

No 758

Act

on the involvement of employees in European companies

Helsinki, 13 August 2004

In accordance with the decision of Parliament, the following is decreed:

Chapter 1

General provisions

§ 1

Aim

The aim of this Act is to regulate the involvement of employees in European companies.

Employee involvement shall primarily be regulated by means of negotiations and agreements in accordance with Chapters 3 and 4 of this Act or, where no agreement is entered into, in accordance with the standard rules set out in Chapter 5.

§ 2

Scope

This Act shall apply to the regulation of employee involvement in European companies which are registered in Finland. However, the provisions of this Act concerning the allocation of seats in the special negotiating body and the representative body, as well as the provisions on how the members representing employees in the special negotiating body, representative body and the European company's administrative or supervisory board are to be appointed in Finland, shall apply irrespective of the member country of the European Economic Area in which the European company is registered.

§ 3

Definitions

For the purposes of this Act,

- (1) "*European company*" means any company established in accordance with Regulation (EC) No 2157/2001 on the Statute for a European company;
- (2) "*participating companies*" means the companies directly participating in the establishing of a European company;

(3) "*subsidiary*" of a company means an undertaking over which that company exercises a dominant influence defined in accordance with Article 3(2) to (7) of 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;

(4) "*concerned subsidiary or establishment*" means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the European company upon its formation;

(5) "*employees' representatives*" means the employees' representatives provided for by national law and/or practice;

(6) "*representative body*" means the body representative of the employees set up by the agreements referred to in Chapter 4 of this Act or in accordance with the provisions of Chapter 5, with the purpose of informing and consulting the employees of a European company and its subsidiaries and establishments situated in the European Economic Area and, where applicable, of exercising participation rights in relation to the European company;

(7) "*special negotiating body*" means the body established in accordance with Chapter 2 of this Act to negotiate with the competent body of the participating companies regarding the establishment of arrangements for the involvement of employees within the European company;

(8) "*involvement of employees*" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the European company;

(9) "*information*" means the informing of the body representative of the employees or employees' representatives by the competent body of the European company on questions which concern the European company itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making bodies 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 consultations between the employees and the European company's competent body;

(10) "*consultation*" means the establishment of dialogue between the body representative of the European company's employees or the employees' representatives and the competent body of the European company, 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 body so that these may be taken into account in the decision-making process within the European company; and

(11) "*participation*" means the influence of the body representative of the employees or the employees' representatives in the affairs of a company by way of the right to elect or appoint some of the members of the company's supervisory or administrative body – or management or similar bodies which jointly cover the company's results –, or the right to recommend or oppose the appointment of some or all of the members of the company's supervisory or administrative body.

Chapter 2

Creation of a special negotiating body

§ 4

Measures by the participating companies, and creation of a special negotiating body

Where the management or administrative bodies of the participating companies draw up a plan for the establishment of a European company, 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 a European company, take the necessary steps, including providing information about the participating companies, concerned subsidiaries or establishments, and the number of their employees, to start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the European company.

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

§ 5

Allocation between Member States of seats in the special negotiating body

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 or establishments. Each Member State shall be allocated one seat 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 or establishments in all the Member States taken together.

§ 6

Allocation of further seats in the event of a merger

Where a European company is formed by way of merger, such further additional members from each Member State shall be appointed to the special negotiating body as may be necessary in order to ensure that it 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 European company. The number of additional seats may not exceed 20% of the number of members elected or appointed pursuant to § 5.

The procedure provided for in the first subparagraph may not, however, entail a double representation of the employees in the special negotiating body

Where the number of such companies as referred to in the first subparagraph is higher than the number of additional seats available, these additional seats shall be allocated to companies in different Member States in decreasing order of the number of persons employed.

§ 7

Allocation of seats between Finnish companies

Where the number of seats in the special negotiating body which are allocated to Finland pursuant to § 5 is less than or equal to the number of participating companies, these seats shall be allocated to the Finnish companies in decreasing order of the number of persons employed.

Where the number of seats in the special negotiating body which are allocated to Finland pursuant to § 5 is greater than the number of participating companies, each Finnish company shall first of all be allocated a seat, following which the remaining seats shall be allocated to the companies according to the number of persons employed.

The employees may, however, conclude agreements derogating from the arrangements for the allocation of seats between Finnish companies as provided for in the first and second subparagraphs. Where possible, such agreements shall ensure that all Finnish participating companies or groups of employees are represented.

§ 8

Election of members to the special negotiating body in Finland

The staff of European companies in Finland shall be entitled to choose their representatives in the special negotiating body by means of agreements or elections. Where the staff is unable to agree on the procedure to be used, the health and safety officers representing the largest combined number of employees or officials shall arrange for an election to be held or another procedure to be applied so that all members of staff are able to take part.

Chapter 3

Negotiations on the involvement of employees

§ 9

Aim of the negotiations

The special negotiating body and the competent bodies of the participating companies shall determine, by written agreement, arrangements for the involvement of employees within the European company. The arrangements for employee involvement shall therefore be negotiated in a spirit of cooperation with a view to reaching an agreement.

§ 10

Aim of the negotiations

The competent bodies of the participating companies shall inform the special negotiating body about the plan for and the progress made in actually establishing the European company, up until its registration.

§ 11

Rules of the special negotiating body concerning decision-making

Unless otherwise provided in § 13, the special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each member shall have one vote.

Where the negotiated agreement on employee involvement leads to a reduction of participation rights, the decision on employee involvement shall require 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. However, the above-mentioned majority shall not be required where, in the case of a European company to be established by way of merger, the employees' participation covers at least 25% of the overall number of employees of the participating companies, or where, in the case of a European company to be established by way of creating a holding company or forming a subsidiary, the employees' participation covers at least 50% of the overall number of employees of the participating companies.

Reduction of participation rights shall mean a proportion of members of the bodies of the European company, within the meaning of § 3 No 11, which is lower than the highest proportion existing within the participating company.

§ 12

Commencement and duration of negotiations

Negotiations shall be initiated as soon as the special negotiating body has been established and shall go on for no more than six months.

The parties may, however, jointly decide to extend the negotiations beyond the period referred to in the first subparagraph for a total period of up to one year after the special negotiating body has been set up.

§ 13

Discontinuation of negotiations, or decision not to open negotiations

The special negotiating body may decide not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the European company has employees. Such a decision shall stop the procedure to conclude the agreement pursuant to this Chapter, whereby the provisions of Chapter 5 of this Act shall also not apply.

The majority required to decide not to open or to terminate negotiations shall be the votes of two thirds of the members 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 a European company established by way of transformation, this paragraph shall not apply where there is employee participation in the company to be transformed.

§ 14

Experts

For the purpose of the negotiations, the special negotiating body may call on the assistance of experts of its choice, such as representatives of appropriate Community-level trade union organisations. 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.

§ 15

Reconvening of the special negotiating body

The special negotiating body shall be reconvened at the written request of at least 10% of the employees of the European company, its subsidiaries and establishments, or their representatives, at the earliest two years after the decision referred to in § 13, first subparagraph, unless the parties agree to negotiations being reopened sooner. However, where the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, the provisions of Chapter 5 of this Act shall not apply.

Chapter 4

Agreement on the involvement of employees

§ 16

Content of the agreement

Without prejudice to the contractual freedom of the parties, and subject to § 17, the written agreement between the competent bodies 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 in the body representing the employees which will be the discussion partner of the competent body of the European company in connection with arrangements for the information and consultation of the employees of the European company and its subsidiaries and establishments;
- (3) the functions and the procedure for the information and consultation of the representative body;
- (4) the frequency of meetings of the representative body;
- (5) the financial and material resources to be allocated to the representative body;
- (6) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body: the arrangements for implementing those procedures;
- (7) if, during negotiations, the parties decide to establish arrangements for participation: the substance of those arrangements including, where applicable, the number of members

in the European company's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose;

(8) the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights;

(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 otherwise provided therein, be subject to the standard rules in Chapter 5 of this Act.

§ 17

Ban on reducing employee involvement upon transformation of companies

Where a European company is established by means of transformation, the agreement shall provide for at least the same level of all elements of employee involvement as those existing within the company to be transformed into a European company.

Chapter 5

Standard rules governing employee involvement

§ 18

Application of standard rules

The provisions of this Chapter shall apply from the date of registration of the European company

(1) where the parties so agree; or

(2) where, by the deadline laid down in § 12, no agreement on employee involvement has been concluded, and the competent body of each of the participating companies decides to accept the application of the standard rules in relation to the European company and thus continue with its registration, and the special negotiating body has not taken the decision not to open negotiations or to terminate negotiations already opened, as referred to in § 13, first subparagraph.

However, the provisions of §§ 28–30 concerning employee involvement shall apply only

(1) in the case of a European company established by transformation, where the rules relating to employee participation applied to a company transformed into a European company;

(2) in the case of a European company established by merger,

(a) where, before registration of the European company, 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) where, before registration of the European company, 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 if the special negotiating body so decides; or

(3) in the case of a European company established by setting up a holding company or establishing a subsidiary:

(a) where, before registration of the European company, 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) where, before registration of the European company, 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 the participating companies and if the special negotiating body so decides.

§ 19

Form of employee involvement

Where there was more than one form of participation within the various participating companies, the special negotiating body shall decide which of those forms must be established in the European company. Where the special negotiating body does not adopt a decision on the form of employee involvement, this shall be decided by the participating companies.

The special negotiating body shall inform the competent bodies of the participating companies of any decisions taken pursuant to the first subparagraph.

§ 20

Creation of a representative body

The representative body shall be composed of employees of the European company and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

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 or establishments, whereby each Member State shall be allocated one seat 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 or establishments in all the Member States taken together.

Where the number of seats in the representative body which are allocated to Finland is less than or equal to the number of participating companies, these seats shall be allocated to the Finnish companies in decreasing order of the number of persons they employ. Where the number of seats in the special negotiating body which are allocated to Finland is greater than the number of participating companies, each Finnish company shall first of all be allocated one seat, following which the remaining seats shall be allocated to the companies according to the number of persons they employ. The employees may, however, conclude agreements derogating from the arrangements for the allocation of seats between Finnish companies as provided for above. Where possible, such agreements shall ensure that all Finnish participating companies or groups of employees are represented

The staff in Finland shall be entitled to choose their representatives in the representative body by means of agreements or elections. Where the staff is unable to agree on the procedure to be used, the health and safety officers representing the largest combined number of employees or officials shall arrange for an election to be held or another procedure to be applied so that all members of staff are able to take part.

The competent body of the European company shall be informed of the composition of the representative body. The body shall draw up its own rules of procedure. The representative body may appoint from among its number an employment committee comprising at most three members. The representative body or employment committee may draw on the assistance of experts of its choice.

§ 21

Adapting to changes in the European company

Unless otherwise agreed, the representative body shall each year examine whether changes within the European company, its subsidiaries or establishments make it necessary to alter the composition of the representative body.

§ 22

Contractual negotiations

Four years after the representative body is established, it shall examine whether to open negotiations for the conclusion of the agreement referred to in Chapter 4 and § 18 of this Act, or to continue to apply the rules laid down in this Chapter.

The provisions relating to the special negotiating body shall apply *mutatis mutandis* to the arrangements for employee involvement where a decision has been taken to negotiate an agreement in accordance with Chapters 3 and 4. Where, by the deadline by which the negotiations come to an end, no agreement has been concluded, the arrangements initially adopted in accordance with the standard rules shall continue to apply.

§ 23

Competence of the representative body

The competence of the representative body shall encompass questions which concern the European company itself or any of its subsidiaries or establishments situated in another Member State, and questions which exceed the powers of the decision-making bodies in a single Member State.

§ 24

Right of the representative body to information and consultation

The representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent body of the European company at least once a year, on the basis of regular reports drawn up by the competent body, on the progress of the business of the European company and its prospects. The local managements shall also be provided with the above-mentioned information.

The competent body of the European company shall provide the representative body with the agenda for meetings of the administrative or, where appropriate, the management and supervisory body, and with copies of all documents submitted to the general meeting of its shareholders.

The meeting as referred to in the first subparagraph shall relate in particular to the structure, economic and financial situation, the anticipated development of the business and of production and sales, the employment situation and probable trends, investments, and substantial organisational changes, the 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.

§ 25

Information on the implications of exceptional circumstances

Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings, or collective redundancies, the representative body shall have the right to be informed thereof. The representative body or, where it so decides, in particular for reasons of urgency, the employment committee shall have the right to meet at its request the competent body of the European company or any more appropriate level of management within the European company having its own powers of decision, so as to be informed and consulted about measures significantly affecting employees' interests.

Where the competent body decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent body of the European company with a view to seeking agreement.

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

The meetings referred to above shall not affect the prerogatives of the company's competent body.

§ 26

Meeting between the members of the representative body, and provision of information to the employee representatives

Before any meeting with the competent body of the European company, the representative body or the employment committee, where necessary enlarged in accordance with § 25, third subparagraph, shall be entitled to meet without the representatives of the company's competent body being present.

In keeping with the provisions of § 31, the members of the representative body shall inform the representatives of the employees of the European company and its subsidiaries and establishments about the content and outcome of the information and consultation procedures.

§ 27

Right to time off for training, responsibility for costs

In so far as is necessary for the fulfilment of their tasks, the members of the representative body shall be entitled to time off for training without loss of income.

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

In particular, the European company shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities, and the accommodation and travelling expenses of members of the representative body and the employment committee, as well as reasonable costs for experts.

§ 28

Employees' right of involvement

Where a European company is established by transformation, the provisions relating to employee involvement shall still apply to the European company.

Where a European company is established in any other manner, the body representing the employees of the European company, its subsidiaries and establishments shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the European company equal to the highest proportion in force in the participating companies concerned before registration of the European company.

Where none of the participating companies was governed by employee participation rules before registration of the European company, the latter shall not be required to introduce any such rules.

§ 29

Allocation of seats between employee representatives

The representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States, or on the way in which the European company's employees may recommend or oppose the appointment of the members of these bodies, according to the proportion of the European company's employees in each Member State. Where the employees of one or more Member States are not covered by the above-mentioned proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State in which of the European company's registered office is located.

The staff of European companies in Finland shall be entitled to choose their representatives in the administrative or supervisory body by means of agreements or elections. Where the staff is unable to agree on the procedure to be used, the health and safety officers representing the largest combined number of employees or officials shall arrange for an election to be held or another procedure to be applied so that all members of staff are able to take part.

§ 30

Rights and obligations of employee representatives

Members of the European company's bodies who have been elected, appointed or recommended by the representative body shall be full members with the same rights and obligations as the members representing the shareholders, including the right to vote.

The members of bodies referred to in the first subparagraph may not, however, take part in discussions of matters relating to collective agreements or industrial action, or to any other matters in which the employees have a fundamental interest which may conflict with those of the European company.

Chapter 6

Special provisions

§ 31

Confidentiality

Members of the special negotiating body or the representative body, and experts who assist them, may not divulge any information concerning business or professional secrets which has been given to them in confidence, and the dissemination of which would be likely to harm the firm or its business associates or contractual partners, to any persons other than the employees or employee representatives to whom the matter relates. The same shall apply to employees' representatives in the context of an information and consultation procedure. This duty of confidentiality shall continue to apply even after the expiry of their terms of office.

§ 32

Derogations from the obligations to provide information

The supervisory or administrative bodies of European companies or participating companies shall not be obliged to provide information where particularly important reasons which could not have been foreseen, but which adversely affect the productive operations or finances of the European company or a participating company or its subsidiaries or establishments, stand in the way of this. Such information shall, however, be provided without delay when reasons no longer exist for a departure from the obligation to provide information. At the same time, the reasons for the deviation in procedure shall be stated.

§ 33

Protection of employees' representatives

With regard to protection against redundancy, the members of the special negotiating body or the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative body of a European company shall, provided that they are employees of the European company, its subsidiaries or establishments or of a participating company in Finland, be covered by the provisions of Chapter 7 § 10 of the

Employment Contracts Act (*arbetsavtalslag*) (55/2001) concerning the termination of employment of shop stewards and elected representatives.

§ 34

Exemption from work, reimbursements, costs

Employers shall exempt the employee representatives referred to in § 33 from their normal work duties for the period required for them to take part in meetings of the special negotiating body or the representative body, or in any information and consultation procedure, in negotiations on the arrangements governing employee involvement or their participation in meetings of the supervisory or administrative bodies of European companies, and in any preparatory work of the employee representatives with a direct bearing on these procedures. The employer shall also reimburse them for any loss of income. Arrangements covering any other exemptions from work or reimbursement of lost income shall, in each individual case, be agreed between the relevant employee representatives and the employer.

The costs relating to the special negotiating body's activities and negotiations, including reasonable costs for the services of experts, shall be borne by the participating companies in such a way that the special negotiating body is able to carry out its tasks properly.

§ 35

International collaboration within groups

Where a European company is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of the provisions on international collaboration within groups as set out in the Act on Cooperation within Undertakings (*lag om samarbete inom företag*) (725/1978), the provisions of that Act shall not apply to the arrangements governing employee involvement in the European company or its subsidiaries.

However, where the special negotiating body decides, in accordance with § 13, first subparagraph, not to open negotiations on the arrangements governing employee involvement, or to terminate negotiations, the provisions on international collaboration within groups as set out in the Act on Cooperation within Undertakings shall apply.

§ 36

Misuse of procedures

Where significant changes occur in a European company, its subsidiaries or establishments within one year of the European company being registered, and their nature is such that the employees should have had greater involvement in the formation of the European company, new negotiations shall be conducted on the arrangements governing employee involvement. The negotiations shall be conducted in the manner in which they would have taken place if the above-mentioned changes had occurred before the registration of the European company.

However, new negotiations need not be initiated where the European company demonstrates that there is an acceptable reason for the significant changes and that such changes could not have been implemented prior to its registration.

§ 37

Supervision

The Ministry of Employment shall monitor compliance with this Act.

§ 38

Fines

The regional authorities may, on request, impose a requirement on the European company and its participating companies, subject to a penalty for non-compliance, that they fulfil the obligations pursuant to this Act or the agreement referred to in § 16. The Ministry of Employment may request the imposition of fines.

§ 39

Penalties

Any persons belonging to the management of a European company or participating company, employers or their representatives who, with intent or through negligence, fail to comply with § 24 or § 25 of this Act, or with the provisions of § 34, first subparagraph concerning requirements other than the obligation to effect payment, or who substantially fail to comply with the arrangements under an agreement as referred to in § 16, shall be ordered to pay fines for *infringement of the obligation to make arrangements for employee involvement*. The apportionment of liability between employers and their representatives shall be determined in accordance with the principles set out in Chapter 47 § 7 of the Penal Code (*strafflag*) (39/1889).

The provisions governing penalties for infringement of the provisions of § 8 of this Act, concerning the right of the employees to elect their representatives to the special negotiating body, are set out in Chapter 47 § 5 of the Penal Code. The provisions governing infringement of the provisions of § 33 concerning the protection of employee representatives are set out in Chapter 47 § 4 of the Penal Code. The penalty for violation of the duty of confidentiality as provided for in § 31, shall be determined in accordance with Chapter 38 § 2, second subparagraph, of the Penal Code unless a more stringent penalty is provided for in any provision other than Chapter 38 § 1.

§ 40

Entry into force

This Act shall enter into force on 8 October 2004.

Helsinki, 13 August 2004

President of the Republic

TARJA HALONEN

Minister *Sinikka Mönkäre*