - b) before registration of the SE or SCE, one or more forms of participation applied in one or more of the participating companies covering less than 25% of the total number of employees in all the participating companies and the special negotiating body so decides;
or
- 3) in the case of an SE established by setting up a holding company or establishing a subsidiary,
if:

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

Section 19 (663/2006)

Choosing the form of employee participation

If there is more than one form of participation within the various participating companies, the special negotiating body shall decide which of those forms will be established in the SE or SCE. If the special negotiating body does not make a decision on the form of employee participation, this shall be decided by the participating companies.

The special negotiating body shall inform the competent organs of the participating companies of any decisions made pursuant to subsection 1.

Section 20

Formation of the representative body

The representative body shall be composed of employees of the SE or SCE and the subsidiaries and establishments thereof elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees. (663/2006)

The members of the representative body shall be elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries and establishments, by allocating for each Member State one seat per portion of employees employed in that Member State equal to 10%, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries and establishments in all Member States.

If the number of seats of the representative body allocated among Finnish participating companies is less than or equal to the number of participating companies, the seats shall be allocated among Finnish companies and other legal entities one at a time by decreasing order according to the

number of employees employed by them. If the number of seats allocated to Finnish participating companies on the representative body exceeds the number of participating companies, one seat shall first be allocated to each Finnish company or other legal entity, after which the remaining seats shall be allocated among the companies in proportion to the number of employees employed by them. However, employees may, by agreement, deviate from what is referred to above. Wherever possible, the representation of all Finnish participating companies and groups of employees shall be secured by agreement. (663/2006)

Employees employed in Finland have the right to select their representatives on the representative body by agreement or election. If the employees cannot reach an agreement concerning the procedure to be followed, the occupational health and safety representatives representing the greatest number of workers and salaried employees shall jointly arrange an election or other selection procedure in such a way that all employees have the right to participate therein.

The competent organ of the SE or SCE shall be informed of the composition of the representative body. The representative body shall adopt rules of procedure. The representative body may elect a working committee from its number, comprising at most three members. The representative body or working committee may be assisted by experts of their choice. (663/2006)

Section 21 (663/2006)

Adaptation to changes in an SE or SCE

Unless otherwise agreed, the representative body shall ensure annually whether any changes have occurred within the SE or SCE or the subsidiaries or establishments thereof that would necessitate changing the composition of the representative body.

Section 22

Agreement negotiations

Four years after the representative body is established, it shall examine whether to commence negotiations for concluding the agreement referred to in chapter 4 and section 18 of this Act or to continue to apply the provisions of this chapter.

If a decision is made to negotiate an agreement according to chapters 3 and 4, the provisions laid down above regarding the special negotiating body apply to the arrangement of employee involvement, as appropriate. Where no agreement has been concluded by the deadline for ending

negotiations, the arrangements initially adopted regarding employee involvement in accordance with the standard rules will continue to apply.

Section 23 (663/2006)

The competence of the representative body

The representative body is competent to deal with matters concerning the SE or SCE itself or any of its subsidiaries or establishments situated in another Member State, and matters exceeding the powers of the decision-making organs in a single Member State.

Section 24 (663/2006)

The representative body's right to be informed and consulted

The representative body has the right to be informed and consulted on the progress of the business of the SE or SCE and its prospects, based on regular reports drawn up by the competent organ, and, for this purpose, to meet with the competent organ of the SE or SCE at least once a year. The local managements shall also be given the information mentioned above.

The competent organ of the SE or SCE shall provide the representative body with the agenda for meetings of the administrative or the management and supervisory organs, and with copies of all documents submitted to the general meeting of shareholders or the general meeting of the cooperative.

The meetings referred to above in subsection 1 shall deal with the following matters in particular: the SE's or SCE's structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, any substantial organisational changes, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

Section 25 (663/2006)

Provision of information on the impact of exceptional circumstances

Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the case of relocations, transfers or the closure of establishments or undertakings or collective redundancies, the representative body has the right to be informed. The representative body or, where it so decides, in particular for reasons of urgency, the working committee, has the right to meet with the competent organ of the SE or SCE or any more appropriate level of management within the SE or SCE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body has the right to a further meeting with the competent organ of the SE or SCE with a view to seeking agreement.

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

The meetings referred to above do not affect the rights of the competent organ of the company or other legal entity.

Section 26 (663/2006)

Meetings of the members of the representative body and informing employees' representatives

Before any meeting with the competent organ of the SE or SCE, the representative body or the working committee, where necessary enlarged in accordance with subsection 3 of section 25, is entitled to meet without the representatives of the competent organ of the company or other legal entity being present.

Subject to the provisions laid down in section 31, the members of the representative body shall inform the representatives of the employees of the SE or SCE and the subsidiaries and establishments thereof of the content and outcome of the information and consultation procedures.

Section 27 (663/2006)

Right to time off for training and responsibility for costs

Insofar as this is necessary for the fulfilment of their tasks, the members of the representative body are entitled to time off for training without loss of earnings.

The costs of the representative body shall be borne by the SE or SCE, which shall provide the members of the representative body with the financial and material resources needed to enable them to perform their duties in an appropriate manner.

The SE or SCE shall bear the cost of organising meetings and providing interpretation facilities, the accommodation and travelling expenses of members of the representative body and working committee and the reasonable cost of experts, unless otherwise agreed.

Section 28 (663/2006)

Employees' participation rights

Where an SE or SCE is established by transformation, the provisions concerning employees' participation will continue to apply to the SE or SCE.

Where an SE or SCE is established by other means, the body representing the employees of the SE or SCE, and the subsidiaries and establishments thereof, has the right to elect, appoint, recommend or oppose a specific number of members of the SE's or SCE's administrative or supervisory organ equivalent to the highest employee participation rate in force in the participating companies concerned before registration of the SE or SCE.

If there was no employee participation in any of the participating companies before registration of the SE or SCE, the SE or SCE is not required to arrange it.

Section 29 (663/2006)

Allocation of seats among members representing employees

The representative body shall decide on the allocation of seats within the administrative or supervisory organ among the members representing the employees from the various Member States, or on the way in which the SE's or SCE's employees may recommend or oppose the appointment of the members of these organs according to the proportion of the SE's or SCE's

employees in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in the first place from the Member State of the SE's or SCE's registered office.

Employees employed by an SE or SCE in Finland have the right to appoint their representatives to the administrative or supervisory organ by agreement or election. If the employees cannot reach an agreement concerning the procedure to be followed, the occupational health and safety representatives representing the greatest number of workers and salaried employees shall jointly arrange an election or other selection procedure in such a way that all employees have the right to participate therein.

Section 30 (663/2006)

The rights and obligations of members representing employees

Members elected, appointed or recommended by the representative body for the organ of the SE or SCE shall be full members of the organ, with the same rights and obligations as the members representing the shareholders or the members of the cooperative, including the right to vote.

However, a member of an organ referred to in subsection 1 is not authorised to handle questions relating to a collective agreement or industrial action or any other questions where an essential interest of employees may be in conflict with an interest of the SE or SCE.

Chapter 5a (1334/2021)

The arrangement of employee involvement, informing and consulting employees and the continuation of employer obligations in cross-border restructuring (90/2023)

Section 30a (90/2023)

Application of the provisions of the Co-operation Act

The provisions of chapter 5 of the Co-operation Act (1333/2021) on employee involvement in the employer's administration shall apply to the arrangement of employee participation in a company formed as a result of a merger or division of companies located in the European Economic Area or in a company domiciled in Finland and created as a result of the transfer of a company's registered office, unless otherwise provided in section 30b. The provisions of chapter 5 of the Co-operation

Act apply in the aforementioned situations to all of the company's offices and personnel located in the European Economic Area.

Section 30b (90/2023)

Application of provisions governing European companies

However, the arrangement of employee involvement in the situations referred to in section 30a shall be governed by the provisions of this Act regarding employee involvement in European companies where:

- 1) the average number of employees of the company transferring its registered office or being divided has, in the six months preceding the announcement of the draft terms for the cross-border transfer or division, been four fifths of the threshold provided in the legislation of the Member State of departure for triggering the employee participation referred to in section 3, subsection 12; or
- 2) at least one of the merging companies has, in the six months prior to the disclosure of the common draft terms of the cross-border merger, an average number of employees equivalent to four fifths of the applicable threshold, as laid down in the law of the Member State to whose jurisdiction the merging company is subject, for triggering the employee participation referred to in section 3, subsection 12.

The provisions of this Act on employee participation in European companies shall also apply to:

- 1) the employees of an undertaking established in Finland as a result of a cross-border merger or transfer of the registered office, where Finnish law does not provide for at least the same level of employee participation as that applied to companies participating in the cross-border merger or to a company transferring its registered office prior to the cross-border merger or transfer of registered office; and
- 2) a division of undertakings, where the recipient undertaking or undertakings have their registered office in Finland and Finnish law does not provide for at least the same level of employee participation in each recipient company being established in Finland as was provided for the company being divided before its cross-border division.

The point of reference for assessing whether the level of employee participation under Finnish law is at least at the same level, as referred to in subsection 2, paragraphs 1 and 2, is the proportion of employee representatives among the members of the administrative or supervisory organ or

their committees or of a management group which covers the profit units of the company, subject to employee representation.

Where, in the situations referred to in paragraphs 1 or 2, an arrangement for employee participation in a European company becomes applicable to the arrangement of employee participation, the special negotiating body referred to in section 4, subsection 2 shall negotiate with the merging companies or the competent organs of the company being divided or transferring its registered office on the arrangement of employee participation. In such a case, the provisions laid down in section 2, subsection 1, sections 4–12 and 14, section 16, subsection 1, paragraphs 1 and 7 to 9 and subsection 2; subsection 1 of section 18; section 19, subsections 2 and 3 of section 28, and sections 29 and 30 shall apply to the arrangement of employee participation in a cross-border merger. In addition, section 18, subsection 2, paragraph 2 applies in such a way that, instead of the 25 per cent provided for therein, the application of sections 28 to 30 on employee participation is subject to the condition that one or more forms of participation applied in one or more participating companies covered at least 33 1/3 per cent of the total number of employees in all the participating companies before the company's registration. In addition, paragraphs 2 to 4 of Article 12 of Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE), hereinafter referred to as the '*SE Regulation*', shall apply to arrangements for employee involvement.

Section 2, subsection 1; sections 4, 5 and 7–10; section 11, subsection 1, the first sentence of subsection 2 and subsection 3; sections 12 and 14; section 16, subsection 1, paragraphs 7–9, and subsection 2; section 17; section 18, subsection 1 and subsection 2, paragraph 1 as well as section 36 shall apply to cross-border divisions or transfers of the registered office of a company. In addition, paragraphs 2–4 of Article 12 of the SE Regulation shall apply to arrangements for employee involvement.

Sections 31–34, 37 and 39 shall apply to all cross-border restructurings. As regards section 16, section 39, subsection 1 shall only apply in respect of failure to comply with the obligations laid down in section 16, subsection 1, paragraphs 1 and 7–9, and subsection 2.

The companies participating in a cross-border merger may however decide, without negotiating with employees, that they will apply the provisions of sections 28–30 on employee participation with immediate effect as of the registration of the company being formed.

If a system of employee participation becomes applicable under paragraph 1 or 2 in a company formed as a result of a cross-border merger or a transfer of its registered office or in companies

formed as a result of a division, a legal form allowing for the exercise of employee participations rights in the company's administration shall be chosen for the company or companies in question.

Section 30c (90/2023)

Decision not to open or to terminate negotiations

The special negotiating body as referred to in section 4, subsection 2 above can decide not to open or to terminate negotiations. The decision requires a majority of at least two-thirds of the votes of members representing at least two-thirds of the employees. In the case of cross-border mergers, the decision may only be adopted if it was supported by members representing employees working in at least two Member States. When the special negotiating body has decided not to open negotiations or to terminate negotiations, the right of the employees to participate in the company's administration is determined in accordance with the Co-operation Act as determined under section 30a for companies created by cross-border arrangements and that have their registered office in Finland. In such cases, sections 30b and 30d to 30f shall not apply.

Section 30d (90/2023)

Limitation of employees' participation

If, after negotiations conducted with personnel, the provisions of sections 28 to 30 on employee participation would apply, the share of personnel representatives in a company established as a result of a transfer of a registered office or a cross-border merger or division can be restricted. However, the proportion of employee representatives in the administrative organ of a company created by a merger or transfer of the registered office or in the administrative organs of each company created by a division shall not be less than one third if employee representatives in one of the companies participating in the merger or in the company transferring its registered office or being divided, constituted at least one third of the board or other administrative organ. .

Section 30e (90/2023)

Protection of employees' participation rights

If an employee participation system is applied in a Finnish company created by a cross-border merger, division or transfer of the registered office, the company shall ensure that the employees'

participation rights are ensured in the event of any subsequent cross-border or domestic merger, division or transfer of the registered office for a period of four years after the aforementioned cross-border merger, division or transfer of registered office has taken effect. In this event, the provisions of this chapter on the arrangement of employees' participation rights shall apply.

Section 30f (90/2023)

Protection of the continuity of employees' participation rights

Employee participation arrangements applied prior to the cross-border division of the company or the transfer of its registered office shall continue to apply until any arrangements agreed on at a later date are applied to the arrangement of employee participation or, in the absence of agreed arrangements, until the standard rules on employee participation referred to in sections 28 to 30 are applied.

Section 30g (90/2023)

Consultation of employees on the draft terms or report of a cross-border merger, division or transfer of registered office

If a limited liability company established in Finland intends to carry out a cross-border merger, division or transfer of its registered office across the borders of countries belonging to the European Economic Area, its employees must be informed and consulted before deciding on the draft terms or report provided for in the Limited Liability Companies Act for cross-border mergers, divisions or transfers of the company's registered office, whichever is decided on earlier.

Employees shall be given a reasoned response to their comments before the general meeting that will decide on approving the draft terms of the cross-border merger, division or transfer of the company's registered office.

Section 30h (90/2023)

Transfer of employer obligations in connection with cross-border restructuring

If a cross-border restructuring carried out in the European Economic Area shall be regarded as an assignment of business within the meaning of chapter 1, section 10, subsection 1 of the Employment Contracts Act (55/2001) or chapter 1, section 10, subsection 1 of the Seafarers'

Employment Contracts Act (756/2011), the provisions of chapter 1, section 10, subsections 1 and 2 of the Employment Contracts Act or chapter 1, section 10 of the Seafarers' Employment Contracts Act shall apply to the rights and obligations of employees of the company participating in the restructuring.

Insofar as the assignment provisions of the Employment Contracts Act or Seafarers' Employment Contracts Act do not apply, the rights and obligations arising from the employment relationships of employees in force when the cross-border merger, division or transfer of the company's registered office takes effect shall be transferred to the company formed as a result of the cross-border merger or transfer of registered office, or to the recipient company or companies in accordance with the draft terms of the cross-border division.

Chapter 6

Miscellaneous provisions

Section 31 (1334/2021)

Confidentiality obligation

The members of the special negotiating body or representative body and the experts who assist them are not authorised to disclose any information about trade secrets given to them in confidence, the dissemination of which is likely to be prejudicial to the company or other legal entity, or its business or contractual partners, to parties other than the employees or employees' representatives whom the information concerns. The same applies to employees' representatives and experts in connection with information and consultation procedures. The confidentiality obligation will continue to apply even after expiry of the term of office.

Section 31, subsection 2 was repealed by Act 90/2023.

Section 32 (90/2023)

Derogation from the employer's duty to inform

If particularly serious reasons which could not have been foreseen so require, the supervisory or administrative organ of a European company, a European cooperative society or a participating company shall not be obliged to disclose information to employees or employees' representatives

where the disclosure of such information would, in an objective assessment, cause significant harm or damage to the production or operations of the European company, European cooperative society or participating company or their subsidiaries and establishments. However, the above-mentioned information shall be provided without delay after the reasons for derogating from the duty to inform no longer exist. The reasons for the exceptional procedure shall be explained at the same time.

The provisions of this section do not apply to employee participation in an administrative organ of the undertaking referred to in this Act.

Section 33 (90/2023)

Protection for employees' representatives

The provisions of section 10 of chapter 7 of the Employment Contracts Act on the termination of the employment contract of a shop steward or an elected representative and provisions of section 9 of chapter 8, of the Seafarers' Employment Contracts Act on the protection against termination in the case of shop steward, apply to the protection against termination for members of special negotiating bodies and representative bodies, employees' representatives in connection with information and consultation procedures and members representing employees on the supervisory or administrative organ of an SE or SCE, or at the general meetings of the latter, where these are employees of an SE or SCE, the subsidiaries or establishments thereof, or employees of a participating company employed in Finland.

Section 34 (1334/2021)

Release from work, compensation and responsibility for costs

An employer shall release employees' representatives referred to in section 33 from normal work for such time as they require for participating in the meetings of a special negotiating body or representative body or in an information and consultation procedure, in order to negotiate the establishment of arrangements for employee involvement or to participate in the meetings of the administrative or supervisory organs of the SE or SCE or in the general meetings of the latter and for the joint preparation of employees' representatives directly related to the said procedures. Accordingly, any consequent loss of earnings caused thereby shall be compensated. Any other release from work and compensation for loss of earnings shall in each case be agreed between the relevant employees' representative and employer.

Any expenses relating to the functioning of the special negotiating body and to negotiations, including any reasonable cost of experts, shall be borne by the participating companies so as to enable the special negotiating body to carry out its task in an appropriate manner.

Section 34, subsection 3 was repealed by Act 90/2023.

Section 35 (340/2007)

Cooperation in international groups

Should an SE or SCE be a Community-wide undertaking or a controlling undertaking within a Community-wide group of undertakings within the scope of the provisions laid down in chapter 3 of the Act on Co-operation within Finnish and Community-wide Groups of Undertakings (335/2007), the provisions of the said Act do not apply to arrangements for employee involvement in the SE or SCE or its subsidiaries.

If, however, the special negotiating body decides, pursuant to subsection 1 of section 13, not to open negotiations for the establishment of arrangements for employee involvement or to terminate the negotiations, the provisions laid down in the Act on Co-operation within Finnish and Community-wide Groups of Undertakings regarding Community-wide groups of undertakings become applicable.

Section 36 (663/2006)

Misuse of SE and SCE arrangements

If any significant change is made in an SE or SCE, or in a subsidiary or establishment thereof, within a year following the registration of the SE or SCE which would have led to more extensive employee involvement upon establishment of the SE or SCE, renegotiations shall be held on arrangements for employee involvement. These shall be held in the order which should have been followed if the above-mentioned change had been made before the registration of the SE or SCE.

Notwithstanding, no renegotiations need to be held if the SE or SCE proves that there is reasonable basis for such significant change and that the change could not have been made before the registration of the SE or SCE.

Section 37 (221/2010)

Supervision

Provisions on supervision of compliance with this Act are laid down in the Act on Cooperation Ombudsman (216/2010).

Section 38 (221/2010)

Section 38 was repealed by Act 221/2010.

Section 39

Penal provisions

Any person belonging to the management of an SE, SCE or participating company, the employer, or the representative of either, who intentionally or negligently fails to observe the provisions of section 24 or 25 of this Act, or of subsection 1 of section 34 on matters other than payment liability, or who substantially fails to comply with the terms of the agreement referred to in section 16, shall be sentenced to a fine *for violation of the obligation to arrange employee involvement*. Allocation of liability between the employer and the employer's representatives is determined according to the principles laid down in section 7 of chapter 47 of the Criminal Code (39/1889). (663/2006)

The punishment for violation of the right of employees to elect their representatives to the special negotiating body as provided in section 8 of this Act is imposed under section 5 of chapter 47 of the Criminal Code. The punishment for violation of the protection of employees' representatives as provided in section 33 is imposed under section 4 of chapter 47 of the Criminal Code. The punishment for violation of the confidentiality obligation as provided in section 31 is imposed under subsection 2 of section 2 of chapter 38 of the Criminal Code, unless a more severe punishment for the act than is provided in section 1 of chapter 38 of the Criminal Code is laid down elsewhere by law.

Section 40

Entry into force

This Act enters into force on 8 October 2004.