

**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**



NATIONAL IMPLEMENTATION REPORT – LATVIA

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## Executive Summary<sup>1</sup>

Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees has been transposed in Latvia by adopting the Law on the Involvement of Employees in the European Cooperative Society. The Law was adopted by the Parliament of Republic of Latvia on 2 November 2006 and it came into force on 29 November 2006.

The Directive has been transposed into national legislation in a sufficiently clear and precise manner and in such a way as to ensure the proper application of the Directive.

There are some aspects that have not been included into the national legislation:

- the definitions of ‘concerned subsidiary or establishment’ and ‘involvement of employees’;
- the provision that ‘the composition of the special negotiating body does not entail a double representation of the employees concerned’ (Article 3 (2) (ii) of the Directive).

There are some aspects that have been transposed imprecisely:

- The Law does not transpose a definition of the ‘participating legal entity’. Instead the Law provides the definition of ‘founding cooperative society’. ‘Founding cooperative society’ means the cooperative society that is established in Latvia and directly participates in the establishing of a SCE (Article 1 (2) of the Law).
- The Directive provides that special negotiating body shall take decisions by an absolute majority of its members (Article 3 (4) of the Directive). The Law provides that special negotiating body shall take decisions by a simple majority vote (Article 21 (1) of the Law).
- The Directive provides that standard rules in accordance with part 3 of the Annex shall apply only in the cases stipulated by Article 7 (2) (a), (b) and (c) of the Directive. The Law provides that Article 17 (1) (that determines the application of standard rules provided by Articles 18, 19, 20, 23 transposing the whole Annex of Directive) shall apply in the cases stipulated by Article 17 (2) (that transposes Article 7 (2) (a), (b) and (c) of the Directive).
- The Directive (Article 8 (3)) provides that if, after the registration of an SCE referred to in paragraph 2, at least one third of the total number of employees of the SCE and its subsidiaries and establishments in at least two different Member States so requests, or if the total number of employees reaches or exceeds 50 employees in at least two Member States, the provisions of Articles 3 to 7 shall be applied, *mutatis mutandis*. In this case, the words "participating legal entities" and "concerned subsidiaries or establishments" shall be replaced by the words "SCE" and "subsidiaries or establishments of the SCE" respectively. The Law provides that if a SCE is established according to Article 21 (2) of the Law, and the total number of

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<sup>1</sup> Report elaborated for Daiga Ermsons

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employees of the SCE and its subsidiary cooperative societies exceeds 50 employees in at least two Member States or at least one third of employees of the SCE and its subsidiary cooperative societies in at least two different Member States requests in writing to conclude a new agreement in order to establish other procedure for information and consultation the new special negotiating body according to the Article 4 of this Law and the provisions of Articles 3 to 18 shall be applied (Article 21 (4) of the Law).

As no SCE has been established in Latvia the practical implementation of the Law has not started yet. It may be concluded that at this stage the legal framework for involvement of employees in the affairs of the SCE in Latvia is established.

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# 1. Introduction

In Latvia, the right to information and consultation of employees is a new concept, which was introduced recently within the overall reform of labour legislation. The new Labour Law that came into force on 1 June 2002 transposed the most of EU directives in the field of employment law, including directives establishing specific framework for informing and consulting of employees (Directive 98/59/EC and Directive 2001/23/EC) and the most of the provisions of the draft Directive 2002/14/EC. On 29 March 2001 the Parliament of Republic of Latvia transposed the Directive 94/45/EC on the establishment of a European Work Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees by adopting the Law on Informing Employees of European Community-scale Commercial Companies and European Community-scale Groups of Commercial Companies and Consulting the Employees. On 24 March 2005 the Parliament of Republic of Latvia transposed the Directive 2001/86/EC supplementing the Statute for European company with regard to the involvement of employees by adopting the Law on European Companies.

The procedures for the founding, re-organisation and liquidation of cooperative societies in Latvia, as well as the legal basis for the activities of these societies are governed by the Law on Cooperative Societies adopted on 5 February 1998. The legislation does not provide any specific system of industrial relations and employees involvement in cooperative societies. Therefore general rules regarding informing and consulting employees are applied in cooperative societies.

On 26 October 2006 the Parliament of Latvia adopted the Law on European Cooperative Societies (hereinafter - SCE). The Law regulates the procedure of establishment and operation of a SCE, if the SCE is intended to be registered in Latvia or a cooperative society, company registered in Latvia or a persons permanently residing in Latvia directly participates in the formation of the SCE.

This report aims to describe, examine and assess how the transposition and practical implementation of the Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees has taken place in Latvia.

The following methods were used for data collection and analysis: documentary analysis and structured interviews with different stakeholders representing: state institutions, employers' organizations and trade unions.

There were no problems encountered during the preparation of this report.

## 1.1 Formal aspects

### a. procedure used for transposition

Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees (hereinafter - the Directive) has been transposed by adopting the Law on the Involvement of Employees in the European Cooperative Society (hereinafter - the Law).

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### **b. date, in relation to the compulsory transposition period**

On 2 November 2006 the Parliament of Republic of Latvia adopted the Law that came into force on 29 November 2006.

### **c. national regulation background**

Labour relations in Latvia are regulated by the Satversme (Constitution) of the Republic of Latvia, international laws binding on Latvia, the Labour Law and other legislative acts, as well as collective agreements and working procedures of undertakings.

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

The national level social partners - Employers' Confederation of Latvia (LDDK) and Free Trade Union Confederation of Latvia (LBAS) were consulted during the preparation of the law transposing the Directive. Prior to submission of the draft law to the Cabinet of Ministers it was approved by the National Tripartite Co-operation Council.

## **1.2 Material aspects**

### **1.2.1 General observations**

The Law closely follows the structure and wording of the Directive.

### **1.2.2 Specific observations**

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

The purpose of the Law is to ensure the involvement of employees in the decision-making process, also the information, consultation and participation of employees in a SCE (Article 2 of the Law).

The Law does not contain a specific definition of the 'SCE'. The Law provides that the Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society and the Law on European Cooperative Societies applies to an SCE (Article 2 of the Law).

The Law does not contain a definition of the 'participating legal entity'. Instead the Law provides the definition of 'founding cooperative society'. 'Founding cooperative society' means the cooperative society that is established in Latvia and directly participates in the establishing of a SCE (Article 1 (2) of the Law).

'Subsidiary cooperative society' means a society that is under the decisive influence of a dominating cooperative society (Article 1 (1) of the Law).

The definition of 'concerned subsidiary or establishment' has not been transposed.

'Employees' representatives' mean a trade union or authorised employees' representatives who have been elected in an undertaking, which employs at least five employees (Article 10 (1) of the Labour Law).

'Representative body' means the body that is the negotiations partner of the representatives of the administrative organs of a SCE in connection with arrangements for the information

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and consultation of the employees of a SCE and its subsidiary cooperative society (Article 14 (2) paragraph 2 of the Law).

‘Special negotiating body’ means a body established to conduct the negotiations (Article 4 (1) of the Law).

Definition of ‘involvement of employees’ has not been transposed.

‘Information’ means the informing of the body representative of employees or employees’ representatives regarding the questions which concern a SCE or its subsidiary cooperative society at a time, in a manner and with a content which allows the employees’ representatives to acquire a notion regarding the possible effects and, if necessary, to prepare for consultations with the representatives of the administrative organ of the SCE (Article 1 (3) of the Law).

‘Consultation’ means the establishment of dialogue and the exchange of views between the body representative of employees or the employees’ representatives and the administrative organ of a SCE at a time, in a manner and with a content which allows the employees’ representatives, on the basis of information received, to express an opinion on measures envisaged by the administrative organ of the SCE, which may be taken into account in the decision-taking process within the cooperative society (Article 1 (4) of the Law).

‘Participation’ means the influence of the body representative of employees or the employees’ representatives in the affairs of a cooperative society by way of the right to elect or appoint members of the administrative organ of the ESC or the right to recommend or oppose the appointment of members of the administrative organ of the ESC (Article 1 (5) of the Law).

## **II. Provisions that apply to SCE based in Member State**

### A. Field of implementation (art. 15)

No specific provisions have been provided.

### B. Procedure for negotiation of the rights of involvement of workers in the SCE

#### *a. Responsibility of procedure (art. 3.1)*

In formulating the draft for the formation of a SCE, a founder cooperative societies shall negotiate with representatives of employees regarding the further involvement of employees in the decision-taking process, also regarding the information, consultation and participation in the SCE, and inform the representatives of employees regarding the founder cooperative societies and subsidiary cooperative societies, the number of employees employed in this cooperative societies and the measures related to the involvement of employees in the decisions-taking process in the founder cooperative societies (Article 3 (1) of the Law).

#### *b. Start of procedure (art. 3.1)*

The negotiations shall be opened immediately after the announcement of draft terms of merger of cooperative societies, after agreeing a plan to form a subsidiary cooperative society or after agreeing the project to transform other legal entity into a SCE (Article 3 (2) of the Law).

#### *c. Constitution and composition of the NB (art. 3.2)*

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A special negotiating body representative of the employees of founder cooperative societies and subsidiary cooperative societies shall be established for conducting negotiations (Article 4 (1) of the Law). Trade union representatives may be included in the special negotiating body whether or not they are employees of founder cooperative societies and subsidiary cooperative societies.

The quantitative structure of a special negotiating body shall be determined in proportion to the number of employees of the founder cooperative societies and subsidiary cooperative societies located in each Member State (Article 4 (2) of the Law).

If the number of employed employees in a Member State, in which a founder cooperative society or subsidiary cooperative society is registered, equals 10 per cent (or a fraction thereof, if below 10 per cent) of the total number of employees employed in all Member States, one employees' representative shall represent the employees of this Member State (Article 4 (3) of the Law).

In calculating the number of employees the employees, with whom an employment contract of limited duration has been entered into, shall also be taken into account (Article 4 (4) of the Law).

If the number of employees of a founder cooperative society changes and such change affects the composition of a special negotiating body, the composition of this negotiating body shall be changed accordingly (Article 4 (5) of the Law). A special negotiating body shall be recognised as established when all its members have been elected (Article 4 (6) of the Law).

If a SCE is formed by merging societies, additional representatives from each Member State shall be included in a special negotiating body so that this body has at least one member, who represents each founder cooperative society, which, in accordance with a draft, will cease to exist as a separate legal entity after the registration of the SCE (Article 5 (1) of the Law). The number of additional representatives may not exceed 20 per cent of the number of members of a special negotiating body (Article 5 (2) of the Law).

If the number of founder cooperative societies is higher than the number of additional seats available in a special negotiating body, additional seats shall be allocated to employees of societies in different Member States in which there are more employees (Article 5 (3) of the Law).

### *d. The functions of the SNB (art. 3.3 and 6)*

A special negotiating body and representatives of the administrative organs of founder cooperative societies shall agree on the involvement of employees in the decision-taking process, also regarding the information, consultation and participation in a SCE. Such agreement shall be entered into in writing. The agreement shall be submitted to the Enterprise Register for examination of the conditions referred to in Article 11, Paragraph 2 of Regulation No. 1435/2003 (Article 7 (1) of the Law).

Representatives of the administrative organs of founder cooperative societies have a duty to inform a special negotiating body of the plan and the process of establishment of SCE up its registration (Article 7 (2) of the Law).



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If not less than two thirds of the members of a special negotiating body, who represent not less than two thirds of employees from at least two Member States, vote in favour, the special negotiating body may decide not to open the negotiations or to terminate the negotiations that have already been opened, and decide that the provisions of rules on information and consultation, which are in force in the relevant Member States of SCE, shall be applied (Article 11 (1) of the Law).

- Such decision shall stop the procedure to conclude the agreement referred to in Article 7 of the Law. In such case, Articles 18, 19, 20 and 23 of the Law shall also not be applied (Article 11 (2) of the Law).
- The provisions of Article 11 (1) of the Law shall not be applied if a SCE is formed by way of transformation and participation exists in the cooperative society to be transformed (Article 11 (3) of the Law).

A special negotiating body shall be reconvened on the basis of a written request of at least 10 per cent of employees of a SCE and its subsidiary cooperative societies, or their representatives, not earlier than two years after the taking of the decision referred to in Article 11 of the Law, unless the parties have agreed on shorter time period (Article 12 (1) of the Law).

If a special negotiating body takes a decision to reopen negotiations with representatives of administrative organs, but no concrete agreement is reached during such negotiations, Articles 18, 19, 20 and 23 of this Law shall not be applied (Article 12 (2) of the Law).

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

A special negotiating body shall take decisions by a simple majority vote, which represents the majority of all employees of a SCE at the time of the election of members of the special negotiating body or the majority of employees of the SCE at the time of voting, if the number of employees of founder cooperative societies has substantially changed at the time of voting (in comparison to the time of the election of members of the special negotiating body). Each member of a special negotiating body shall have one vote (Article 8 of the Law).

A special negotiating body may take a decision regarding the reduction of participation rights if at least two thirds of the members of the special negotiating body, who represent not less than two thirds of employees from at least two Member States of a SCE, vote in favour of the reduction of participation rights (Article 9 (1) of the Law).

The provisions of (Article 9 (1) of the Law) shall be applied if a SCE is formed:

- by merging the founder cooperative societies, and if participation covers at least 25 per cent of the total number of employees of the founder cooperative societies, or
- by any other way provided in the Regulation 1435/2003 and, if participation covers at least 50 per cent of the total number of employees of the founder cooperative societies (Article 9 (3) of the Law).

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Participation rights are reduced if after the formation of a SCE, the participation of employees, within the meaning of Article 1 (5) of the Law, is lower than the highest level of participation in the participating cooperative societies (Article 9 (2) of the Law).

A special negotiating body has the right to invite experts. In the meetings of representatives of a special negotiating body and the administrative organs of founder cooperative societies experts shall participate in an advisory capacity (Article 10 of the Law).

Any expenses, which are related to the functioning of a special negotiating body and to the negotiations, shall be borne by the participating cooperative societies, ensuring appropriate conditions for the special negotiating body for the performance of its tasks (Article 13 of the Law).

*f. Duration of negotiations (art. 5)*

Negotiations shall be opened after the establishment of a special negotiating body and such negotiations shall continue for not longer than six months. The parties may, by joint agreement, extend this time period up to a total of one year from the establishment of a special negotiating body (Article 15 of the Law).

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

Administrative organs of the founder cooperative societies and the special negotiating body negotiate with a view to reaching an agreement referred to in the Article 7 of the Law on arrangements for the involvement of the employees within the SCE (Article 14 (1) of the Law).

Article 14 (2) of the Law provides that the agreement between representatives of the administrative organs of founder cooperative societies and a special negotiating body shall specify:

- a. the scope of the agreement;
- b. the composition, number of members and allocation of seats of the representative body - the negotiations partner of the representatives of the administrative organs of a SCE in connection with arrangements for the information and consultation of the employees of a SCE and its subsidiary societies;
- c. the functions and the procedures for the information and consultation of the representative body;
- d. the frequency of meetings of the representative body;
- e. the financial resources to be allocated to the representative body;
- f. the arrangements for the establishment of one or more information and consultation procedures if, during negotiations, the parties agree on the establishment of such procedures instead of a representative body;
- g. the provisions for the implementation of participation rights if, during negotiations, the parties agree on the participation rights of employees including the number of

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members in the SCE's administrative organ which the employees will be entitled to elect, appoint, recommend or oppose and the procedures as how these members may be elected appointed, recommended or opposed by the employees, and their rights;

- h. the date of entry into effect of the agreement, its duration, cases where the agreement should be renegotiated, as well as the procedures for the renegotiation, including, in the event of structural changes in the SCE and its subsidiary societies which occur after the creation of the SCE.
- i. other information if the parties regard such information as necessary.

The agreement shall not, unless the parties agree otherwise, be subject to the rules referred to in the Articles 17, 18, 19, 20 and 23 of the Law (Article 14 (3) of the Law).

If a SCE is established by means of transformation, an agreement regarding the involvement of employees shall preserve at least the same level of employee involvement as was previously specified (Article 14 (4) of the Law).

The agreement may specify the arrangements for the entitlement of employees to participate in the general meeting of a SCE or in any other meeting, if it exists, in accordance with Article 22 of the Law and Article 59(4) of Regulation 1435/2003 (Article 14 (5) of the Law).

### **III. Reference provisions (standard rules)**

#### **a. Field of implementation (art. 7)**

The standard rules are laid down in the Articles 18, 19, 20 and 23 of the Law.

Article 17 (1) of the Law provides that standard rules shall be applied:

- a. if the parties so agree; or
- b. if by the deadline specified in Article 15 of the Law no agreement has been reached between parties and the administrative organ of each founder cooperative society accepts the application of the standard rules, as well as if a special negotiating body has not taken the decision provided for in Article 11 of the Law.

Article 17 (1) shall be applied if:

- a. a SCE is established by transformation and if the provisions regarding participation applied to the cooperative society transformed into the SCE (Article 17 (2) paragraph 1 of the Law);
- b. a SCE is established by merger and if participation applied in at least one of the founder cooperative societies covering at least 25 per cent of the total number of employees of the founder cooperative societies, or if less than 25 per cent of the total number of employees of the founder cooperative societies have been covered by participation rights and a special negotiating body takes a decision to apply the standard rules (Article 17 (2) paragraph 2 of the Law);
- c. a SCE is established in any other way provided in the Regulation 1435/2003 and if employee participation existed in at least one of the founder cooperative societies

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covering at least 50 per cent of the total number of employees of the founder cooperative societies, or if less than 50 per cent of the total number of employees of the founder cooperative societies have been covered by participation rights and a special negotiating body takes a decision to apply the standard rules (Article 17 (2) paragraph 3 of the Law).

In order to examine the conditions referred to in Article 11 (2) of the Regulation No. 1435/2003:

- in the case provided in Article 17 (1) paragraph 1 of the Law an agreement between an administrative organ and a special negotiating body regarding the application of the standard rules shall be submitted to the Enterprise Register;
- in the case provided in Article 17 (1) paragraph 2 of the Law a confirmation regarding the fulfilment of the referred provisions shall be submitted to the Enterprise Register (Article 17 (3) of the Law).

If different forms of participation exist in founder cooperative societies, a special negotiating body shall decide, which form of participation to implement in a SCE. The special negotiating body shall inform the administrative organs of the founder cooperative societies regarding such decision. If such decision is not taken, a form of participation that exists in the founder cooperative society that employs the largest number of employees shall be implemented in the SCE (Article 18 of the Law).

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

A representative body shall be composed of employees of a SCE and its subsidiary cooperative societies, who are elected by employees' representatives or, in the absence thereof, by all employees according to the procedure for election of employees' representatives specified by the Labour Law. The principle of gender balance shall be observed (Article 19 (1) of the Law).

Where its size so warrants, the representative body shall elect a select committee from among its members, comprising at most three members (Article 19 (2) of the Law).

The quantitative structure of a representative body shall be determined in proportion to the number of employees in founder cooperative societies and subsidiary cooperative societies located in each Member State (Article 19 (3) of the Law).

If the number of employees employed in a Member State in which a founder cooperative society or subsidiary cooperative society is registered equals 10 per cent (or a fraction thereof, if below 10 per cent) of the total number of employees employed in all Member States, one employees' representative shall represent the employees of this Member State (Article 19 (4) of the Law).

Each 10 per cent (or a fraction thereof, if below 10 per cent) of employees of the total number of employees employed in all Member States shall represent one employees' representative in a representative body (Article 19 (5) of the Law).

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Once a year, a SCE shall inform a representative body regarding changes in the SCE and its subsidiary cooperative societies if such changes influence the allocation of seats in the representative body. In such case, the composition of the representative body shall be modified so as to conform to the changes made (Article 19 (6) of the Law).

The rules of internal operation procedure of a representative body shall be included in the regulations accepted by a representative body (Article 19 (7) of the Law).

A representative body shall inform the administrative organs of a SCE about its composition (Article 19 (8) of the Law).

Not later than four years after the establishment of a representative body, it shall decide with a simple majority vote whether to open negotiations with the administrative organs of a SCE, or to henceforth apply the provisions of the Articles 19, 22, 23, 24 and 25 of the Law. If the representative body decides to open negotiations regarding the conclusion of an agreement, it shall have the same rights and obligations as a special negotiating body. If an agreement has not been reached after the opening of new negotiations within the time period specified in Article 15 of the Law, the provisions of the Articles 20, 23, 24, 25 and 26 of the Law shall continue to be applied (Article 19 (9) of the Law).

The cooperation between the administrative organs of a SCE and representative body, the information of the administrative organs of a SCE and consultations with employees' representatives shall take place with due regard for their reciprocal rights and obligations (Article 19 (10) of the Law).

A representative body shall deal with the questions, which concern the SCE and its subsidiary cooperative societies, as well as with questions, which exceed the competence of the administrative organs in one of the Member States (Article 20 (1) of the Law).

Meetings of the representatives of a representative body and the administrative organs of a SCE shall take place not less than once a year. The purpose of the meetings shall be, on the basis of annual accounts, to inform the representative body and to consult with it regarding the activities and further development of the SCE (Article 20 (2) of the Law). Representatives of the administrative organs of a SCE shall inform the local administrative organs of the founder cooperative society and its subsidiary cooperative societies regarding these meetings (Article 20 (3) of the Law).

Representatives of the administrative organs of a SCE shall prepare a meeting agenda and inform a representative body about the agenda, as well as ensure the members of the representative body with copies of all documents submitted by the members of cooperative (Article 20 (4) of the Law).

The following issues shall be examined in a meeting:

- the structure of a SCE, its economic and financial situation;
- the possible development of commercial activities, production and marketing;
- initiatives related to the corporate social responsibility issues;
- the situation and probable trend of employment;

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- investments (investment programmes);
- substantial organisational changes;
- the introduction of new work methods or production processes;
- transfer of the property or its majority part (also structural units) to another location;
- re-organisation of cooperative society (merger or division);
- the liquidation of cooperative society or the closure of structural units; and
- collective redundancy (Article 20 (5) of the Law).

If exceptional circumstances occur which have a substantial impact on the interests of employees, including the transfer of the property or its majority part (also structural units) of a SCE to another location, the liquidation of cooperative society or the closure of its structural units, or collective redundancy, the administrative organs of the SCE shall inform a representative body in a timely manner. In such case, the representative body has the right to request that a meeting with representatives of the administrative organs of the SCE be organised in order to obtain information and to consult regarding the measures to be performed in the SCE, which have a substantial impact on the interests of employees (Article 20 (6) of the Law).

If representatives of the administrative organs of a SCE do not take into account the opinion expressed by a representative body, this body has the right to request that additional meetings be organised in order to reach an agreement. In the case of a meeting organised with the select committee, those members of the representative body that represent employees who are directly concerned by the measures in question shall also have the right to participate. Such meetings shall not affect the prerogatives of the administrative organs of the SCE (Article 20 (7) of the Law).

Representatives of the administrative organs of a SCE and the members of a representative body shall, upon mutual agreement, decide regarding the appointment of the head of the meeting (Article 20 (8) of the Law).

Prior to any meeting with representatives of the administrative organs of a SCE, the members of a representative body are entitled to meet among themselves without the participation of the representatives of the administrative organs of the SCE (Article 20 (9) of the Law).

A representative body shall inform the representatives of employees of the SCE and its subsidiary cooperative societies regarding the progress of information and consultation (Article 20 (10) of the Law).

If necessary, a representative body shall use the assistance of experts selected on the basis of their choice (Article 20 (11) of the Law).

Members of a representative body have the right to a paid educational leave in order to acquire knowledge that is necessary to fulfil the duties of the members of a representative body (Article 20 (12) of the Law).

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A SCE shall cover the expenses, which are related to the operations of a representative body, and also to the election of its members, the organisation of negotiations (premises, materials, staff, interpretation), and to business trips of the members of this body (travel expenses and subsistence expenses), as well as the invitation of one expert (Article 20 (13) of the Law).

### c. Participation of employees (annex 3)

If a SCE is established by transformation and the provisions of participation were applicable to a founder cooperative society prior to transformation, such provisions of participation shall continue to be applied in full also after the registration of the SCE (Article 23 (1) of the Law).

In other cases of establishing of a SCE, the employees of the SCE and subsidiary cooperative societies or a representative body has the right to elect or appoint members of the administrative organ of the SCE or the right to recommend the candidates or object their appointment. The participation of employees in the SCE shall conform to the highest proportion in force in the founder cooperative societies concerned before registration of the SCE (Article 23 (2) of the Law).

If prior to the registration of a SCE the provisions of participation did not exist in any of the founder cooperative societies, the SCE shall not be required to establish provisions of employees' participation (Article 23 (3) of the Law).

A representative body shall decide on the allocation of seats within the administrative organ of a SCE among the members of the representative body according to the proportion of employees of the SCE in each Member State, or on the way in which the employees of the SCE may recommend or oppose the appointment of members of the administrative organ of the SCE (Article 23 (4) of the Law).

It shall be ensured as far as possible that the employee representatives of each Member State - especially the Member State of registration of a SCE - are included in the composition of the administrative organ of the SCE (Article 23 (5) of the Law).

Every member of the administrative organ of a SCE who has been elected, appointed or recommended by a representative body or employees, shall be a full member of the administrative organ of the SCE and has the same rights (also voting rights) and duties as the members of the administrative organ of the SCE who represent members (Article 23 (6) of the Law).

## **IV. Common provisions (with II and III)**

### a. Confidentiality of information (art. 10)

Members of a special negotiating body or a representative body and employees' representatives, as well as the experts and interpreters who assist them, are prohibited from disclosing to third parties the acquired information that is a commercial secret. This prohibition shall apply regardless of whether the relevant person is fulfilling or has ceased to fulfil his or her duties (Article 24 (1) and (2) the Law).

The definition of the commercial secret is defined in the Article 19 of the Commercial Law. A status of commercial secret may be applied to the objects of an economic, technical or scientific nature, or information which is recorded in writing or by other means that comply with the following requirements: belongs to the undertaking or are directly associated with

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the undertaking; is not accessible to third persons; has a financial or non-financial value; its coming into the disposition of another person, may cause losses and in relation to which reasonable measures have been taken to preserve secrecy.

The administrative organ of a SCE may refuse to provide information, the disclosure or use of which, taking into account the nature and its objective reasons, may substantially harm or cause losses to the SCE and its subsidiary cooperative societies (Article 24 (3) the Law).

If the administrative organs of a SCE or the participating cooperative society demand the confidentiality or do not give the relevant information, the employees' representatives have the rights to ask the revision of this decision and the rights to apply to the court (Article 24 (4) of the Law).

### b. Spirit of cooperation (art. 11)

The cooperation between the administrative organs of a SCE and representative body, the information of the administrative organs of a SCE and consultations with employees' representatives shall take place with due regard for their reciprocal rights and obligations (Article 19 (10) of the Law).

### c. Protection of employees' representatives (art. 12)

The same rights and duties that are specified in the Labour Law for authorised representatives of employees shall be applicable to members of a special negotiating body, members of a representative body and employees' representatives during the fulfilling of the duties of information and consultation (Article 25 (1) of the Law).

Members of a special negotiating body, members of a representative body and employees' representatives shall be granted a vacation so that they may fulfil the duties of information and consultation, maintaining the average earnings for this time period. As regards members of a special negotiating body, members of a representative body and employees' representatives, the parties may agree on more favourable conditions (Article 25 (2) and (3) of the Law).

### d. Misuse of procedures (art. 13)

Article 26 of the Law provides that for non-compliance with this Law the persons shall be held liable.

## **V. Provisions applicable to work centres and subsidiary companies in the territory of the Member State**

### a. Field of implementation

The Law applies if the SCE is intended to be registered in Latvia or a cooperative society, company registered in Latvia or a persons permanently residing in Latvia directly participates in the formation of the SCE.

### b. Identification of national employees' representatives (art. 2.1.e)

'Employees' representatives' mean a trade union or authorised employees' representatives who have been elected in an undertaking, which employs at least five employees (Article 10 (1) of the Labour Law).



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c. Appointment of employees' representatives in the SNB and representative body (art. 3.2.b and annex 1, b)

Employees of a founder cooperative society or a subsidiary cooperative society may decide that the existing representatives of employees shall represent their interests in a special negotiating body (Article 6 (1) of the Law). If such decision has not been taken employees shall elect new employees' representatives in accordance with the procedures specified by the Law. A member of a special negotiating body shall also be elected if the number of employed employees in the founder cooperative society or subsidiary cooperative society is less than the number necessary for the election of employees' representatives (Article 6 (2) of the Law).

If the employees of a founder cooperative society or subsidiary cooperative society are represented by both an employee trade union and representatives authorised by employees, they shall authorise their representatives to select the members of a special negotiating body in proportion to the number of employees they represent, but not less than one representative each (Article 6 (3) of the Law).

At least one employees' representative from each founder cooperative society and subsidiary cooperative society registered in Latvia shall be included in a special negotiating body. The number of nominated members of the special negotiating body from Latvia may not exceed the number of representatives calculated for Latvia in accordance with Article 4 of the Law (Article 6 (4) of the Law).

If the number of founder cooperative societies registered in Latvia is greater than the number of representatives calculated for Latvia in a special negotiating body, the representatives of each founder cooperative society shall agree on a common representative of employees in the special negotiating body. If such an agreement is not reached, the employees employed in Latvia shall be represented by a representative of the founder cooperative society in which the largest number of employees is employed (Article 6 (5) of the Law).

Members of representative body shall be elected by employees' representatives or, in the absence thereof, by all employees according to the procedure for election of employees' representatives specified by the Labour Law. The gender balance shall be observed (Article 19 (1) of the Law).

Labour Law provides that the employees' representatives may be: trade unions or authorised employees' representatives. The representatives of trade unions which are authorised to act on their behalf are elected according to the articles of association of the trade union.

Authorised employees' representatives may be elected in an undertaking that employs five or more employees. They shall be elected for a specified term of office by a simple majority vote at a meeting in which at least half the employees employed by an undertaking participate. The course of the meeting shall be recorded in minutes and decisions taken shall be entered in the minutes. Authorised employees' representatives shall express a united view with respect to the employer.

d. Protection of employees' representatives (art. 10)

The same rights and duties that are specified in the Labour Law for authorised representatives of employees shall be applicable to members of a special negotiating body,

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members of a representative body and employees' representatives during the fulfilling of the duties of information and consultation (Article 25 (1) of the Law).

Labour law provides that performance of the duties of employees' representatives may not serve as a basis for refusal to enter into an employment contract, for termination of an employment contract, or for otherwise restricting the rights of an employee (Article 11 (6)). The additional protection is provided to members of trade unions. An employer is prohibited to terminate an employment contract with an employee - member of a trade union - without prior consent of the relevant trade union. If the trade union does not agree, the employer in order to terminate the employment contract shall bring an action in court for termination of this contract (Article 110 of the Labour law).

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

In the case of a SCE established exclusively by natural persons or by a single legal entity and natural persons, which together employ at least 50 employees in at least two Member States, the provisions of Articles 3 to 18 shall apply (Article 21 (1) of the Law).

In the case of a SCE established exclusively by natural persons or by a single legal entity and natural persons, which together employ fewer than 50 employees, or employ 50 or more employees in only one Member State, employee involvement shall be governed by:

- in the SCE, the provisions of the Member State of the SCE's registered office, which are applicable to other entities of the same type,
- in subsidiaries and companies of the SCE, the provisions that in the relevant Member State is applicable to other entities of the same type (Article 21 (2) of the Law).

In the case of transfer from one Member State to another of the registered office of an SCE governed by participation, at least the same level of employee participation rights shall continue to apply (Article 21 (3) of the Law).

If a SCE is established according to Article 21 (2) of the Law, and the total number of employees of the SCE and its subsidiary cooperative societies exceeds 50 employees in at least two Member States or at least one third of employees of the SCE and its subsidiary cooperative societies in at least two different Member States requests in writing to conclude a new agreement in order to establish other procedure for information and consultation the new special negotiating body according to the Article 4 of this Law and the provisions of Articles 3 to 18 shall be applied (Article 21 (4) of the Law).

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

Subject to the limits laid down in Article 59(4) of Regulation (EC) No 1435/2003, the employees of the SCE or their representatives are entitled to participate in the general meeting or in other meeting (if it exists) with the right to vote, in the following circumstances:

1. when the parties so decide in the agreement referred to in Article 7,
2. when a cooperative governed by such a system is transformed into an SCE,

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3. when, in the case of an SCE established by means other than transformation and if in a founding cooperative society exists the rights for employees to vote in the general meeting of cooperative society, the parties cannot reach agreement, as referred to in Article 7, by the deadline laid down in Article 15, the provisions of Articles 17 and 23 shall apply taking into account the highest proportion of participation in force in the cooperative societies concerned before registration of the SCE (Article 22 of the Law).

### **VIII. Legal procedures**

State Labour Inspection is the main institution responsible for supervision and monitoring of the implementation of labour legislation in Latvia. The officials of the Inspection have the rights:

- to carry out examination, control and investigation at the undertakings;
- to request the information necessary in order to verify that the requirements of labour legislations are observed;
- to take decisions regarding matters of employment legal relationships and to issue warnings and orders to employers;
- to impose, in accordance with the procedures prescribed for the examination of administrative violations, administrative sanctions on employers.

In practice, the employees' representatives may inform State Labour Inspection if the employer breaks the law. The Inspection may intervene only if the breach is undisputable, for example, the employer refuses to disclose none information to employees' representatives. However, if there is a dispute about the scope of confidential information the employees' representatives have to apply to the civil court where the procedure could be very time consuming.

National legislation does not provide for specific administrative or judicial review procedures for the case where the administrative organ of a SCE requires confidentiality. In the case of dispute the parties shall apply to civil court.

### **IX. Other issues**

No specific issues.

## **2. Practical application**

### **a. Overview of the situation regarding the cooperatives**

No SCE has been established yet.

### **b. Measures set out by national law ensure that the companies covered abide by the obligations laid down by the Directive**

No measures have been established yet.

### **c. Position of employers' and trade union organizations**

No specific position.

## 3. Assessment of the results of implementation

### 3.1 Regarding legal transposition

#### a. Overall quality of transposition.

The Directive has been transposed into national legislation in a sufficiently clear and precise manner and in such a way as to ensure the proper application of the directive. The Law establishes a general framework for involvement of employees in the affairs of the SCE thus the national implementation measures achieve the objective of the Directive.

#### b. Has the national regulation framework sufficiently fulfilled the requirements of the Directive or has it gone beyond these requirements?

The national regulation framework sufficiently fulfils the requirements of the Directive.

#### c. Which aspects have not been included in national regulation?

The definitions of ‘concerned subsidiary or establishment’ and ‘involvement of employees’ have not been transposed.

The provision that ‘the composition of the special negotiating body does not entail a double representation of the employees concerned’ (Article 3 (2) (ii) of the Directive) has not been transposed.

#### d. Elements of conflict or “grey areas” or areas where there is a lack of definition between national regulation and Community Directive.

The Law does not transpose a definition of the ‘participating legal entity’. Instead the Law provides the definition of ‘founding cooperative society’. ‘Founding cooperative society’ means the cooperative society that is established in Latvia and directly participates in the establishing of a SCE (Article 1 (2) of the Law).

The Directive provides that special negotiating body shall take decisions by an absolute majority of its members (Article 3 (4) of the Directive). The Law provides that special negotiating body shall take decisions by a simple majority vote (Article 21 (1) of the Law).

The Directive provides that standard rules in accordance with part 3 of the Annex shall apply only in the cases stipulated by Article 7 (2) (a), (b) and (c) of the Directive. The Law provides that Article 17 (1) (that determines the application of standard rules provided by Articles 18, 19, 20, 23 transposing the whole Annex of Directive) shall apply in the cases stipulated by Article 17 (2) (that transposes Article 7 (2) (a), (b) and (c) of the Directive).

The Directive (Article 8 (3)) provides that if, after the registration of an SCE referred to in paragraph 2, at least one third of the total number of employees of the SCE and its subsidiaries and establishments in at least two different Member States so requests, or if the total number of employees reaches or exceeds 50 employees in at least two Member States, the provisions of Articles 3 to 7 shall be applied, mutatis mutandis. In this case, the words "participating legal entities" and "concerned subsidiaries or establishments" shall be replaced by the words "SCE" and "subsidiaries or establishments of the SCE" respectively. The Law provides that if a SCE is established according to Article 21 (2) of the Law, and the total number of employees of the SCE and its subsidiary cooperative societies exceeds 50 employees in at least two Member States or at least one third of employees of the SCE and

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its subsidiary cooperative societies in at least two different Member States requests in writing to conclude a new agreement in order to establish other procedure for information and consultation the new special negotiating body according to the Article 4 of this Law and the provisions of Articles 3 to 18 shall be applied (Article 21 (4) of the Law).

### 3.2 Regarding the application

Under national legislation, the cooperative society is a voluntary association of natural persons and legal persons the aim of which is to provide services in order to increase the effectiveness of the commercial activity of its members. There could be various types of cooperative societies: agricultural services cooperative societies, cooperative societies of apartment owners, cooperative societies of vehicle garage owners, cooperative societies of boat garage owners etc. Currently there are 1986 cooperative societies registered in the Enterprise Register of Latvia.<sup>2</sup>

The management functions of a cooperative society within the framework of its competence perform the general meeting of members (meeting of authorised persons), the council and the board of directors. The functions of the board of directors in accordance with the procedures set out in the articles of association of the society may be performed by the director or the manager.

The Law on Cooperative Societies does not contain any provision regarding the participation of employees' representatives in the general meetings of cooperative society.

### 3.3 Regarding the effects caused

#### a. relation to the objectives sought;

As the Directive has been transposed very recently, it is difficult to assess the effects caused.

#### b. Unexpected effects, positive or negative;

No such effects.

## 4. Conclusions

The Law establishes a general framework for involvement of employees in the affairs of the SCE thus the national implementation measures achieve the objective of the Directive. Although the Directive has been transposed into national legislation in a sufficiently clear and precise manner there are some provisions that have been transposed imprecisely and few provisions which have not been transposed.

As the Directive has been transposed very recently it is impossible to assess the practical impact of the Directive on industrial relations in Latvia.

## 5. Recommendations

In order to fully comply with requirements of the Directive the Law should be accordingly amended.

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<sup>2</sup> [www.lursoft.lv](http://www.lursoft.lv)

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## **Bibliography**

No publications.

## **Annex I: List of the National Legislative Implementation Measures**

- Law on the involvement of employees in the European Cooperative Society, adopted on 2 November 2006, in force as of 29 November 2006.



## **Annex II: A list and summary of relevant case law towards implementation**

No case law.

## **Annex III: Relevant statistical information**

No statistical data.

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## Annex IV: Table of correspondence 2003-72

Content	Articles in the Directive	The Law*
Objective	1	Art.2
Definitions	2	Art.1, 4 (1), 14 (2)
	3.1	Art. 3
	3.2 a	Art. 4 and 5
	3.2 b	Art. 6
	3.3	Art. 7
	3.4	Art. 8 and 9
	3.5	Art.10
	3.6	Art. 11 and 12
	3.7	Art.13
Content of agreement	4	Art.14
Duration of negotiations	5	Art. 15
Legislation applicable to the negotiation procedure	6	Art. 16
Standard rules	7	Art. 17 and 18
SCS established by natural persons	8	Art. 21
Participation in the General Meeting	9	Art. 22
Reservation and confidentiality	10	Art. 24
Operation of the representative body and procedure for the information	11	Art. 19 (10)
Protection of employees' representatives	12	Art. 25
Misuse of procedures	13	Art. 26
Compliance with this directive	14	Art. 26
Link between this Directive and other provisions	15	No provisions
Annex	Part 1	Art.19
	Part 2	Art. 20
	Part3	Art. 23

\* The Law on the Involvement of Employees in the European Cooperative Society