

**Studies on the implementation of Labour Law Directives
in the enlarged European Union**

**Directive 2003/72/EC supplementing the Statute
for a European Cooperative Society with regard
to the involvement of employees**

NATIONAL IMPLEMENTATION REPORT



Content

EXECUTIVE SUMMARY.....	3
1. PRELIMINARY COMMENTS: SPECIFICITY OF THE COOPERATIVES AND THEIR EMPLOYEES IN THE NATIONAL LEGAL ORDER	5
2. FORMAL ASPECTS	6
3. MATERIAL ASPECTS.....	9
4. PRACTICAL APPLICATION.....	20
ANNEX I: ANNEX: CORRESPONDENCE TABLE - TRANSPOSITION OF THE 2003/72/EC (SCE) DIRECTIVE INTO THE ACT ACT LXIX OF 2006.....	22

NATIONAL IMPLEMENTATION REPORT – HUNGARY

Executive summary¹

Hungary transposed both Regulation on the European Cooperative Statute (1435/2003/EC) and the Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees (hereafter the Directive) by means of Act LXIX of 2006, which came into effect on 18th August 2006.

By and large the Directive has been transposed appropriately by the Act LXIX of 2006, only minor problems of transposition (slightly different wording, lacking insignificant paragraphs) could be detected which certainly do not cause any practical problems in course of implementation.

As for employee involvement, the Hungarian transposition practically copied the solutions elaborated by Hungarian legislation in course of transposition of Council Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees and that of the European Works Council Directive. Therefore the three laws use similar or often identical wording, and this solution has its own merits and demerits. The law also heavily relies on three domestic laws as background regulations: the Act XXII of 1992 on the Labour Code, Act X of 2006 on Cooperatives and Act CXLIV of 1997 on Business Associations (company law).

The major shortcoming of the law, however, is the same that of the transposition of the EWC and SE Directives. The most controversial issue of these Acts is the total neglect of the Hungarian dual channel system of workplace representation. Company-level unions have no say at all in the setting up or in the operation of SNBs, and the same holds for the employee representative body defined by the standard rules in the SE and SCE. These three Acts authorise only works councils (or central works councils, if they are in place) to delegate representatives for Hungarian employees, or in the absence of a works council they call for direct elections.

Whenever the Directive makes possible for the Member States to regulate issues according to the national legislation or practice, the Hungarian legislation usually relied on the solutions elaborated in the Labour Code concerning works councils and the Act on Cooperatives regarding participation in the general meeting or section or sectorial meeting. With the exception of the above-mentioned preference of the works council, other solutions seem not to be disadvantageous for employees or employee representatives; moreover at a specific point the Hungarian law defines a more effective procedure than the Directive requires it. The issues with regulations coming from the Labour Code are the following: the detailed rules of information and consultation procedure, time-off and wages for this period, legal protection of representatives, confidentiality issues, juridical remedies for breaching the law on each side, etc. Similarly to the SE Directive, the novelty of the law in the Hungarian context is that in many cases the Company Registry Court is in the position to provide jurisdiction for grievances in the field traditionally deemed as the domain of the labour law. In line with the EU legislation, the Act efficiently makes meeting the requirements by the Directive a precondition of registration of an SCE, which can be considered the most serious measure in order to enforce the transposed Directive. In theory the Company Registry Court

¹ Report elaborated by László Neumann.

NATIONAL IMPLEMENTATION REPORT – HUNGARY

is in the position to impose fines, if a company breaches the rules, depending on the seriousness of the case the fine may range between HUF 50,000 (EUR 200) up to HUF 10 million (EUR 40,000).

Given the limited time elapsed since the transposition, no wonder it is not known either any SCE with registering office in Hungary, or any participating legal entity or subsidiary operating in the country, and thus so far there has not been any Labour Court cases dealing with an SCE. However, it is a far reaching effect of the SE and SCE Directives that obviously, the government seems to be keen to make use the experience obtained while working on transposition when prepared the new company law. Act IV of 2006 on Business Associations brought about several changes, such as introduction the option of one-tier corporate governance system and re-regulation of employees' mandatory representation in Supervisory Boards at domestically registered companies. A sort of deregulation is emerging both in the one-tier system and in the board level representation, which is undoubtedly an impact of solutions brought about by the EWC and SE Directives.

1. Preliminary comments: specificity of the cooperatives and their employees in the national legal order

In Hungary the Act X of 2006 on Cooperatives includes the following definition of coops: “The cooperative is an organisation with legal entity which is established with the members’ share-note equity predetermined by the founding document and operating according the principles of open membership and variable capital; the objective of the organisation is to promote meeting the economic and other societal (cultural, educational, social and health care) needs of the members.” (7. §) Naturally, this broad definition is applicable for different types of coops, of which only the primarily economic organisations (productive, agricultural, saving, consumers’ and procurement cooperatives) are of interest from the point of view of European Cooperatives. Basically the Act X of 2006 sets rules and procedures for establishment, registration, organisation, operation, transformation, etc. similar to the economic associations (companies), with one significant exception: the decision-making procedure is based on the “one member – one vote” principle regardless to the equity ratios across the members. Concerning property and personal relations not regulated by this law the Civil Code serves as a background legislation. (3. §.)

Another specific feature of the coops is the members’ – except for the so-called investor members – “personal contribution”. The actual form of contribution is laid down in the founding document, which – among other in kind forms of contribution – may require performing work. The legal base of working may be an employment contract or a civil law contract or a casual assignment contract sought between the coop and its member. These contractual relationships are regulated by the Labour Code (Act XXII of 1992) and the Civil Code, respectively. (56. §) Should someone’s membership cease to exist at the coop, this fact does not lead automatically to the termination of the contractual relationship about working for the coop.

Furthermore, the cooperative may hire employees who are not members. As a general rule the Act X of 2006 stipulates that for the rights and duties of the employees of the cooperatives and for industrial relations the Labour Code shall be applied. (4. §) The latter means that non-member employees of the cooperative may join a trade union and elect a works council (if the number of employees exceed 49) or an employee representative (if the number of employees more than 15 but less than 50). Such employee representatives have the same right (e.g. information, consultation and codetermination) as their counterparts in other business organisations (companies). The only notable difference is the board-level representation; contrary to the company law the cooperative law does not provide employee representation in the Supervisory Board even if the number of employees exceeds 200. On the other hand, however, the representatives of the employees may partake at the major decision making forum of the coop (general-, section- or delegates’ meeting), though they have no voting rights. This option is not contingent on the number of employees. (23. § (3))

As far as industrial relations at coops are concerned, the rights of working members represent a grey zone in the regulation. Obviously as members (i.e. owners) they take part in the major decision making forum of the coop (general-, section- or delegates’ meeting) with voting rights. However, the cooperative law does not adequately clarify it whether they

NATIONAL IMPLEMENTATION REPORT – HUNGARY

provided with collective labour law instruments. The ambiguity of the valid regulations dates back the cooperative law of the socialist regime. Historically, in the state-socialist period the legislation deemed working coop members as self-employed, and deprived them from collective employee representation on the basis of lacking clear demarcation between employer (owner) and employee.

The practice varies across different types of coops and depends on the size of employment. For instance, in big coops with hundreds of working members trade unions, works councils and even collective agreements are in place. At the consumers' and saving coops the working members' decision making power is negligible due to the relatively large pool of members, but trade unions are traditionally well organised. On the other hand in agricultural coop trade unions were politically banned until the mid-eighties, and union density and collective bargaining coverage is still relatively low here. Works councils are not common in coops either, it can be found mainly at big agricultural coops. However, if they exist, non-member employees vote at the election for works councillors too.

See further details on the regulations in 1.c and on the Hungarian cooperative movement in 3.a.

2. Formal aspects

a) procedure used for transposition

Hungary chose the legislative mode of transposing the Directive on employee involvement in the SE rather than via an agreement between the social partners. Hungary transposed both Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees by means of Act LXIX of 2006 passing by the Parliament on 24th June 2006.

b) date, in relation to the compulsory transposition period

The Act came into effect on 18th August 2006, exactly on the date of deadline of the compulsory transposition.

c) national regulation background

As far as the directive on employee involvement is concerned, the government's draft bill relied heavily on the rules established by the earlier transposition of the Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees and Council Directive 94/45/EC on establishment of a European Works Council. The Act also makes reference to those sections of the Labour Code (Act XXII of 1992) which regulate the functioning of works councils, as well as certain aspects of trade union functioning within companies, and to existing board-level employee representation laid down in the then valid company law, Act IV of 2006. The Act also makes references to and the Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings the Act. X of 2006 on Cooperatives, as well as to the Government Decree based on the authorisation of the 107 § (3) paragraph of the Act on Cooperatives. (The latter stipulation allows the government to issue specific regulations on the so-called 'school-cooperatives' in which public schools are also members.) According to the 1 § (5) paragraph, the relevant stipulations of Act. X of 2006 should be applied whenever

NATIONAL IMPLEMENTATION REPORT – HUNGARY

the text of the law (and that of the Directive) mention national law provisions applicable to cooperatives.

The valid Hungarian law on cooperatives (Act. X of 2006) is rather new; it came into effect as of 1st July 2006. The reasons for the new legislation were manifold: taking into account international organisations' (EU, ILO) positions on cooperatives and ensuring the full-fledged implementation of the principles of cooperatives laid down by international documents; promoting the idea of "social economy" in Hungary and strengthening the social responsibility of cooperatives; encouraging a shift from the prevailing productive cooperatives to procurement-sales ones; creating a unified Act on cooperatives and excluding the possibilities for misusing the laws. As far as the previous legislation is concerned, the departing point is the Constitution of Republic of Hungary, which declares, "The state supports cooperatives based on voluntary association". However, contrary to the freedom declared by the Constitution, legislation of the communist period rather ensured the state/party control over the cooperatives, instead of promoting voluntary association. (See the historical background in 3.a.) During the economic reforms of the sixties a new framework regulation (Act III of 1971) was passed and separate supplementary laws regulated the cooperatives operating in different fields (such as agricultural productive cooperatives, industrial and service cooperatives, consumer coops, saving coops and housing coops.) Following the transition to market economy and democracy, the Act I of 1992 regulated the transformation of former cooperatives into 'new' cooperatives or into business organisations; however, transformation of agricultural cooperatives was also heavily dependent on legislation on land ownership. Another law (Act CXLI of 2000) regulated the transformed or newly established cooperatives, furthermore in 2001 a separate Government Decree was issued on cooperatives established in connection with public schools. Nonetheless, following the legislation on a unified cooperative law, still there are separate laws on coops operating in the housing, insurance and banking sectors.

Hungary completed the transposition of Council Directive 94/45/EC on European Works Councils and 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees in a very controversial fashion in 2003 and 2004, respectively. Although Hungary has a dual channel workplace representation system with company trade unions and statutory works councils (the latter are not only entitled to bargain with employers, but also authorised to consult with the employer on a wide range of issues), the relevant articles of the Act XXI of 2003 and Act XLV of 2004 make no reference to the role of company unions either in the setting up or in the actual operation of SNB, EWC and the representative body of SE. The law only authorises works councils (or central work councils, if they are in place) to delegate representatives of Hungarian employees to SNBs and EWCs, or in the absence of a works council, it calls for direct elections.

d) national consensus in the transposition (participation or consultation of social agents).

Similarly to the legislation on SE, most of the attention of the public, politicians and experts was paid again to the application of the SCE Statute into the Hungarian legal system. Basically, the government's approach was to create a favourable business climate, establishing the simplest possible, flexible rules for setting up and running SCEs, in particular SCEs with the registering office in Hungary. As the state secretary at the Ministry of Justice and Law Enforcement stressed in his Parliamentary speech, "Passing effective and flexible rules makes possible the establishment of these supranational businesses in the

NATIONAL IMPLEMENTATION REPORT – HUNGARY

country and/or their operation in Hungary, which will certainly have a favourable effect on attraction of foreign direct investment as well as on job creation”.

In the Parliamentary debate the MP speaking on behalf the major opposition party heavily criticised the overcomplicated structure of the law, and referred to the promise of the Minister of Justice and Law Enforcement, had made as a candidate for this post a couple of weeks before, that he would strive for simplifying the legal system, especially in the field of business law. In contrast to this promise, the bill on SCE cannot be used without having thorough knowledge on several other laws (the SCE Statute, the Act on co-operatives, the company law, Act on Company Registry and the Labour Code), which are referred by the bill. He also underlined that the lack of unified legal text will lead to juridical uncertainties in the future. Interestingly, despite their reservations, MPs of the major opposition party also voted in favour of the bill, saying that it is an obligation of the country to harmonise its legal system with the EU legislation.

The bill on European cooperative was not on the agenda of the plenary session of the National Interest Reconciliation Council (Országos Érdekegyeztető Tanács, OÉT), the highest tripartite forum of social dialogue. Only an expert level consultation was held in the Economic Committee of OÉT on 6th February 2006. From the trade union side only the Confederation of Unions of Professionals (Értelmiségi Szakszervezeti Tömörülés, ÉSZT) showed up, which basically welcomed the bill and did not make any comment. Of the employers' associations, the National Federation of Consumer Co-operatives (Általános Fogyasztási Szövetkezetek Országos Szövetsége, ÁFEOSZ) questioned some points of the transposition (for instance, it would prefer a unified text of the law including the detailed rules of Council Regulation (EC) No. 1435/2003 on establishment of SCE). In its answer the representative of Ministry of Justice explained how limited the Member States' room for manoeuvring was in course of transposition and justified the way of transposition chosen by the experts of the Ministry. The other questions also dealt mainly with those stipulations of the law, which incorporated the Statute into the Hungarian legal context (for example, protection of the interests of creditors in course of transferring the office of registration.) The only proposal concerning transposition of the Directive focused on the consultation procedure in case the management take a decision that is not in line with the opinion of the representative body issued. According to initial text of the bill in such a case the representative body may initiate new negotiations immediately. The proposal of the National Association of Entrepreneurs and Employers (Vállalkozók és Munkáltatók Országos Szövetsége, VOSZ) wished to determine a reasonable deadline for such an initiative, in order to avoid hindering the 'management ability for making decisions'. It also proposed that the Administrative/Management Board might act in accordance with the default procedures not only in case the parties fail to reach agreement during the new round of negotiations, but also if the representative body does not require a new round of consultation or it fails to show up at the scheduled new meeting. The government representative accepted these proposals and the 46 § (2) of the law includes an 8-day deadline for taking this initiative and specifies the further cases of application of the default rules by the Administrative/Management Board.

NATIONAL IMPLEMENTATION REPORT – HUNGARY

3. Material aspects

A) General observations

The first part of LXIX of 2006, which regulates the setting up, internal organisation, headquarter-relocation and winding up of European Cooperatives is fairly concise. Basically, the nature of the EU regulation made it possible to deal with only the most essential issues: as Regulation 1435/2003 EC applies directly in the member states, it must be applied together with the Hungarian law supplementing the European law. First, the Hungarian Act establishes the scope of the regulation and procedures for registering European companies in Hungary. As for setting up European companies, the law regulates mergers with particular attention to the protection of the interests of minority shareholders who do not want to maintain their stake in the new company, as well as of creditors of predecessor companies. Further articles deal with corporate governance issues (both in monistic and dualistic case), procedures for relocating headquarters and the closing section of the Act amends many domestic laws (from the Civil Code and the Act on Company Registry Courts to different tax laws) in order to accept the European Cooperative as a domestic actor by making the would-be SCE subject to the relevant Hungarian laws.

The second, fairly lengthy part of LXIX of 2006 is the transposition of the Council Directive 2003/72/EC, and includes a detailed regulation on employee involvement. As to the scope of this part of the Act, the Hungarian transposition embraces both the main and accessory provisions, namely the unified text equally affects SCEs with registering office in Hungary and the representation of Hungarian employees in an SCE with headquarters abroad. The law introduces the procedure of elaborating the channels of worker representation through the Special Negotiating Body (SNB) and opens up the possibility of not beginning or of stopping such negotiations in line with the directive.

B) Specific observations

I. Object and definitions (arts. 1 and 2)

The preamble of the Hungarian law states that “the purpose of this Act is to establish – with a view to completion of the internal market and the unimpeded exercise of the right of establishment – the legal framework for the establishment and operation of European Cooperative which have their registered office in Hungary, and to lay down rules governing employee involvement that are consistent with European Union law.” Similarly, another stipulation can be found in the 13 § of the law, saying that employee’s participation in the decision making process shall be ensured in the European Cooperative.

The 16 § (2) paragraph provides other aspect of the ‘General Provisions’, which is the title of this part of the law. It requires that the Hungarian Labour Code shall apply for information and consultation rights of Hungarian employees of the SCE or that of the subsidiary of the SCE in those questions, which are not regulated by this law.

Similarly to the Directive’s Article 2, the Hungarian law lays down definitions in its 52 §. The law does not define ‘SCE’ itself, which is obviously unnecessary, as the same law provides the supplementary regulations to apply the SCE Statute in the Hungarian context of national legislation. The law provides verbatim translations of the following terms: ‘participating legal entities’, ‘subsidiary’, ‘concerned subsidiary or establishment’,

NATIONAL IMPLEMENTATION REPORT – HUNGARY

‘representative body’, ‘special negotiating body’ and ‘participation’. The latter is translated as ‘employee participation’, which better fits to the Hungarian usage of the term. The definitions refer to the relevant sections of the law if necessary.

The law gives an extended definition for ‘involvement of employees’, as it adds: ‘Employee involvement includes information and consultation of employees and – if so provided in the agreement pursuant to the 31 §, or the provisions of this Act – the exercise of employee participation rights’. (The 31 § deals with the content of the agreement concluded by the SNB and the founders of the SCE.)

Also slightly different transposition can be found in the following cases: ‘information’ and ‘consultation’. In both cases the Hungarian law misses the last few lines of the definitions, instead, a separate paragraphs (52 § (2) and 52 § (3), respectively) have been inserted with the same contents. Moreover, the scope of consultation is limited to the questions listed concerning the information rights (‘on questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which concerned subsidiaries or which exceed the powers of the decision-making organs in a single Member State’.)

As far as ‘employees’ representatives’ are concerned the law defines them as ‘members and alternate members of the works council’. Although the directive allows using definition of representatives as it provided for by national law and/or practice, this definition neglects the dual channel workplace representation structure of the country. This is a serious shortcoming of the transposition as it was already mentioned in the introductory part of this analysis.

The 52 § of the Hungarian law provides further definitions for ‘special negotiating body’, ‘reduction of participation rights’ and ‘Hungarian employees’. While the first seems to be unnecessary, as the same law deals with this body in detail, the latter helps in understanding the principle laid down in the Article 3 (4) of the Directive and Part 3 (b) of the Annex. (The latter definition is a verbatim translation of the last sentence of Article 3 (4).)

The law provides further definitions in excess to the list of the Directive. Such definitions are: ‘management body’ (“the Management Board or Administrative Board of the cooperative, the Management Board or Administrative Board of the joint stock company, the management organ of a limited liability company or managing body of any other legal entity”) and ‘workers employed in Hungary’. (The latter is defined as persons employed within Hungary by a participating legal entities, European Cooperative or branch or establishment thereof irrespective of whether the European company has its registered office in Hungary.)

The same section of the law also provides detailed rules for identifying the ‘controlling enterprise’, in order to help interpreting the term of ‘subsidiary’. (18(4)-18(8)) These provisions cannot be deemed as transposition of the Directive, they are imported paragraph by paragraph from Act XLV of 2004, while the latter took over them, with some alterations, from the Act XXI of 2003, which transposed the EWC directive.

NATIONAL IMPLEMENTATION REPORT – HUNGARY

II. Provisions that apply to SE based in the Member State

A. Field of implementation (art. 15)

The first paragraph of Article 15 (1) is not transposed by the Hungarian law. Among the General Provisions the 18 § is a verbatim translation of the second paragraph Article 15 (1), with appropriate reference to the Hungarian law transposed the EWC Directive.

Article 15. (2) and (3) are not transposed by the Hungarian law. Beyond transposition of Article 3 (4) of the Directive and Part 3 (b) of the Annex, there are no any special measures in the law to guarantee that the structures of employee representation in participating companies/cooperatives which will cease to exist as separate legal entities are maintained after the registration of the SCE that would require duly transposition of Article 13 (4)

B. Procedure for negotiation of the rights of involvement of workers in the SE

a. Responsibility and start of procedure (art. 3.1)

Article 3.1 is duly transposed by the 19 § (2) of the law.

b. Constitution and composition of the SNB (art. 3.2)

The 20-24 § of the Hungarian law transposes Article 3.2 of the Directive, stating that the SNB shall have at least 10 members and applies the ‘one seat per 10 percent of employees’ rule of Article 3 (2i). Two separate paragraphs (20 § (2-3)) transpose appropriately the rules for the case of establishment through merger.

As to the method to be used for election or appointment of the members and alternate members of the SNB, the 21 § of the Hungarian law adapts the method elaborated in course of transposition of the EWC directive. The members representing employees in Hungary are to be appointed by the works council (Üzemi Tanács, ÜT) of the establishment. Where there is a central works council (Központi Üzemi Tanács, KÜT) in place, the latter appoints the members of the SNB. If there is more than one central works council, the members of the SNB are appointed at a joint meeting of the central works councils. The 21 § (3) requires that “every effort shall be made” to ensure that the employees of every participating company are represented on the special negotiating body. 21 § (4) promotes gender balance, required by Article 3.2 (b).

The 22 § provides that employees in undertakings or establishments in which there are no employees’ representatives through no fault of their own have the right to elect or appoint members of the special negotiating body. If a particular establishment does not have a works council, directly elected employee representatives are invited to the meeting of the existing ÜT (KÜT, joint meeting of KÜTs) of other establishment(s) to appoint SNB members. In this respect, these representatives are deemed to be members of the ÜT or KÜT. As for the election of such employee representatives, the management of the establishment without an ÜT or KÜT is required to inform employees about the election. The election committee, directly elected by the employees, decides on the rules of elections, including those on how the votes will be counted, and sets the date. All employees are entitled to vote (active election right), but only those employees can be elected who have been employed at the employer in question for at least six months (passive election right). On the request of the election committee, it is the duty of the employer to present the list of employees who have active and passive election rights five days in advance of the elections. The Act adopted the validity criteria as specified for works council elections by the 51/A § of the Labour Code. (The election is considered valid if more than half the employees with an active election right have participated, save employees on sick leave, maternal leave or unpaid leave, or

NATIONAL IMPLEMENTATION REPORT – HUNGARY

performing military service or posted to another workplace for a period longer than one week.) Invalid elections are to be repeated within 30 days. The second round is deemed to be valid if more than one third of employees vote. The winner is the employee who receives the greatest number of votes.

The 24 § regulates the cases of removal of a member of the representative body. The mandate of an SNB member shall cease, if: a) he or she resigns; b) the mandate expires; d) his or her mandate is withdrawn; e) he or she becomes entitled to exercise employer's rights at the European company or one of its subsidiaries or establishments; f) the employment relationship ceases. In case of resignation, member shall be replaced by the alternate member elected in the same Member State. The law stipulates that the SNB shall be dissolved on the date of registration of the European Cooperative.

c. The functions of the SNB (art. 3.3 and 6)

Article 3.3 is duly transposed by the 25 § of the law. These stipulations also require that the information should be provided in written form, the relevant documents should be transferred to the SNB.

Article 3.6 of the Directive is transposed by the 30 § of the law. Interestingly, in the (1) paragraph the law slightly deviate the negative statement of the Directive (in case of not opening or stopping negotiations 'none of the provisions of the Annex shall apply. '), instead, it states positively that 'the provisions of the Labour Code shall apply to the information and consultation requirements in respect of the SE's workers employed within Hungary.'

The 30 § (2-4) is a verbatim translation of the rest of the Article 3.6.

d. The workings of the SNB (art. 3.4,5 and 7)

The 29 § of the law transposes 3.4 Article of the Directive, with the exception of the last sentence, which, as it has already been mentioned, was transferred into the section of definitions.

The 31 § of the law transposes 3.5 Article of the Directive accurately.

The 28 § of the law transposes 3.7 Article of the Directive. According to the Directive Member States may lay down budgetary rules regarding the operation of the special negotiating body. Such rules of the Hungarian law stipulates that 'justified and necessary' expenditure in connection with the operation of the special negotiating body and the negotiations themselves (premises, experts' and interpreters' fees, travel and accommodation expenses, etc.) shall be borne by the participating companies in proportion to the number of workers they employ. The amount to be borne by the individual participating companies shall be determined in accordance with the 63 § of the Labour Code.

e. Duration of negotiations (art. 5)

The 26 § transposes Article 5 of the Directive through verbatim translation.

f. Involvement agreement: content, juridical efficiency and, given the case, supplementary regulations in force regarding validity, extension, report and renegotiation (art. 4)

The 16 § (3) among the General Provisions require cooperation "in good faith and fairness" on the part of both cooperative/company boards and management, as well as of employee representative bodies, which practically transposes Article 4.1 of the Directive.

NATIONAL IMPLEMENTATION REPORT – HUNGARY

The 31 § (1) of the law transposes every item enlisted by 4.2 Article of the Directive.

The reference to the Standard Rules in Article 4.3 is transposed by the 31 § (2) paragraph of the law. The 31 § (3) regulates the special case of transformation in line with the Directive (Article 4.4).

The 32 § of the law transposes Article 4.5. This section of the law also transposes the detailed rules of Article 9 on the preconditions participation in the general meeting or section or sectoral meeting.

III. Reference provisions (standard rules)

Unfortunately, the Act designates these rules as ‘optional rules’ [választható szabályok], which is a rather misleading translation.

A. Field of implementation (cases in which they are applied) (art. 7)

Among the General Provisions of the law, the 17 § (1) contains almost literally translation of the general conditions laid down by the Article 7 (1a-1b). The 17 § (2) applies to the establishment through transformation, namely, if employees had representation in the Supervisory Board of the predecessor company according to the Hungarian company law, the relevant regulations of employees’ board representation of the Standard Rules shall be applied. The 16 § (2-3) deals with the case of merger and any other ways of establishment, providing verbatim translation of the Directive’s relevant text. The law makes use the authorisation of Directive for the Member States in case of conflicts of different participation forms in the predecessor companies. In Hungary, in absence of such a decision of the SNB, the system most advantageous to the employees shall apply. (17 § (4)) The SNB must inform the management of the participating companies about its decision. (17 § (5))

B. Employees’ representative bodies: competences, composition and standard rules (annex 1 and 2)

The 36 § (1) is a verbatim translation of Part 1 (a) of the Annex. Instead of detailed rules of establishment there is a shortcut in Hungarian law by using the following text: ‘Establishment of the representative body shall be governed by the 20 § (1), the 21 § (1)–(2) and the 22 §.’ These exactly are the rules for establishing the Special Negotiation Body, therefore the law similarly neglects Hungary’s dual channel representation system, and local trade unions have no influence on the composition of body representative of the employees either. The 36 § contains the obligation of the representative body to inform the SE about its establishment, giving detailed list of data to be provided. In turn, the executive body of the SE is responsible to forward these data to the management and employee representatives in all subsidiaries.

According to the 38 § the term of office of the representative body is three years. The law includes detailed rules for dissolving the representative body. The possible reasons are: a) the SCE is wound up without a legal successor; b) its mandate expires; c) its mandate is withdrawn; d) the number of its members is reduced by over one third for any reason. Withdrawal of the representative body’s mandate shall be put to the vote at the proposal in writing of at least 30% of the employees with voting rights. The paragraph also includes rules for validity of the vote, and concerning other issues it refers to the rules of election. In the case of withdrawal and reduction of number of members a new representative body shall be elected within three months.

NATIONAL IMPLEMENTATION REPORT – HUNGARY

The 39 § regulates the cases of removal of a member of the representative body. The mandate of a member shall cease, if: a) he or she resigns; b) the mandate expires; d) his or her mandate is withdrawn; e) he or she becomes entitled to exercise employer's rights at the SCE or one of its subsidiaries or establishments; f) the employment relationship ceases; g) the subsidiary or establishment to which the representative belongs ceases to exist. Withdrawal is a right of the (Central) Works Council. The paragraph also includes procedural rules for such voting of the Works Council. If the term of office of a member of the representative body of a domestic subsidiary ends before the mandate of the whole representative body expires, he or she shall be replaced by the domestic alternate member.

The 38 and 39 § cannot be deemed as a transposition of the directive in the strict sense, however Part 1 (b) allows that 'the election or appointment of members of the representative body shall be carried out in accordance with national legislation and/or practice.' It is questionable whether the term 'election or appointment' includes the option of withdrawal. Nonetheless, according to the Hungarian Labour Code similar procedure applies for works council members.

The 40 § requires the representative body to elect a President and Vice-President. If there are at least 15 members in the representative body, it shall elect a three-member select committee. The members of the committee shall include the President of the representative body. The President and the two other members must be from different Member States. The same section of the law requires the body to adopt its own rules of procedure. Unless otherwise provided in these rules of procedure, decisions of the representative body shall be taken by simple majority.

The 42 § stipulates that, at the request of the representative body, the European Company's Administrative/Management Board shall examine on at least an annual basis whether changes in the number of employees in individual Member States in accordance with the '10% rule'. If changes justify it, the representative body may initiate new election/appointment procedure, and at the same time the mandates of current members from the given country terminates.

The 43 § transposes duly Part I (g) of the Annex, referring to the relevant references in the Hungarian law.

The 44 § is a verbatim translation of the text of Part 2(a) of the Annex. The next paragraph of the Annex (2(b)) is transposed by the 45-46 §. The 46 § (1) translates all items of the list of possible agenda of information and consultation. The information provided shall relate in particular to:

- a) the structure, economic and financial situation of the undertaking or group of undertakings;
- b) the probable development of the business and of production and sales;
- c) the situation and probable trend of employment;
- d) investments (investment programmes);
- e) substantial changes in organisation;

NATIONAL IMPLEMENTATION REPORT – HUNGARY

- f) mergers;
- g) the introduction of new working methods or production processes;
- h) the relocation of undertakings, establishments or significant parts thereof and transfers of production;
- i) the cutting back or closure of undertakings, establishments or significant parts thereof;
- j) collective redundancies;
- k) decisions concerning the social responsibility of the European Company.

The last item was taken from the law transposing the SE Directive. (As the study on transposition of the SE Directive mentioned, this item was added following consultations with the social partners.) However, the 46 § (2) dealing with ‘exceptional circumstances affecting the employees’ interests to a considerable extent,’ refers only to (i)-(j) items of the above list.

The 46 § (3) includes the possibility of extraordinary meetings in urgent cases, in line with the Directive. However, there is a stipulation on further meetings within a year based on the agreement of the parties is in the 44 § (2), i.e. such an agreement may be concluded any time, though without specifying that ‘with a view to seeking agreement.’ This is not an accurate transposition of the second paragraph in Part 2 (c).

Making use of the authorisation in Part 2 (d), there are other supplementary rules for the information and consultation process, applied in line with the Labour Code’s relevant provisions. One such regulation requires that the required documentation shall be provided 15 days prior to the meeting. Similarly, this deadline applies for exceptional circumstances affecting the employees’ interests to a considerable extent; the meetings shall be held 15 days prior to the planned measures. Should the management take a decision that is not in line with the opinion of the representative body issued, the representative body may initiate new negotiations within 8 days in written form, and the next round of consultation shall be held within the following 15 days. The management decision may not be implemented until the new negotiations have been completed – according to 46 § (4). Any agreement reached during the negotiations shall be set down in writing. If the representative body does not require a new round of consultation or it fails to show up at the scheduled meeting or the parties fail to reach agreement during the new round of negotiations or, the Administrative/Management Board shall act in accordance with the default procedures.

This stipulation of the Hungarian law gives the representative body stronger rights than those described in Part 2 (c) (‘Where the competent organ 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 organ of the SE with a view to seeking agreement. ... The meetings referred to above shall not affect the prerogatives of the competent organ.’) It is worth to note that the procedural rules for information and consultation in the SCE are more detailed and slightly different from those in the law transposing the SE directive, as in the meantime Hungary transposed the Directive 2002/14/EC on ‘general framework on information and consultation’. Since than the Labour Code includes more sophisticated

NATIONAL IMPLEMENTATION REPORT – HUNGARY

procedural rules, and the law transposing the SCE directive is in line with the current regulations. Moreover, as it was already mentioned, consultation with social partners also contributed to develop a more elaborated text.

The second paragraph of Part 2 (d) on meetings ‘without the representatives of the competent organ being present.’ is transposed by the 47 §.

The 48 § is a verbatim translation of the Part 1 (e) of the Annex, while Part 1 (f) is transposed by the 41 §. Similarly to the Directive there is no limitation in the number of experts, as far as the extent of expenditures is concerned the law refers to the relevant section of the Labour Code. The same paragraph on expenditures, however, remains silent on time-off, avoiding loss of wages and training in case of the employee representative body (Part 1 (h)). Appropriate time-off is stipulated by 34 § (2); however, training is not specified by this paragraph either. Obviously, the Hungarian transposition copied the relevant paragraph of the law concerning transposition of the SE directive, and did not notice the small differences between the two directives.

C. Participation of employees (annex 3)

The 49 § transposes Part 3 (a) and (b) of the Annex. It is a slightly difference text, swapping the Directives stipulations, i.e. the Hungarian law gives first a verbatim translation of Part 3 (b) as a general rule. Then the law deals with the case of transformation and duly transposes Part 3 (a). The following paragraph (49 § (3)) translates the regulation that participation need not be made in the European company if none of the participating companies made provision for such employee participation (Part 3 (c)).

The 49 § (6) excludes nomination of the members of the representative body, however the nominee shall be an employee of the SE or its subsidiaries.

The distribution of seats is regulated in detail by the 49 § (4-5) and 51 § in line with the Directive. However, the representative body is not only in the position to nominate or recommend employees’ board representatives, but also entitled to withdraw them from the board. This stipulation is analogous with the procedures applied in the nomination of members of the SNB and representative body, and in line with the national law on board representation. Beyond translating the second sentence of Part 3 (d) of the Annex, the law adds that in case further seats on the Administrative or Supervisory Board are available to representatives of workers employed within Hungary, they shall be distributed in proportion to a number of employees in the subsidiaries and other establishments.

The 49 § duly transposes Part 3 (e) of the Annex.

IV. Common Provisions (with II and III)

A. Confidentiality of information (art. 10)

Confidentiality issues are regulated in the 33 § of the law. The 33 § (1) states that the Management/Administrative Board of the European company or the management body of the participating company shall be subject to the information obligation under this Act only where disclosure of such information does not endanger the reasonable interests concerning trade secrecy rights of the European Cooperative, participating legal entity or their subsidiaries or establishments. Obviously, the jurisdictions’ role is to decide on the interpretation of ‘reasonable interests’ in case of disputes.

NATIONAL IMPLEMENTATION REPORT – HUNGARY

The 33 § (3) of the Act stipulates that the members and alternate members of the SNB, members of the representative body cannot pass any information that they received as confidential business information to third parties, to the public, and that information cannot be used for any other purposes than to achieve the goals determined by this Act. This obligation shall continue to apply even after the expiry of their terms of office. According to the 33 § (4), beyond employees' representatives this obligation shall apply also to employee delegates, interpreters and experts.

The juridical appeal procedure is introduced by the 32 § (2). If the company has not provided the required information, the Court of Registration may, at the request of the special negotiating body, representative body or employees' representative, order it to do so.

As far as Article 8 (2) of the Directive is concerned, the Hungarian legislation did not make use the authorisation either to give a waiver in specific cases from the obligation of information, or to make such dispensation subject to prior administrative or judicial authorization. The Act does not stipulate the option offered by Article 8 (3), which allowed that a Member State may lay down particular provisions for SE in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, on the date of adoption of this Directive such particular provisions already exist in the national legislation.

B. Spirit of cooperation (art. 11)

Article 11 of the directive is transposed by the 16 § (3) among the General Provisions. It states: 'In the course of the negotiations and procedures governed by this part of the Act, the special negotiating body, representative body, employees' representatives, Administrative/Management Board of the European Cooperative (or other body mandated by them), Supervisory Board and management bodies of the participating companies shall act in mutual cooperation in accordance with the requirements of good faith and integrity.'

C. Protection of employees' representatives (art. 12)

Protection of employees' representatives is regulated by the 34 § (1) of the law. The provisions of the Labour Code concerning the members of works councils shall apply for the protection of members and alternate members of the special negotiating body and representative body employed within Hungary, employees' representatives participating in the information and consultation procedures and employee delegates represented on the Administrative or Supervisory Board.

The 33 § (2) transposes the second paragraph of Article 12; the persons referred to in paragraph (1), during the time-off for their service in the representative bodies, are entitled to the 'leave of absence' allowance (in Hungarian: távolléti díj). The Labour Code includes the rule of calculation of such an allowance.

D. Misuse of procedures (art. 13)

There is no definite provision in the law, which corresponds Article 13 of the Directive. Maybe the 1 § (2) can be deemed as such a stipulation, which requires applying the provisions of this Act also for Hungary-based founders of a European Cooperative with a planned registered office abroad.

NATIONAL IMPLEMENTATION REPORT – HUNGARY

V. Provisions applicable to work centres and subsidiary companies in the territory of the Member State (accessory provisions)

The law does not include a specific part dealing with work centres and subsidiary companies in the territory of Hungary (accessory provisions). In the first part of the law, among the General Provisions the 1 § (4) definitely states the applicability of the rules of Part II as accessory provisions: “The provisions of Part Two of this Act shall apply accordingly to the election or removal of employees’ representatives (...) employed within Hungary in participating legal entities (52 §), European cooperative or their subsidiaries or establishments; and to the rights and obligations of the company, works council, employees and employees’ representatives in this connection, including where the registered office of the planned European company is situated abroad.” However, as it was mentioned above, the law contains special regulations for Hungarian employees of the SE or its subsidiaries in each paragraph if it is applicable.

VI. Rules applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons (art. 8)

The 15 § transposes Article 8 of the Directive. This paragraph contains verbatim translation; however, in the case of under 50 employees the law identifies the Act X of 2006 on Cooperatives, which is applicable for employees’ involvement at subsidiaries and establishments in Hungary. The law transposes 15 § (3) adequately, however, as far as the transfer from one Member State to another of the registered office of an SCE governed by participation is concerned, the Hungarian law covers only transfers into Hungary.

VII. Participation in the General Meeting or Section or Sectoral Meeting (art 9)

The 32 § transposes Article 9 of the Directive. This paragraph also contains verbatim translation, however, the scope of this paragraph is limited to the Hungarian employees of the SCE. As it was mentioned in the introductory part, according to the domestic rules the representatives of the employees may partake at the major decision making forum of the coop (general-, section- or delegates’ meeting), though they have no voting rights.

VIII. Legal procedures (or, given the case, extrajudicial)

Article 14 of the directive is partly transposed by the 35 §. Its paragraph (1) states that “In the event of infringement of the rights and obligations laid down in this Part, the special negotiating body, the representative body or the employees’ representatives participating in the information and consultation procedures may, in application of the relevant sections of the Labour Code, bring legal action against the European cooperative’s Management/Administrative Board or the management bodies of the participating companies.” This legal action practically means filing a ‘law dispute’ case to the Labour Court. As the Directive also requires that ‘as the case may be, the employees themselves abide by the obligations laid down by this Directive’, the paragraph (2) gives employers the same right, saying that “The right laid down in paragraph (1) also applies to the Management/Administrative Board of the European cooperative and the management bodies of the participating companies vis-à-vis the special negotiating body, the representative body and the employees’ representatives.” Knowing the rights of the employee representatives, as far as the practical effect of this stipulation is concerned, it is hard to imagine what sort of infringement of the rights can be committed by the employee representatives, with the exception of the confidentiality rules.

NATIONAL IMPLEMENTATION REPORT – HUNGARY

There are a more concrete legal procedures provided by the Standard Rules. The 46 § (5) stipulates that the representative body may bring the case before the Labour Court if the European company's Administrative/Management Board fails to act in accordance with the procedures laid down in the 45-46 § of the law. In such a case the court acting in first or second instance shall issue a decision by nonlitigious procedure within 15 days. If the court finds that the rules of procedure have been breached, it shall order the correct implementation or repetition of the procedures concerned. As it was already mentioned the 33 § (2) introduced another juridical appeal procedure: if the European cooperative has not provided the special negotiating body, the representative body or the employees' representative the required information, the Court of Registration, at the request of employees' representative body, may order it to do so.

It is worth to note that the law failed to amend the Act LXXV of 1996 on Labour Inspection to extended the mandate of Labour Inspectorates to oversee the observance of the stipulations of this act. Interestingly, in the XXI Act of 2003 on the European Works Council there is such a stipulation concerning the information and consultation duty by the employers, therefore in the case of EWC the Inspectorate may fine the employers for breaching the legal regulation.

Undoubtedly the most serious measure in order to enforce the transposed Directive can be found in the Annex of the law. The Annex practically contains an amendment of the Company Registration Act, which enumerates the documents required for registration of European cooperatives or registration of change of status. This includes the following:

- “the agreement on employee involvement in the European company's decision-making process, or
- decision by the special negotiating body not to start negotiations on employee involvement in the European company's decision-making process, or to discontinue such negotiations, or
- joint declaration by the management boards of the participating companies that no agreement was reached with the special negotiating body by the deadline specified in separate legislation on the arrangements for employee involvement in the European company's decision-making process”.

Obviously, the above-mentioned ‘specific legislation’ means exactly this law, which is considered specific only from the point of view of the Company Registration Act. This rule, in line with the EU legislation, efficiently makes meeting the requirements by the Directive a sufficient precondition of registration of an SE.

IX. Other issues (for example, juridical efficiency in the Member State of the provisions of other Member States and sanction system for non-compliance)

As far as it known, there has been no precedence either for registering a newly established SCE in Hungary or a Hungarian legal entity participating in establishment of an SCE. Therefore, so far there have not been any Labour Court cases dealing with an SCE.

4. Practical application

Cooperatives used to be widespread in Hungary during the state-socialist regime, as following the communist takeover (1948), parallel with nationalisation of big private enterprises, small-scale businesses were forced to enter into cooperatives. This transformation ensured a sort of party/state control through the formally democratic representation organisations of cooperatives. They were the prevailing business form especially in rural areas, smallholder farmers and shopkeepers were formed agricultural and consumer coops, respectively. Similarly, artisans and other small businesses entered into industrial and service cooperatives, and saving banks operated in cooperative form. Instead of the earlier procurement and sales coops of independently working small businesses, during the communist period productive cooperatives became prevailing. As a legal consequence, the legislation on cooperatives broke with its roots in the commercial law, and predominantly regulated cooperatives as working organisations.

In the early nineties, with the political changes most of the agricultural, industrial and service cooperatives ceased to exist as they transformed themselves into business firms. This procedure was triggered by the amendment of the law on cooperatives, which allowed such transformation and also allowed members to leave the cooperative with their share in the 'common' assets. This process was further accelerated by the Restitution Act, which gave the original owners back the nationalised property, including the case of forced cooperatives. In-kind restitution was practically limited to the arable land, and as a consequence, nowadays the remaining agricultural cooperatives cultivate mostly the lands owned by former members or their offsprings.

In statistical terms, there were 6,532 registered cooperatives in the country at the end of 2004. This is a relatively small fraction of the total number of registered corporations and unincorporated enterprises that was 964,073 at the same time. (Hungarian Central Statistical Office) Moreover, it is known that many cooperative inherited from the state-socialist period have been 'hollowed out', i.e. the actual economic activity, including employment is carried out in a separate business firm, which is characteristically owned by the founder cooperative. For instance, such a large-scale transformation took place in the consumer cooperatives. Nonetheless, according to the estimates, the existing cooperatives still have 1.8 million members, even if in the decisive consumer or banking cooperatives practically the members' actual influence is rather limited. Newly founded cooperatives with natural persons are practically non-existent in Hungary, as the prevailing individualistic value system and ideological stand is not favourable for any sorts of 'common' ownership. Another example for the dissolution of common property forms is Employee Share Ownership (ESOP), which programme was popular in course of the early years of privatisation, but once the employees repaid the loan for buying shares, most of them are taken over by outside investors, or having avoided such a takeover they make a decision to distribute the property among the employees, who thus became individual small shareholders of the company. An interesting new development is the establishment of new cooperatives by legal entities in the food

NATIONAL IMPLEMENTATION REPORT – HUNGARY

industry. Prugberger and Csáki found such a development, in the sugar industry where the refineries formed procurement and sales coops together with the producers of sugar roots.²

² See: Prugberger, Tamás: Kritikai észrevételek az egységes szövetkezeti törvény koncepciójához. [Critical comments to the concept of the unified law on cooperatives.] *Szövetkezés* Vol. 26 No. 1. pp. 193-211.

NATIONAL IMPLEMENTATION REPORT – HUNGARY

Annex I: Annex: Correspondence table - Transposition of the 2003/72/EC (SCE) Directive into the Act Act LXIX of 2006

Table of correspondence		
Content	Articles in the Directive	Sections in National legislation
Objective	1	Preamble, 13, 16
Definitions	2	52
Creation of a special negotiating body	3.1	19
	3.2 a	20
	3.2 b	21
	3.3	25
	3.4	29
	3.5	31
	3.6	30
	3.7	28
Content of agreement	4.1-4.2	16, 31
	4.3-4.5	31, 32
Duration of negotiations	5	26
Legislation applicable to the negotiation procedure	6	–
Standard rules: 7 and annex	Annex part 1	34, 36-43, 48
	Annex part 2	44-47
	Annex part 3	49
Reservation and confidentiality	8	15
Operation of the representative body and procedure for the information and consolation of employees	9	32
Protection of employees' representatives	10	33
Misuse of procedures	11	16
Compliance with this directive	12	33,34
Link between this Directive and other provisions	13	1