

**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

 **Lithuania**

**NATIONAL IMPLEMENTATION REPORT – LITHUANIA**

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## Preliminary comments<sup>1</sup>

Lithuanian laws provide for a number of different types of legal business entities (personal enterprise, a general partnership, State or municipal enterprise, an agricultural company, a cooperative society) but the particular importance for economic activity in Lithuania have private and public companies, i.e. limited liability enterprises with authorised capital divided into shares. The Law requires private company (*uždaroji akcine bendrove*) to have authorised capital of at least 10 000 Litas (app. 2900 EUR) whilst the authorised capital of the public company (*akcine bendrove*) shall not be least than 150000 Litas (app. 43450 EUR). The Law does not set the maximum number of shareholders in the public company, but their number in private company may not exceed 250. Full structure of the company organs is comprised of the General Meeting of Shareholders, the Supervisory Board, the Board (collegial executive body) and Head of Company (one-man executive body). Several years ago there were restrictions regarding the structure of the public company but today all the companies may have both one-tier system and two-tier structures because the law allows them to choose not to have Supervisory board or the Board.

Under Lithuanian law <sup>2</sup> there are two types of establishments: branch office (*filialas*) and representation office (*atstovybe*) of the legal person. Branch office of a legal person shall be its structural unit, which has its registered office and performs all or part of legal person's the functions. The legal person shall be liable for the obligations of the branch office and the branch office shall be liable for the obligations of the legal person. A representative office of a legal person shall be a unit of a legal person, which shall have its registered office enjoy the right to perform all operations concerning the right to represent the interests of a legal person and safeguard them, to enter into contracts as well as perform other operations in legal person's name, to conduct import and export operations exclusively between foreign legal persons and other organisations, which have established the branch office or related enterprises, institutions or organisations and the branch office.

The legal status of the cooperative societies is consolidated in the Law no IX-903 on Cooperative Societies (Cooperatives) of 28 May 2002<sup>3</sup>, which has replaced the first Law on Cooperative Societies from 1993. Pursuant to Article 2 (2) cooperative society is a economic entity established by natural and (or) legal entities in accordance with laws, for the purpose of satisfying economic, social and cultural needs of its members. Their members contribute to share investment, share the risk and profit among themselves in accordance with their amount of turnover with the cooperative society and actively participate in the management of cooperative society.

A cooperative society is a private legal person of limited liability. It is liable for its obligations to the extent of its property; the members are not liable for the debts of

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<sup>1</sup> Report elaborated by Tomas Davulis.

<sup>2</sup> Civil Code of the Republic of Lithuania. Valstybes zinios, (State Gazette), 2000, no. 74-2262.

<sup>3</sup> State Gazette 2002, no 57-2296.

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cooperative society to an amount exceeding the sum remaining unpaid on his share investment.

A cooperative society must have no less than 5 members (natural or legal persons). The name of the cooperative society must contain the words "*kooperatine bendrove*" (cooperative society) or "*kooperatyvas*" (cooperative).

The employment relationship neither with members of cooperative societies nor with other employees has not deserved the special attention of the legislator. It means they remain under general regulation of national labour law with no special rules or peculiarities established. There are no special meanings of „employee representatives“, „information“, „consultation“ in the context of cooperative societies as well. The participation of employees in the meaning of the directive as well as participation of employees in the general assembly of members in the cooperatives is still unknown in the modern Lithuanian legal system.

According to the data provided by the Department of Statistics under the Government of the Republic of Lithuania the number of registered cooperatives is quite steady over last few years: 509 in 2003, 531 in 2004, 535 in 2005, 529 in 2006 and 531 in 2007. However, only half of them was and is in operation. There are now in Lithuania 276 cooperative societies and one union of cooperative societies in operation. The great majority of all cooperatives (150) employs up to 10 employees. Only 9 cooperatives employ more than 50 employees, and only 7 employ more than 100 employees. According to the data of Confederation of Lithuanian Industrialists, the total number of the members in the Lithuanian cooperative societies does not exceed 200 000, which constitutes only 6 per cent of all population. The main sectors of economic activities of cooperatives include regional retail trade, food production and agriculture.

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## 1. Formal aspects

On 15 June 2006 the Parliament of the Republic of Lithuania (*Seimas*) adopted the Law on the European Cooperative Societies<sup>4</sup>. The law ensures the application of the Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (ECS) in the Republic of Lithuania. It regulates formation, management, conversion and transfer of the registered office of European cooperative society. This Law has come into effect on 18 August 2006

Following the example with European Company, for the transposition of the supplementing Directive 2003/72/EC the way of adoption of a separate law on involvement of employees was proposed. On 5 December 2006 the Parliament of the Republic of Lithuania (*Seimas*) adopted the Law no X-935 on Employees Involvement in Decision-Making in European Cooperative Societies (hereinafter - EIDMECS-Law)<sup>5</sup> (*Lietuvos Respublikos įstatymas dėl darbuotojų dalyvavimo priimant sprendimus Europos kooperatinėse bendrovėse*). The Law came into effect on 28 December 2006. It contains general provisions on the purpose of the law, definitions and scope of application of the law, so-called ‘fundamentals’ of the involvement of employees in the decision making in a European Cooperative Societies, the principles of formation and work of special negotiating committee (hereinafter – SNC) and the standard rules.

In addition, the administrative sanctions for violations of the law were introduced in the Administrative Penalties Act (Article 41-10)<sup>6</sup>. On the 5 December 2006 the Article 21 of the Law on on Taxes on Profits of Legal Persons was amended recognising a trip of the employee to take part in the meetings of SNB or the meeting of the works council of the ECS as an employees’ business trip for the purpose of taxation.

The draft Law was prepared by the working group of the representatives of the ministries with no participation of social partners or academics and due to delay in meeting the deadline of transposition no consultation with social partners and no discussions in the tripartite Council of the Republic of Lithuania were initiated.

## 2. Material aspects

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

According Article 1 of the EIDMECS-Law the purpose of this Law is to ensure the participation of employees in decision making in European Cooperative Societies (ECS). The provisions of the Law shall implement the legal act of the European Union presented in the annex, namely 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, i.e. the aim of transposition of the Directive 2003/72/EC was clearly indicated in national legislation.

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<sup>4</sup> State Gazette, 2006, no 73-2764.

<sup>5</sup> State Gazette, 2006, no 141-5387.

<sup>6</sup> State Gazette, 1985, no 1-1.

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Pursuant to Article 3 (6) EIDMEC-Law, a *European Cooperative Society* means a legal person established under Council Regulation (EC) no 1435/2003 of 22 July 2003.

The Law gives the definitions of twofold definition of participating legal entity. According to Article 3 (13) IEDMEC-Law, a *participating natural person* is a natural person directly participating in the establishing of ECS. Article 3 (14) defines *participating legal person* as cooperative society or another legal person directly participating in the establishing of ECS.

The *subsidiary of participating legal person* or the *subsidiary of ECS* means a legal person over which another company has a dominant influence as defined in Article 4 of the Law on the European Works Council of the Republic of Lithuania<sup>7</sup> (Article 3 (2) EIDMECS-Law).

According to Article 4 (2) of the Law on the European Works Council of the Republic of Lithuania (EWC-Law), the 'dominant influence' means the situation when controlling undertaking exercises or is in position to exercise its decisions in relation to operations of the controlled undertaking and/or the composition of the bodies of that undertaking and/or their decision-making. Pursuant to Article 4 (3) EWC-Law the ability to exercise a dominant influence shall be presumed, without prejudice to proof to the contrary, when, in relation to another undertaking directly or indirectly:

- a) holds a majority of that undertaking's subscribed capital; or
- b) holds a majority of the votes attached to that undertaking's issued share capital; or
- c) is able to appoint more than half of the members of that undertaking's administrative or supervisory body.

The ability to exercise a dominant influence directly shall be presumed if an undertaking is a sharer of another undertaking and fulfils at least one condition specified above under points a)-c). The ability to exercise a dominant influence over another undertaking indirectly shall be presumed, if the undertaking controlled by controlling undertaking or any person acting in his own name but on behalf of the controlling undertaking or on behalf of any other its controlled undertakings, are able to exercise the rights as regards holding of majority (Article 4 (3) point b EWC-Law) of the votes and appointment of the members of the body (Article 4 (3) point c EWC-Law).

Where two or more undertakings from a group satisfy one or more of the conditions laid down in Article 4 (3) EWC-Law, the undertaking which satisfies the criterion on the ability to appoint the members shall be regarded as the controlling undertaking, without prejudice to proof that another undertaking is able to exercise a dominant influence (Article 4 (5) EWC-Law).

The exercise of the right to appoint the liquidator of the liquidating undertaking or administrator of the undertaking being in the process of insolvency shall not be presumed as a dominant influence (Article 4 (6) EWC-Law).

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<sup>7</sup> Valstybes žinios (State Gazette), 2004, no. 39-1271.

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The Undertakings which do not fall under the scope of application of the provisions on the concentration between an undertaking of the Law on Competition of 23 March 1999 no VIII-1099<sup>8</sup> shall not be deemed to be a 'controlling undertaking' (Article 4 (7) EWC-Law).

When determining whether an undertaking, which has its registered office not in the territory of the Republic of Lithuania, is a 'controlling undertaking', the law which governs that undertaking shall be applicable. Where the law governing that undertaking is not that of a Member State, the law applicable shall be the law of the Member State within whose territory the representative of the undertaking or, in the absence of such a representative, the central management of the group undertaking which employs the greatest number of employees is situated (Article 4 (8) EWC-Law).

**Concerned subsidiary or establishment** means a subsidiary or an establishment of the participating legal person that will become a subsidiary or an establishment of the ECS upon its formation (Article 3 (15) EIDMECS-Law).

Article 3 (4) EIDMECS-Law gives the general definition of **employees representatives** that includes both employees representatives in the framework of the involvement of employees in the ECS or SNC and national representatives of employees. Representatives of employees means representatives of the employees of a ECS, participating legal person or concerned subsidiary or concerned establishment as well as representatives of employees of participating natural person.

The representatives of the employees of a legal person that has a registered office in the Republic of Lithuania or an establishment operating in the Republic of Lithuania or of the natural person residing in the territory of the Republic of Lithuania shall be defined by the Article 19 of the Lithuanian Labour Code.

Representatives of employees of legal persons that have their registered offices in another member state as well as of establishments operating in other member states or of employees of natural person residing in the territory of another member state shall be defined in accordance with the legislation or practice of these member states. In certain cases, the ECS-Works Council formed in the procedures laid down in the IEDMECS- Law, a committee of the ECS-Works Council or the SNC may also be considered a representative of employees.

As far as Lithuanian employees' representatives are concerned, the Article 19 of the Labour Code called "Representatives of Employees" states, that the rights and interests of employees may be represented and protected by the trade unions. Where an enterprise, institution or organisation has no functioning trade union and if the staff meeting has not transferred the function of employee representation and protection to the trade union of the appropriate sector of economic activity, the employees shall be represented by the work council elected by secret ballot at the general meeting of the collective of employees.

Since there are two channels of workers' representation we shall distinguish between few possible institutionalized bodies which may act as employees' representatives:

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<sup>8</sup> Valstybes zinios, 1999, no. 30-856.

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1. *Trade union at enterprise* (enterprise-level trade union). Art. 50 of the Lithuanian Constitution declares that trade unions shall be freely established and shall function independently. They shall defend the professional, economic, and social rights and interests of employees. The Preamble of the Law on Trade Unions describes trade unions as a voluntary, independent and self-establishing organizations representing and defending employees' professional, labour, economic, social rights and interests – may be established if it has more than 30 founders (employees), or if there are no less than 30 founders in the enterprise, institution or organisation, or when the founders account for no less than 1/5 of all the employees, but no less than three employees (Article 6 (2) Law on Trade Unions<sup>9</sup>, Article 2.38 Civil Code<sup>10</sup>). No rules exist on the method of calculating the threshold of employees.
2. *Sectoral trade union* may be authorised by the general meeting of employees to represent the employees employed by single employer.
3. *Works council* may be elected in the undertakings or establishments (which are acting as a single employer) employing at least 20 employees (Art. 3(3) Law on Works Council). The Law on Works Councils no. IX-2500<sup>11</sup> was adopted on 11 November 2004 allowing setting up them in the enterprises without presence of functioning enterprise-level trade unions. Article 2 (2) Law on Works Councils defines works council as a body of employees representation which defends employees' professional, labour, economic and social rights and representing their interests. The law contains no reference to the territory of the state where employee is employed. In the undertakings or establishments with less than 20 employees the individual employee as a representative of employees' may be elected. He would enjoy all the competences and protection as of works council *mutatis mutandis* (Art. 3 (4) Law on Works Councils). Article 5 Law on Works Councils establishes the rules on calculating the threshold of employees. It is calculated taking into account number of persons having valid contract of employment regardless the length of their service. The employees employed by the establishments or structural subdivisions not having the capacity of a single employer are to be included. Employees on parental leave before the child is three years of age, employees called up to fulfil active national defence service and employees having a short-term (up to two months) contract of employment as well as persons acting as employers' representatives in accordance with laws and employers' activity documents shall not be included.

Once the union or works council is considered to be “Representative of Employees” according to the law, it is entitled to represent all the employees of the enterprise irrespective of their membership in the particular union or participation in the elections of the council. In addition, the legislator generally does not divide the competences of workers representatives when representing employees of the enterprise, i.e. they are entitled to all the rights of collective representation: the right to enter into negotiation, the right to conclude the collective agreements, the right to strike (by now this right is not recognized for works councils) and some participation rights. However, the legitimate realization of some of those

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<sup>9</sup> State Gazette, 1991, no 34-933.

<sup>10</sup> State Gazette, 2000, no 74-2262.

<sup>11</sup> Valstybes zinios, 2004, no. 164-5972.



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rights (conclusion of the collective bargaining agreement and right to call on strike) depends on approval of general meeting of employees.

*As far as **representative body** is concerned, Lithuanian Law in Article 3 (7) refers directly to ECS-Works council describing it as representative body of employees formed under EIDMECS-Law through which the right of the employees of the ECS, its subsidiaries or establishments to information, consultation and participation is exercised. Under EIDMECS-Law, any representative organ established on the basis of the legal acts of another Member State through which the right of employees of a ECS established in another Member State, its subsidiaries or establishments to information, consultations and participation is implemented shall be considered the ECS-Works council too.*

According to Article 3 (12) EIDMECS-Law, a *special negotiating committee* (SNC) means an organ formed under the provisions of the this Law for the purposes of negotiating with the competent organ of participating legal entities or the central management of ECS on the involvement of employees in decision-making within ECS.

Article 3 (5) EIDMECS-Law describes *involvement of employees* any way, including information, consultation and participation, in which the representatives of employees may affect the decisions taken in the ECS.

Pursuant to Article 3 (3) EIDMECS-Law, **participation** means the influence of the representatives of employees on the management of the ECS or participating legal entities realised through the right to elect, appoint members of the supervisory or administrative organs of the ECS or participating legal persons, nominate them for appointment and/or object to their appointment.

**Information** means communication of information (data) to the ECS-Works council, to the committee of ECS-Works council and/or the representatives of employees on matters related to the ECS or one of its subsidiaries, concerned establishments located in another Member State, or matters that exceed the powers of decision making organs in one Member State in order to inform them on the core of the problem (Article 3 (8) EIDMECS-Law).

**Consultation** means exchange of views and the establishment and development of a dialogue between ECS-Works council, the committee of ECS-Works council and/or employees' representatives and the central management or the management of another level. (Article 3 (11) EIDMECS-Law)

All the definitions corresponding to those of the Directive are given in Article 3 of the EIDMECS-Law but Lithuanian legislator provides for other definitions for better understanding and applying of the law too. The EIDMECS-Law gives the notions of:

- *Central management* under which a competent managing or administrative organ of a ECS shall be understand (Article 3 (1) EIDMECS-Law);
- *Management of another level*, i.e. the managing or administrative organ of the subsidiary of a ECS or the manager of a establishment of a ECS or of the establishment of the the subsidiary of a ECS (Article 3 (9) EIDMECS-Law);
- *Competent organ of participating legal entities* means a negotiating body formed by the agreement of the managing or administrative organs of the participating legal or

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natural persons for the purposes of negotiating with the special negotiating committee on the involvement of employees in decision making (Article 3 (10) EIDMECS-Law).

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

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

The EIDMECS-Law shall be applicable if the ECS's registered office is or if the registered office of the ECS will be upon its formation in the Republic of Lithuania. The legislator uses the word "*buveinė*" (office, seat) which is more linked to the „seat“ than to the place of registration or registered Office. The notion of „registered office“ does not exist in national civil law at all – according to Article 2.49 of the Civil Code of the Republic of Lithuania<sup>12</sup>, theoretically there could both a „seat of a legal person“ and „the seat of the legal person that is consolidated in the statute and is registered within the registry of legal persons“<sup>13</sup>.

Some articles of the Lithuanian transposition law shall be applicable without regard to the location of the registered office of the existing European Company or the location of the registered office of the European Company upon its formation.

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

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

According to Article 9 EIDMECS-Law, in establishing a ECS, the managing or administrative organs of the participating companies, concerned subsidiaries or establishments shall be obliged to initiate negotiations on the involvement of employees in decision-making at the ECS. If in the establishment of ECS participate natural persons

In the case of an SCE established exclusively by natural persons or by a single legal entity and natural persons, natural persons and managing or administrative organ of the legal entity shall be obliged to initiate negotiations on the involvement of employees in decision-making at the ECS only if they together employ not less than 50 employees in not less than two Member States (Article 9 (2) EIDMECS-Law).

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

According to Article 9 (3) EIDMECS-Law, as soon as possible but not later than within 30 days of the submission to the manager of the Register of legal persons' of the draft conditions for the establishing of a ECS by merger or of the reorganisation of a cooperative

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<sup>12</sup> State Gazette, 2000, no 82.

<sup>13</sup> Article 2.49 Civil Code reads: 1. Seat (*buveinė*) of a legal person shall be the seat of its principal managing body. Seat of a legal person shall be defined by indicating the address of the premises in which the head office is located.

2. Where the seat of a legal person indicated in the register of legal persons, incorporation documents or the contract and the seat of its principal managing body fail to coincide, the third parties shall enjoy the right to consider the seat of its principal managing body to be the registered office of a legal person.

3. All correspondence with a legal person shall be deemed appropriate where the address of the seat is used as well as where due regard of paragraph 2 of the given article is taken except as otherwise provided by a legal person.

4. Upon changing his seat a legal person shall have to change its incorporation documents accordingly and register them.

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society into a ECS, the managing or administrative organs of the participating legal persons and concerned subsidiaries or establishments or participating natural persons shall inform in writing the representatives of the employees or, in their absence, shall inform the employees at the general meetings or by other usual means used for providing information about:

- 1) the plans to establish a ECS and to present the relevant information;
- 2) the participating legal and natural persons, concerned subsidiaries and establishments and the employees' representatives in such subsidiaries and establishments;
- 3) the total number of employees employed by natural persons or in the participating legal persons, concerned subsidiaries and establishments and the number of employees in each of them, also the total number of employees in each Member State;
- 4) the number of seats in the special negotiating committee for the representatives of the employees of each participating natural or legal person, concerned subsidiary and establishment, and their distribution by different Member States;
- 5) the participation rights in the participating legal persons, that is, what proportion of the administrative or supervisory organ of such companies the employees or their representatives are entitled to appoint, elect or nominate for appointment and/or to refuse to agree to their appointment;
- 6) the rights of participating cooperative societies to participate in the general meetings and (or) meetings of the section(s).

If before registration of ECS within Register of legal persons' the negotiations haven't been conducted on employee involvement in decision-making in ECS, the central management of ECS shall initiate the negotiations only if the total number of employees employed in ECS, its subsidiaries, establishments or establishments of subsidiaries is not less than 50 or, alternatively, is less than 50 but at least 1/3 of employees from not less than two Member States request the initiation of negotiation.

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

A special negotiating committee shall be set up for negotiations with the competent organ of the participating legal entities on the involvement of employees in the decision making at a ECS (Article 10 (1) EIDMECS-Law). The number of seats allocated to the employees employed in one Member State shall be established in proportion to the total number of employees of all the Member States:

- 1) not more than 10 per cent – 1 seat;
- 2) over 10 per cent but not more than 20 per cent – 2 seats;
- 3) over 20 per cent but not more than 30 per cent -3 seats;
- 4) over 30 per cent but not more than 40 per cent -4 seats;

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- 5) over 40 per cent but not more than 50 per cent -5 seats;
- 6) over 50 per cent but not more than 60 per cent -6 seats;
- 7) over 60 per cent but not more than 70 per cent -7 seats;
- 8) over 70 per cent but not more than 80 per cent -8 seats;
- 9) over 80 per cent but not more than 90 per cent -9 seats;
- 10) over 90 per cent – 10 seats.

If the ECS is established by way of merger, an additional representative of employees shall be appointed or elected a member of the special negotiating committee from each participating person in each Member State that is to cease to exist to ensure that the employees of each participating person, registered in that Member State, which is to cease to exist should appoint or elect their representative. The number of such additional members shall not exceed 20 per cent of the members elected, and it should be ensured that the same employees should not have a double representation.

If the number of the participating cooperative societies, establishment of ECS or its subsidiaries and their establishment is higher than the number of additional seats, these additional seats shall be allocated between the participating societies of different Member States with the highest number of employees. If a Member State is allocated more than one seat, the representatives of employees shall be appointed from different companies. When appointing or electing members of SNB the balance of gender shall be promoted (Art. 10 (5) EIDMECS-Law).

Where the registered office of the participating legal person, concerned subsidiary is in Lithuania or the concerned establishment operates in Lithuania or the permanent place of residence of natural person is located in Lithuania, the Lithuanian member(s) of the SNC shall be appointed by the employees or their representatives (local trade union, sectoral trade union which has received the mandate of representation, or the works council). Where several participating legal or natural persons, concerned subsidiaries are registered in Lithuania and/or there is one or more concerned establishments operating, the member(s) of the SNC shall be appointed by “a majority of employees or their representatives, if this majority represents the majority of all employees” (Art. 11 (1) EIDMECS-Law).

If the employees’ representatives fail to appoint a member (members) of the special negotiating committee within 30 days of the provision of information the member(s) shall be elected by secret ballot at a general meeting of the employees. The general meeting may be called by any representative of the employees. The same procedure shall be applicable if the establishment or the company does not have representatives of employees, but in such a case the general meeting of employees shall be called by the managing or administrative organ of the company, by central management of ECS or by the manager of the establishment or the natural person (Art. 11 (2) EIDMECS-Law).

If several participating legal persons, concerned subsidiaries or establishments are registered or operating in Lithuania and if the employees’ representatives fail to agree among themselves on the appointment of a member(s) of the SNC from the Republic of Lithuania

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within 30 days of the provision of information referred or if there are no employees' representatives in at least one participating company, concerned subsidiary or in establishment, the member(s) shall be elected by secret ballot at a joint conference of the delegates of the employees of the companies and/or establishments. At such a conference one delegate shall represent ten employees. The conference shall be called by, respectively, the central management of ECS or the managing or administrative organ of the legal person or the head of the establishment with the largest number of employees or the participating natural person (Art. 11 (3) EIDMECS-Law).

The ECS, the participating companies, concerned subsidiaries and the concerned establishments shall provide technical assistance in the organisation of the general meeting of the employees and the joint conference of the employees' delegates of the companies and/or establishments.

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

According to Article 15 (1) EIDMECS-Law, the SNC shall have a right to decide:

- 1) to start or not to start negotiations with the competent organ of the participating legal entities or central management of established ECS on the involvement of employees in decision-making within a ECS;
- 2) to terminate the started negotiations with the competent organ of the participating legal entities or central management of established ECS.

A decision not to start or terminate negotiations may be adopted by a 2/3 majority of the votes of the members of the SNC representing at least 2/3 of the employees provided that these members represent employees of at least two Member States. This provision is not applicable where a ECS is established by way of reorganisation of cooperative society that has an established procedure of participation.

After a decision is taken not to start or terminate negotiations, the involvement of employees in decision making shall be subject to the legal acts and practices of the Member States where the employees of a ECS are employed rather than the Lithuanian Law.

Decisions of SNC shall be notified in writing to the competent organ of the participating legal entities or the central management of established ECS without delay. The SNC may decide to notify other organisations as well, including the trade unions.

Where a decision has been taken not to start or terminate negotiations, the negotiations shall be resumed after at least 10 per cent of the employees of the ECS, its subsidiaries and establishments or their representatives approach in writing the central management in this respect, but not before two years elapse from the date of such a decision, unless the parties agree to resume the negotiations earlier.

Where the SNC decides to resume negotiations with the competent organ of the participating legal entities, but no agreement is reached in the negotiations, the standard rules shall not be applied.

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

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The SNC shall elect its chairperson and secretary and approve its rules of procedure. The SNC shall adopt decisions by a majority of votes of all its members provided that the majority represents the majority of all the employees. The exception of this rule concern cases where the negotiations concern the waiver or the limitation of the existing rights of participation. The decision of the SNC on such a question shall require votes of a 2/3 majority of members representing at least 2/3 majority of all the employees at least in two member states:

- 1) where the ECS is established by way of merger, if the participation is implemented in the participating legal persons that have at least 25 per cent of the total number of employees of the participating legal persons;
- 2) where a holding ECS is established by the other way if the participation is implemented in the participating legal persons that have at least 50 per cent of the total number of employees of the legal persons (Article 12 (3) EIDMECS-Law).

The first meeting of the SNC shall be called by the competent organ of the participating legal entities or the central management of ECS if the negotiations are conducted after establishment of ECS. The SNC shall have a right to convene in meetings before the start of the negotiations or before each negotiating meeting. A meeting of this kind of the SNC may not last longer than a day. With the consent of the competent organ of the participating legal entities or central management respectively ECS, the SNC may hold meetings more often and/or for a longer time. The participating legal and natural persons or the central management of the ECS shall provide premises and working tools for the meetings of the SNC and ensure translation and the proper organisation of the meeting. The meetings of the SNC shall be closed, unless it is decided otherwise. (Article 13 EIDMECS-Law). Minutes shall be taken of the meetings of the SNC. The minutes of the meeting shall be signed by the chairperson of the meeting and the authorised member of the SNC.

All the expenditure related to the formation of the SNC and the participation of its members in the meetings of the committee or its negotiations with the competent organ of the participating legal entities or central management of ECS shall be covered by the funds of the participating legal entities on their agreement or ECS respectively. Such expenditure shall include the costs of travel, insurance of health and life, accommodation and subsistence. The amount of such expenditure and the procedure for its reimbursement is established by the Government of the Republic of Lithuania (Article 14 (1) EIDMECS-Law).

If the expenditure for travel, health and life insurance, accommodation and subsistence of a member of the SNC is not reimbursed within 30 days of the meeting of the SNC, this expenditure shall be reimbursed, within 30 days of the special written request, by the participating legal entity, concerned subsidiary or establishment with which the member of the SNC had or has concluded the contract of employment (Article 14 (2) EIDMECS-Law).

Where the SNC invites one or several experts and where the SNC and the competent organ of the participating legal entities or central management of ECS do not agree on a larger number of paid experts, the participating legal entities or ECS shall cover the expenses for only one expert. Where the participating legal entities (or ECS and its establishments and subsidiaries) cannot agree on the reimbursement of expenditure related to the formation of the SNC and the participation of the members of the SNC in its meetings or negotiations, these legal entities shall cover the expenditures jointly and severally.

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

According to Article 16 EIDMECS-Law, having received the decision of SNC to start negotiations, the competent organ of the participating legal entities or central management of established ECS shall call the first negotiating meeting within 30 days. The first negotiating meeting shall be notified in writing to the members of the SNC and the managing or administrative organs or the manager of the participating legal entities, concerned subsidiaries and establishments or establishments and subsidiaries of established ECS where the members of the SNC are employed, at least 14 days before the meeting.

The notification of the negotiating meeting shall include:

- 1) the name of the establishment or subsidiary or of the natural person employing the member(s) of the SNC who was invited to the negotiating meeting;
- 2) the first and last name and the title of the member(s) of the SNC invited to the negotiating meeting;
- 3) the date, time and venue of the negotiating meeting;
- 4) the agenda of the negotiating meeting;
- 5) the time limits and procedures for the reimbursement of the expenditure of the members of the SNC for travel, health and life insurance, accommodation and subsistence.

The competent organ of the participating legal entities or the central management of established ECS shall agree with SNC on the procedures, venue and time limits of the negotiating meetings, the time limits and procedures for the notification of the meetings, and the procedures for chairing and performing secretarial duties. Minutes shall be taken of the negotiating meetings. The minutes of each meeting shall be signed by the person who chaired the meeting and the authorised representative of the other party of the negotiations (Article 18 EIDMECS-Law).

Negotiations may last six months from the date of the formation of the SNC (Article 17 EIDMECS-Law). The SNC and the competent organ of the participating legal entities or the central management of established ECS may decide by mutual agreement to extend the duration of negotiations up to one year from the date of the formation of the special negotiating committee.

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

The negotiations shall end when an agreement is reached between the SNC and the competent organ of the participating legal entities or central management of established ECS on the involvement of employees in decision taking at the ECS. The agreement shall be executed in writing and shall be signed by at least two persons authorised by the competent organ of the participating legal entities or the central management of ECS and two persons authorised by the SNC.

The agreement shall include (Article 19 (2) EIDMECS-Law):

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- 1) the scope of the agreement;
- 2) the composition, number of members and the allocation of seats in the ECS-Works council which will be the central management's partner of ECS in the discussion on the information and consultation of employees of the ECS and its subsidiaries establishments, as well as the rules under which the rules on the changes in the number of members in ECS-Works council and the allocation of its seats in different Members States may be modified due to the changes in the structure and number of employees of the ECS in Member States or in the subsidiaries, establishments or the establishments of the subsidiaries.
- 3) the functions of the ECS-Works council, the procedures for the provision of information to it and consultations with it;
- 4) periodicity, venue and duration of the meetings of the ECS-Works council;
- 5) funds, assets allocated to the ECS-Works council and the services provided to it;
- 6) where the negotiations decide to introduce another information and consultation procedure instead of the ECS-Works council, detailed arrangements on the introduction of one or another procedure;
- 7) if during the negotiations a decision is taken on the participation, - detailed arrangements for the implementation of the participation procedures, including the number of members of the administrative or supervisory organ that the employees will be entitled to elect, appoint, nominate or support, the procedures that the employees may apply in the election, appointment, nomination or support of such members and the rights of such a member;
- 8) the effective date and duration of the agreement, cases where the parties are obliged to hold renegotiation and the arrangements thereof, and the procedures for the renegotiation including cases with structural changes in ECS and (or) its subsidiaries and establishments after its establishment.

The agreement may provide the rules and procedure on participation of employees in the general meetings or in the section or sectorial meetings.

Where a ECS is established by transformation (in Lithuanian translation – reformation), the rules provided for in the agreement shall be no less favourable than the rules in the society under reformation (Article 19 (4) EIDMECS-Law).

The agreement shall not be subject to the standard rules, except in the case where the SNC and the competent organ of the participating legal entities or the central management of the established ECS agree at the negotiations that the involvement of employees in decision-making in the ECS will be implemented by application of the standard rules.

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

#### **a. Field of implementation (cases in which they are applied) (art. 7)**

According to Article 22 EIDMECS-Law, the Lithuanian standard rules shall be applicable where:



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- 1) an agreement in the negotiations between the SNC and the competent organ of the participating legal entities or the central management of the established ECS has been reached that the involvement of employees in decision making at a ECS shall be carried out under standard rules, or
- 2) no agreement on the involvement of employees in decision-making within ECS has been reached by the end of the negotiation, and the competent organ of each participating legal entities and (or) participating natural persons or the central management of the established ECS decide to apply the standard rules. In such a case, the special negotiating SNC does not take a decision not to start or to terminate negotiations.
- 3) Achieved agreement on the involvement of employees in decision-making within ECS violates the in favorem rule of Article 19 (4) EIDMECS-Law.

The standard rules shall apply to a European company registered in the Republic of Lithuania from the day of the establishment of the European company.

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

*Composition*

For the determination of the composition of ECS-works council the rules of Article 10 (2) and 10 (5) of EIDMECS-Law applies *mutatis mutandis*, i.e. the provisions for composition of and allocation of seats and the principle of promotion of gender balance are identical for both SNC and ECS-works council.

Within 30 days of the establishment of a ECS, the central management shall inform the employees' representatives in societies (companies) or establishments or, in their absence, the employees at the general meetings or by other information means used traditionally in the societies (companies) and establishments about:

- 1) the total number of employees in the ECS, the number of employees in each of its subsidiaries and each establishment of the ECS, also about the total number of employees in each Member State;
- 2) the number of seats in the ECS-Works Council for the members appointed by the employees of each company and establishment and their allocation by different Member States.

If the ECS, its subsidiary has a registered office in Lithuania or an establishment of the ECS or an establishment of its subsidiary operates in Lithuania, the member(s) of the ECS-Works council shall be appointed by the employees' representatives (trade union, sectoral trade union or works council) of this society or this establishment respectively. Where there are several subsidiaries registered in the Lithuania and/or there is one or more establishments operating in it, the member(s) shall be appointed by a joint agreement of the employees' representatives of all those societies and/or establishments (Article 23 (3) EIDMECS-Law)..

If within 30 days of the provision of the information the employees' representatives fail to appoint a member(s) of the ECS-works council, the member(s) shall be elected by secret ballot at the general meeting of employees; the meeting may be called by any representative

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of the employees. The same procedure shall be applied if there are no employees' representatives in the society or in the establishment. In such a case the general meeting of the employees shall be called by the managing or administrative organ of the company or the head of the establishment.

If there are several societies, subsidiaries or establishments in Lithuania, and the employees' representatives fail to appoint a member(s) of the ECS-works council within 30 days of the provision of the information, or if in at least one society, or its subsidiary or establishment there are no employees' representatives, such a member(s) shall be elected by secret ballot at a joint conference of the delegates of the employees of all the Lithuanian the societies and/or their establishments. At such a conference one delegate shall represent ten employees of the society or the establishment. The conference shall be called by the managing or administrative organ of the society or the establishment with the largest number of employees or by the manager of the establishment. (Article 23 (5) EIDMECS-Law).

These same rules apply for the replacement of members of ECS-Works Council.

The management of another level shall provide technical assistance in the organisation of the general meeting of the employees and the joint conference of the employees' delegates of the societies and/or establishments (Article 23 (7) EIDMECS-Law).

Members of the ECS-Works council representing employees of subsidiaries registered in other Member States or of establishments of the European Company or establishments of its subsidiaries operating in them shall be appointed (elected) under the legislation and/or the practices of those Member States.

If due to the changes in the structure of the ECS or the number of employees in the Member States or in its subsidiaries, establishments or the establishments of its subsidiaries it is necessary to increase the number of the members in the ECS-works council, the ECS-works council, taking into consideration the opinion of the central management, shall decide on the appointment (election) of an additional member to the works council of the European company. Having taken such a decision, the ECS-works council shall approach the central management with a request for the initiation of the procedure for the appointment (election) of the new member(s) in accordance with the provisions of the Law.

### *Competences and standard Rules (Annexes 1 and 2)*

Employees' involvement in decision making (information, consultation, participation) must cover questions related to the ECS itself, to its subsidiaries having registered offices in other Member States or establishments operating there, or questions the decision of which exceeds the competence of the central management or a management of another level in a single Member State (Article 4 (2) EIDMECS-Law).

Standart rules for information and consultation were implemented according to the model given by the directive.

At its first meeting the ECS-Works council shall elect by a majority vote of all its members the chairperson, a deputy chairperson and approve the rules of procedures. If ECS-Works council has more than six members, it shall elect a three-member committee that would be responsible for the performance of the functions of the ECS-Works council between the

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meetings of the ECS-Works council. If possible, the members of ECS-Works council should be from different Member States (Article 27 EIDMECS-Law).

ECS-Works council or its committee shall adopt their decisions by a majority vote of all their members. Each member shall have one vote.

The ECS-Works council shall perform its functions until the end of its term of office. According to Article 26 EIDMECS-Law, the term of office of the ECS-works council shall be four years.

*Annual report*

Pursuant to Article 29 IEDMEC-La , within three months of the end of the calendar year, the central management shall prepare and submit to ECS-Works council a report for the year on the economic situation and perspectives of the ECS, its establishments, its subsidiaries and the establishments of its subsidiaries.

The annual report shall contain at least the following information on ECS and its subsidiaries in respect of their:

- 1) structure;
- 2) economic and financial situation, incentives for enhancement of employer's social responsibility;
- 3) possible changes in the activities, including changes and perspectives in the scale of trading, production and services;
- 4) the number of employees calculated in the procedure laid down herein; and the analysis of the reasons for the changes in the number of the employees;
- 5) situation in the rates of employment and the perspectives for the expansion of employment;
- 6) investment programmes in the phase of implementation and planning;
- 7) the main organisational changes;
- 8) implementation of new working methods and productive technologies;
- 9) intended relocation of the society, production or business or its part;
- 10) wind-ups, transformations, acquisitions or sale of companies; also the termination of the activities of establishments of the companies or the setting up of new establishments;
- 11) collective redundancies and the envisaged measures to mitigate the effect of such dismissals.

The annual report shall be discussed at the joint meeting of the ECS-Works council and the central management. The meeting shall be held after the passage of at least 30 days from the

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submission of the report to the ECS-Works council. Minutes shall be taken of the joint meeting of the ECS-Works council and the central management. If necessary, the members of the ECS-Works council shall have the right to meet the representatives of the central management before their each joint meeting.

The annual report submitted to the joint meeting of the ECS-Works council and the central management shall be accompanied with the copies of all the documents presented to the general meeting of the shareholders and the agendas of the meetings of the managing and administrative organs. The central management shall submit the annual report together with the minutes of the joint meeting of the ECS-Works council and the central management to the management of another level within 30 days (Article 31 (3) – 31 (5) EIDMECS-Law).

Other information or consultation rights applicable in exceptional circumstances

According to Article 32 EIDMECS-Law, the emergence of extraordinary circumstances shall be immediately notified in writing to the committee of the ECS-Works council, and, if it has not been set up, to the ECS-works council. Extraordinary circumstances are circumstances that have a great effect on the interests of the employees of the ECS, its establishment, subsidiary or the establishment of its subsidiary, particularly the relocation of the society, production or business or some part of it, the termination of the activities of an establishment or a society, group dismissals. Notification must be made by the central management or the management of another level entitled to take independent decisions concerning the extraordinary circumstances.

Having received the notification, the committee or the ECS-works council itself may request the central management or the management of another level to call immediately a joint meeting. This meeting should be devoted to consultations concerning the protection of the interests of the employees or measures for the mitigation of the social and economic consequences to the employees. If the committee participates in the procedures of information and consultations, the central management or the management of another level must also invite to the meeting the members of the ECS-works council that were appointed or elected by the employees or their representatives of the ECS or those of its establishments, subsidiaries or their establishments that are directly affected by the exceptional circumstances.

The committee of the ECS-Works council must inform, without delay, all the members of ECS-Works council about the questions considered and the decisions taken at the joint meeting and they, in their turn, must inform the representatives of employees of the ECS or those of its establishments, subsidiaries or their establishments that are directly affected by the circumstances, and if there are no representatives, they must provide this information at the meetings of employees.

If the central management or the management of another level decides not follow the opinion expressed by the committee or by the ECS-works council, the committee or ECS-works council shall have a right to meet the central management or the management of another level once again.

### *Meetings*

The first and regular meetings of the ECS-Works council shall be called by the central management. The first meeting must be called within 90 days. A regular meeting of the

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ECS-Works council must be held each year before the joint meeting with the central management. The agenda of the joint meeting shall include discussions of the report.

The committee of the ECS-Works council (in its absence, the ECS-Works council) shall have a right to hold extraordinary meetings where there are exceptional circumstances. Having co-ordinated the venue and time of the meeting with the central management, the chairperson of the ECS-Works council shall ask the central management in writing to call the meeting.

A meeting of ECS-Works council or its committee may not last longer than a day. With the consent of the central management, the ECS-Works council or its committee may hold meetings more often and/or for a longer time.(Article 28 EIDMECS-Law).

### *Information duties of the representative body*

According to Article 34 EIDMEC-Law, the ECS-Works council and its committee shall inform the employees' representatives, in their absence, the employees, of the ECS and its establishment, the subsidiary of the ECS and their establishments about their activities and the results of information and consultation at least once a year. The ECS-Works council may authorise one of its members to provide the information to the employees' representatives of a certain establishment of the company or its subsidiary or directly to the employees in the member state.

### *Experts*

The ECS-Works council or its committee may invite experts at their own discretion. Where the ECS-works council or committee invites one or several experts and if the ECS-Works council and the central management cannot agree on a larger number of paid experts, the ECS shall cover the expenses for only one expert (Article 30 (4) EIDMECS-Law).

### *Financial and material resources*

The central management shall provide premises and work tools for the meetings of the ECS-Works council or its committee and to ensure translation and the proper organisation of the meetings (Article 28 (5) EIDMECS-Law).

### *Budgetary rules*

According to Lithuanian practice, accommodation and travelling expenses are covered by the direct employer, i.e. by the establishment or society where the employees' representative works. However, according to Article 30 (1) EIDMECS-Law, all the expenditure related to the formation of the ECS-Works council and the participation of the members at the meetings shall be covered by the ECS. Such expenditure shall include the costs of the travel, insurance of health and life, accommodation and subsistence of the members. The amount of such expenditure and the procedure for its reimbursement was established by the Government of the Republic of Lithuania.

If the expenditure for travel, health and life insurance, accommodation and subsistence of a member of ECS-Works council is not reimbursed by the ECS within 30 days, this expenditure shall be reimbursed, within 30 days of the special written request, by the subsidiary or the establishment of the ECS or the establishment of its subsidiary with which the member of ECS-Works council requesting the reimbursement is or was related by employment relations (Article 30 (2) EIDMECS-Law).

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*Training licence*

Members of the ECS-Works council shall be allocated time for the participation in training necessary for the performance of their functions; for the time spent in training the member shall receive salary that is equal at least to his/her mean salary (Article 30 (5) EIDMECS-Law).

c. Participation of employees (annex 3)

Article 33 EIDMECS-Law sets out the rules on participation. The rules applied in the regulation of the involvement of employees in the activities of the administrative or supervisory organ of the society before its transformation into a ECS shall remain applicable also when, after the transformation of such a society, a ECS is established.

When a ECS is established in a way other than transformation, the rules are applicable if:

- a) before the establishment of ECS, one or more participating legal persons employing not less than 50 per cent of the employees in all the participating legal persons applied one or more forms of participation; or
- b) the respective decision was taken by the SNC and, before the establishment of ECS, there was applicable one or more forms of participation in one or more participating legal persons employing less than 50 per cent of all employees employed by all participating legal persons.

Where the ECS is established by way of merger, said provisions shall be applicable when:

- 1) before the establishing of the ECS, one or several participating societies employing not less than 25 per cent of the employees in all the participating societies applied one or more forms of participation, or
- 2) the respective decision was taken by the SNC and, before the establishing of the ECS, there was applicable one or more forms of participation in one or more participating societies employing less than 25 per cent of all the employees in all the participating societies.

When a ECS is established in a way other than transformation, the employees or the employees' representatives of its establishments, subsidiaries or their establishments shall have a right to elect, appoint or nominate as many members of the administrative or supervisory organ of the ECS as make their number proportionate to the maximum number of such members that was established in the participating legal entities before the establishment of the ECS. This provision shall be applicable in cases where there participation is implemented in form of an opposition to the appointment of members to the administrative or supervisory organ of the ECS (Article 33 (3) EIDMECS-Law).

Said provisions may not be applied in a ECS if before its establishment not a single participating legal person applied any forms of participation (Article 33 (8) EIDMECS-Law).

The decision on the allocation of seats in the administrative or supervisory organ of the ECS to the respective Member States or the decision on the way the employees of the ECS may propose the appointment of members to these organs or to object to their appointments shall

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be taken by the ECS-Works council. If the allocation of the seats selected by ECS-Works council is not applicable in at least one Member State, the ECS-Works council, in order to seek a balanced allocation of seats, shall give the priority to the employees of the Member State of the registration of the ECS.

The SNC shall take a decision on the form of the involvement of employees in the European Company when before the establishment of the European Company several forms of the involvement of employees were applied in the participating company.

Each member of the administrative or supervisory organ of a ECS elected, appointed or nominated by employees' representatives shall have the same rights, including the right to vote, and the same duties as members elected by the general meeting of cooperative society (Article 33 (6) EIDMECS-Law).

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

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

Article 7 EIDMECS-Law states that the central management is obliged to provide information to the ECS-works council, its committee and also to the SNC in a timely manner and shall be responsible for the correctness of the information. Information must be provided in such a manner and to such an extent as to enable the employees' representatives to thoroughly evaluate its potential impact and, if necessary, to prepare for consultations with the central management.

Members of the ECS-works council as well as members of the SNC shall have the right of access to information considered to be a commercial (industrial) or professional secret only when it is necessary for the performance of their duties, upon presenting a written pledge not to divulge the commercial (industrial) or professional secret.

Members of the ECS-Works council, members of the SNC, as well as an expert or translator involved in negotiations or in the activities of the ECS-works council or its committee shall be prohibited from disclosing information considered to be a commercial (industrial) or professional secret, which has become known to them, to third persons. This obligation remains valid after the termination of the powers of the representatives of the employees or the contractual relations with the expert or translator.

The central management may refuse in writing to provide information that is considered to be a commercial (industrial) or professional secret, if by objective criteria due to its nature it could produce harm or very great harm to the company or its activities. Upon the receipt of a written refusal, the ECS-Works council, its committee or the SNC may, within a month of the receipt of the refusal to supply information, file a suit in court. If the court finds that the refusal to supply information is unfounded, the European Company or the participating legal entity shall be obliged to provide this information.

The rules on confidentiality do fully correspond to the ones foreseen for national employees' representatives established in the Article 47 Labour Code. However, there is a slight difference in regulation of timing: Article 21 Law on Works Council contains a unique for Lithuanian Labour Law provision that sets time limits for provision of information by the employer to enterprise level works council: 10 days in enterprises with less than 100 employees and 20 days in other enterprises.

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

The central management or the management of another level and the representatives of employees shall proceed in accordance with the principles of co-operation, equality, good will, respect for lawful mutual interests and other principles of social partnership (Article 6 (1) EIDMECS-Law). The central management or the management of another level may not exert any influence on the activities of the employees' representatives. The representatives of the employees shall be consulted at such time, in such a manner and on such issues that would enable the representatives of the employees, on the basis of the information received, to form an opinion on the measures planned by the central management or the management of another level, which may be taken into consideration in taking decisions at the ECS.

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

The EIDMECS-Law requires that the conditions must be created for the members of the ECS-works council and the members of the SNB to participate in the meetings of the council or of the committee, also in the joint meetings with the central management and in the negotiations on the involvement of employees in the decision-making in the ECS by guaranteeing their jobs and their mean salary. The same rule shall apply when the members of the supervisory or administrative organ of the ECS elected by employees or their representatives participate at the meetings of the supervisory or administrative organ of the ECS or in general meetings or section or sectoral meetings (Article 8 (1) IEDMECS-Law).

The contracts of employment concluded with member of SNC or the member of ECS-works council may not be terminated during their membership in the ECS-Works council or the SNC at the initiative of the employer without the consent of the employees' representative (i.e. trade union body or works council) that appointed them. If these members were elected by a meeting or conference of the employees, the office of the State Labour Inspectorate within the territory in which the office of legal entity or residence of natural person is registered shall have the right to give its consent to their dismissal. In such cases, Article 134 of the Labour Code of the Republic of Lithuania shall be applied *mutatis mutandis* to the dismissal procedures.

Article 134 Labour Code states, *inter alia*, that the body of employees' representative must take a decision as to whether to satisfy the employer's application for its consent to the dismissal within 14 days from the receipt of the said application and shall submit its consent or refusal to dismiss an employee in writing. If the representative body of employees fails to reply to the employer within this period, the employer shall be entitled to terminate the employment contract. The employer shall be entitled to contest the refusal to give its consent to the dismissal in court. The court may reverse such a decision if the employer proves that this decision substantially violates his interests. An employee, who has been dismissed from work in violation of the requirements of consent, must be reinstated in his former position by a decision of the labour dispute resolution body.

The rules on confidentiality do basically correspond to the ones foreseen for national employees' representatives established in Lithuanian Law. The EIDMECS-Law guarantees even higher degree of protection for the members of SNC and the members of ECS-Works council because it protects them from all dismissals at the initiative of employer, including those without notice on the ground of breach of work discipline. Lithuanian employees, who are elected to representative bodies of enterprise level trade union or to works council, enjoy the protection only from the dismissals from work at the initiative of employer with notice



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without any fault on the part of an employee (i.e. on economic, technological grounds or due to the restructuring of the workplace, as well as for other similar reasons).

Members of the ECS-Works council shall be allocated time for the participation in training necessary for the performance of their functions; for the time spent in training the member shall receive salary that is equal at least to his/her mean salary (Article 30 (5) EIDMECS-Law). However, the legislator does not set the minimum or maximum number of hours for the training.

The protection of the rights and guarantees of the members of ECS-works council and the SNB, members of the supervisory or administrative body of a ECS elected by employees or their representatives shall be applied from the date of their appointment (election) to the post under the legislation or practices of the Member State in which the registered office of their society is located or where the establishment of their employment operates or the place of residence of their employer – natural person is located (Article 8 (3) EIDMECS-Law).

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

If shortly after the establishment of a ECS, essential changes take place in the ECS or in its subsidiaries, which clearly show that the purpose for the establishment of the ECS was to deprive the employees of the right to be involved in decision making, it is necessary to start new negotiations. Essential changes in a company mean changes in the number of the employees of the ECS or its subsidiaries or changes in the way of the incorporation of the society which would have extended the rights of the employees to be involved in the management of the society if they had been implemented before the establishment of the ECS (Article 6 (4) EIDMECS-Law).

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

### a. Field of implementation

The national provisions are applicable if the ECS's registered office is or if the registered office of the ECS will be upon its formation in the territory of Republic of Lithuania (Article 2 (2) EIDMECS-Law).

However, according to Article 2 (2) EIDMECS-Law some articles of the Lithuanian transposition law shall be applicable without regard to the location of the registered office of the existing ECS or the location of the registered office of the European Company upon its formation. These are the provisions which:

- determine the number of employees of the participating legal entities, concerned subsidiaries and natural persons that have a registered office or place of residence in the Republic of Lithuania, and concerned establishments operating in the Republic of Lithuania as well as the number of employees of a ECS;
- concern procedures and conditions for the appointment (election) of the representatives of employees of participating legal entities, concerned subsidiaries and natural persons that have a registered office or place of residence in the Republic of Lithuania, and establishments operating in the Republic of Lithuania to the special negotiating committees;

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- establish the procedures for the appointment (election) of representatives of Lithuanian employees of ECS operating in the Republic of Lithuania, the subsidiaries of a ECS that have a registered office in the Republic of Lithuania or the establishments of a ECS and the establishments of its subsidiaries that operate in the Republic of Lithuania to the ECS-works council or the administrative or supervisory organs of the ECS and their participation in the general meetings or section or sectoral meetings;
- consolidate guarantees and the protection of the rights of the members of the SNC, members of the ECS-works council, members of the administrative or supervisory organs of a ECS or representatives participating in general meetings or section or sectoral meetings who were elected, appointed or nominated by employees or their representatives, or members whose appointment was supported by employees or their representatives to the reimbursement of travel, health and life insurance, accommodation and subsistence costs if these members are in employment relations with a Lithuanian participating legal or natural person, concerned Lithuanian subsidiary or concerned Lithuanian establishment.

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

*Employees' representatives* according to Lithuanian law are the enterprise level trade union, sectoral trade union and works council. Article 19 of the Labour Code called "Representatives of Employees" states, that the rights and interests of employees may be represented and protected by the trade unions. Where an enterprise, institution or organisation has no functioning trade union and if the staff meeting has not transferred the function of employee representation and protection to the trade union of the appropriate sector of economic activity (i.e. sectoral trade union), the employees shall be represented by the work council elected by secret ballot at the general meeting of the collective of employees

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

#### *Election or appointment of the members of the SNB*

Where the registered office of the participating legal person, concerned subsidiary is in Lithuania or the concerned establishment operates in Lithuania or the permanent place of residence of natural person is located in Lithuania, the Lithuanian member(s) of the SNC shall be appointed by the employees or their representatives (local trade union, sectoral trade union which has received the mandate of representation, or the works council). Where several participating legal or natural persons, concerned subsidiaries are registered in Lithuania and/or there is one or more concerned establishments operating, the member(s) of the SNC shall be appointed by "a majority of employees or their representatives, if this majority represents the majority of all employees" (Art. 11 (1) EIDMECS-Law).

If the employees' representatives fail to appoint a member (members) of the SNC within 30 days of the provision of information the member(s) shall be elected by secret ballot at a general meeting of the employees. The general meeting may be called by any representative of the employees. The same procedure shall be applicable if the establishment or the society does not have employees' representatives, but in such a case the general meeting of employees shall be called by the managing or administrative organ of the company, by central management of ECS or by the manager of the establishment or the natural person respectively (Art. 11 (2) EIDMECS-Law).

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If several participating legal persons, concerned subsidiaries or establishments are registered or operating in Lithuania and if the employees' representatives fail to agree among themselves on the appointment of a member(s) of the SNC from the Republic of Lithuania within 30 days of the provision of information referred or if there are no employees' representatives in at least one participating company, concerned subsidiary or in establishment, the member(s) shall be elected by secret ballot at a joint conference of the delegates of the employees of the companies and/or establishments. At such a conference one delegate shall represent ten employees. The conference shall be called by, respectively, the central management of ECS or the managing or administrative organ of the legal person or the head of the establishment with the largest number of employees or the participating natural person (Art. 11 (3) EIDMECS-Law).

The ECS, the participating companies, concerned subsidiaries and the concerned establishments shall provide technical assistance in the organisation of the general meeting of the employees and the joint conference of the employees' delegates of the companies and/or establishments.

Analogous rules apply for appointment (election) of Lithuanian members of ECS-works council (Articles 23 (3) – 23 (6) EIDMECS-Law).

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

(See IVc)

According to Article 30 (1) EIDMECS-Law, all the expenditure related to the the participation of the members at the meetings shall be covered by the ECS. Such expenditure shall include the costs of the travel, insurance of health and life, accommodation and subsistence of the members. If the expenditure for travel, health and life insurance, accommodation and subsistence of a member of ECS-Works council is not reimbursed by the ECS within 30 days, this expenditure shall be reimbursed, within 30 days of the special written request, by the subsidiary or the establishment of the ECS or the establishment of its subsidiary with which the member of ECS-works council requesting the reimbursement is or was related by employment relations.

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

According to Article 9 (2) EIDMECS-Law, in case of ECS established exclusively by natural persons or by a single legal person and natural persons, participating natural persons and (or) administrative or managing organ of a legal person shall initiate the negotiations on employees' involvement in decisions making at ECS only if they together employ not less than 50 employees in not less than two Member States.

No further arrangements for ECS employing smaller number of employees were introduced.

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

The Law on Cooperative Societies neither on the date of the adoption of Directive nor today consolidates the rights of employees' or their representatives to participate in the general meetings or in the section or sectoral meetings with voting rights.

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According to Article 20 (1) EIDMECS-Law, the employees of the SCE and (or) their representatives shall be entitled to participate in the general meeting or, if it exists, in the section or sectorial meeting, with the right to vote, in the following cases:

- when the parties so decide in the agreement on employee involvement in decision making at ECS;
- when a cooperative society governed by such a system transforms itself into an ECS (the principle in favorem shall be respected here), or
- when, in the case of an SCE established by means other than transformation, a participating cooperative was governed by such a system.

The last (number 3) right shall be implemented only if:

- 1) the parties cannot reach agreement on employee involvement in decision making at ECS by the established deadline and competent organ of each participating society decides to apply standard rules;
- 2) standard rules concerning participation (Article 33 EIDMECS-Law) apply, except its provision related to the establishment of ECS by way of merger; and
- 3) the participating cooperative society governed by such a system has the highest proportion of participation rights in force in the participating cooperatives concerned before registration of the SCE

After the move of the registered office of ECS to the territory of another Member State, the legislation of which does not consolidate this sort per participation rights, these rights cannot be enforced in accordance with Article 59 (4) of the Regulation no.1435/2003 (Article 20 (3) EIDMECS-Law).

Article 21 EIDMECS-Law states, that the rules on participation with voting rights in the general meeting or, if it exists, in the section or sectorial meeting, existed before transformation into ECS shall apply also in case when the ECS is established by way of transformation and its central management or the management of another level is in located in Member State, which the legislation or practice governs the implementation of these participation rights, unless the agreement of employee involvement in decision making at ECS stipulates otherwise.

If other cases where an SCE is established, the employees or their representatives shall have the right to participate with voting rights in the general meeting or, if it exists, in the section or sectorial meeting only if participation rights are established in the legislation or practice of Member State, that is applicable to ECS, its subsidiary or establishments or in the agreement on employees involvement in decision making at ECS.

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

The measures of protection of rights deriving from this Directive include possibility of using the judicial procedure in terms foreseen in general in the Labour Code and Law on Works Council as well as in Code of Civil Procedure, without any specifications regarding the involvement of employees in the ECS.

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

There is no provision stating that the agreement concerning the creation of a representative body or an information and consultation procedure concluded according to the legislation of another Member State in which territory is situated the headquarters of the SE, oblige the subsidiaries and establishments situated in Lithuania territory, as well as its employees.

Sanction system for non-compliance

Pursuant to Article 36 EIDMECS-Law, persons violating this Law shall be responsible under the legislation of the Republic of Lithuania.

On 5 December 2006 the Code of Administrative Penalties of the Republic of Lithuania<sup>14</sup> was amended and the administrative fines were introduced in Article 41-10 of the Code<sup>15</sup>. The violation of the guarantees of employees' representatives provided in the EIDMECS-Law carries a fine for employers or their representatives from 400 Litas (approx. 115 EUR) to 1000 Litas (approx. 290 EUR). The repeated violation shall be penalized with an administrative fine of up to 2000 Litas (approx. 580 EUR). The violation of the obligation to initiate the negotiations or to organize the formation of the ECS-Works council provided in the EIDMECS-Law carries a fine for employers or their representatives from 500 Litas (approx. 145 EUR) to 2000 Litas (approx. 580 EUR). The repeated violation shall be penalized with an administrative fine of up to 2500 Litas (approx. 725 EUR).

The administrative sanctions are identical compared to those introduced one year ago in relation to violations of the Law on Employees Involvement in Decision Making at European Companies (Article 41-9 Administrative Penalties Code). The Code contains no special administrative sanctions for violation of national legislation with regard to information, consultation rights of employees and their representatives. In this case only the general sanction for the violation of labour legislation from 500 LTL (approx. 145 EUR) to 5000 LTL (approx. 1450 EUR) (Article 41 (1) of the Administrative Penalties Code) theoretically could be imposed by State Labour Inspectorate but there are no single case of the application of administrative sanctions so far.

The fines of the Article 41-10 of the Administrative Penalties Code for violation of EIDMECS-Law can hardly to be considered as proportionate and dissuasive for that calibre of managers of the undertakings or establishments. In addition, there may be problematic to impose the administrative sanction upon 'employer' as indicated in the Article 41-10 of the of Administrative Penalties Code since the legislator intentionally and constantly avoided the notion of an 'employer' in the EIDMECS-Law and was referring in most cases to competent managing or administrative organs of the companies. Thirdly, there is no provision on the administrative responsibility for all other type of violations of the law (eg. violations of information and consultation procedures, misuse of the procedures, refusal to grant statutory rights to the ECS-works council or its committee, non-observation of the standard rules etc.).

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<sup>14</sup> State Gazette, 1985, no. 1-1.

<sup>15</sup> State Gazette, 2005, no 141-5389.

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The breach of the duty of confidentiality by employees' representatives constitutes the offender both in civil liability, under general terms of law, and in disciplinary liability (Article 235 of the Labour Code).

### **3. Practical application of the Directive**

The ECS is a totally new phenomenon therefore there was no legal regulation of this kind of the legal persons in the Republic of Lithuania. As far as information and consultation is concerned, the both forms of social partnership in their modern legislative shape are quite new and remain still declaratory in practice. In the soviet era the representative body (committee) of the strong and centralised soviet trade union enjoyed various statutory information and co-decision rights in enterprise. Formally these rights were intended to serve for the purpose of “involvement of employees” into decision-making within enterprise but they were used also as a tool to exercise the control over management of the enterprise. After restoration of independence these rules were quick abolished in 1990 as relic of soviet regime contradicting with the principles of private property and undisputed right of owner to manage the private enterprise. Afterwards, the employers' duty to inform and to consult employees' representatives has been mentioned in Article 15 Law on Labour Protection of 7 October 1993 (now the Law on Health and Safety at Work) but has never become a big issue.

Today the Labour Code establishes the right of the employees' representatives to be informed and consulted about general situation in enterprise (Section 47 (4) Labour Code), on dismissals of employees on economic or technological grounds as well as due to the restructuring of the workplace, (Section 130 (4) Labour Code) etc. but the law is not going into the details of the procedure. However, very often the absence of these rules of procedural nature leads to their practical ignorance. Other forms of participation are established by law requirements for the employer to get the anticipatory consent of workers representatives or to consider their opinion for certain actions of employer. For example, the decision of the employer to adapt internal work regulation (Section 230 Labour Code) or approval of the work (shift) schedules (Section 147 (1) Labour Code) requires anticipatory consent of the workers representatives. Some decisions of employer, for example on the employment in elective positions, qualification examination or competition (Sections 101-103 Labour Code) require just weak “consideration” of the opinion of workers representatives.

Lack of awareness of employees about use and methods of information and consultation procedures is one of the reasons why they have rather small impact on the situation of social dialogue in the enterprises. Sometimes the employees even express their clear doubts about necessity to possess such information. The collective bargaining or the right to strike traditionally are seen by employees as more effective means for determination of working conditions or solving the problems of employment. In addition, the negative experiences with the extensive participation rights of the soviet type trade unions in the socialist past evoke small interest of employees in this issue. By majority of employers and society

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including jurisprudence these rights are to some extent considered as restriction of employers' initiative what is foreign body in the market-oriented economy<sup>16</sup>.

National legislation establishes neither the right of workers (their institutionalised representatives) to elect/appoint members of the Board of Supervisory Board nor impose the obligation on the shareholders to discuss the possibility of involvement of employees in formation of the organs of the company. These rights may be established in the collective bargaining agreements or in the agreements concluded by employer and works councils (latter agreements are recognised by the Law on Works Councils but they have no normative force). However, no such agreement was registered so far.

The limited impact may be attributed to the fact that there is no ECS set up in Lithuania and no procedures concerning information and consultation established so far. I am not aware of practice of the participation of the representatives of Lithuanian employees in the activities of foreign ECS.

Due to aforementioned circumstances there is no jurisprudence on the transposition law so far. Labour Inspectors did not have imposed administrative sanctions for infringements of the EIDMECS-Law.

As far as a position of social partners is concerned, the social partners at sectoral and inter-sectoral levels did not show much interest in issues on the involvement in the decision-making within ECS considering this question being not of great importance. Employers' organisations have not been experienced with activities of cooperatives in general so far and it seems that they do not feel the need to interfere. The reluctance of the trade unions can be attributed to the fact that the cooperative societies are rather fragmental legal form used by employer and not many of their members work in the cooperative societies. Moreover, Lithuanian trade unions consider the transposition of the Directive as a very technical question with no sufficient room left for national variations.

## 4. The effects of implementation

The overall quality of the transposition law is satisfactory. There are only few points to be mentioned. The direct link between EIDMECS-Law and the Labour Code of Lithuania should be highlighted. It should be mentioned at the outset that the Labour Code does not contain a direct reference to EIDMECS-Law as it is the case with EWC-Law. According to the Article 47 (6) Labour Code, the Code guarantees the right of the employees of EU enterprises or groups of enterprises to information and consultations through the European Works Councils; the status of the Councils, the conditions of their establishment and activities shall be determined by a special law of the Republic of Lithuania. This connection has a great importance under the structure of Lithuanian labour law. The Labour Code establishes its own supremacy over all other laws. This feature is embodied in the Article 11 'Implementation of Labour Laws': in case of a contradiction between a provision of this Code and provisions of another law or regulatory act, the provision of the Labour Code shall apply. The identified principle *primus inter pares* may cause substantial problems related to implementation of the EC-directives, if these directives are transposed by special laws such

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<sup>16</sup> See the Implementation Report on the Directive 2002/14/EC.

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as the EIDMECS-Law without explicit reference in the Code – the ‘stronger’ provisions of the Code may interfere and preclude the application of the domestic transposing law. There exists a slight speculative possibility that the application of some provisions of EIDMECS-Law can be precluded because of no explicit reference in Article 47 (6) Labour Code.

The transposition law has clearly followed the model of transnational information and consultation procedures and its institutionalisation already established by the EWC-transposition law and ECS-transposition law few years ago. All the laws have this same structure, provide for almost the same legal status of works councils and their members, guarantees and rules on other organisational matters. The feature of non-extension of the rights of trade unions and other rights of employees’ representatives (no external trade union representation, limited financing etc.) granted by the Directive remains common for both laws. Despite the fact that both laws provides for similar procedure of appointment/election of SNC members and the members of the ECS-works council (appointed by the institutionalised employees’ representatives in the company or establishment, i.e. enterprise level trade union or sectoral trade union on exceptional basis or works council), there is one significant difference. EIDMECS-Law alongside with the transposition law of the ECS-Directive prescribes that if there are several participating companies or establishments in Lithuania, the representative from Lithuania appointed by the agreement between all existing employees’ representatives. But if there is at least one company (establishment) where there is no employees representatives institutionalised – the election of the member of SNC or of ECS-works council shall take place in the representing conference of all Lithuanian employees despite the fact that there are trade unions or works councils acting in other Lithuanian subsidiaries or establishments.

## 5. Conclusions

### a. Regarding legal transposition

The Republic of Lithuania has transposed the Directive 2003/72/EC by adopting the special Law on the Employees Involvement in Decision making in European Cooperative Society. Following the requirements of the Directive, the transposition law sets down the detailed arrangements on the composition of the SNC and ECS-Works Council and their competences and guarantees for their members. By drafting the transposition law the Lithuanian legislator has clearly followed the model of transnational information and consultation procedures and its institutionalisation already established by the EWC-transposition law and in ECS-works councils transposition law a few years ago. All the transposition laws have this same structure, provide for the same legal status of works councils and their members, guarantees and rules on other organisational matters. The overall quality of the transposition seems to be satisfactory, despite some disputable moments remain to exist. They concern the role of the external trade unions organisations, the responsibility for the violation of the transposition law, the procedure of the selection/appointment of the Lithuanian members of the SNC or ECS-works council. In the majority of aspects the Lithuanian transposition law does not go further than is required by the directive. The Lithuanian law provides for extensive protection of the Lithuanian representatives of employees to the SNC and ECS-Works council trying to regulate some questions (eg. the reimbursement of travel and subsistence costs) in the great detail. The rules on the protection against the dismissal are even more broadly formulated compared with those concerning national employees’ representatives.



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### **b. Regarding the application**

Since there is no European Cooperative Society having its registered office in the Republic of Lithuania the application and effects of the majority of the legal provision of the transposition law can be hardly evaluated. Lithuanian employees were not have been invited to select their representatives to the SNC or ECS-works council so far.

Neither social partners, nor State Labour Inspectorate have started to pay attention to the practical implementation of the rules on involvement of employees in the affairs of ECS. The collective agreements don't take this subject into account. Until the present, there is no case law regarding the involvement of employees in the decision-making process of ECS.

## **6. Recommendations**

To include statement considering the duty of Lithuanian employers and employees to fulfil the obligations from the agreement on employees' involvement in ECS concluded under the law of another member State, i.e. when registered office of the ECS is in the territory of another Member state.

To rethink the procedure of appointment of the representative of Lithuanian employees to the SNB or ECS-Works Council where in Lithuania there is at least one company or establishment where there is no institutionalised employees' representatives – the election of the member of SNC or of ECS-Works council shall take place compulsorily in the representing conference of all Lithuanian employees despite the fact that there are trade unions or works councils acting in other Lithuanian subsidiaries or establishments seems to be too heavily enforceably solution.

## Annex I: List of the national legislative implementation measures

1. Law no X-935 on Employees Involvement in Decision-Making in European Cooperative Societies, of 5 December 2006, came into effect on 28 December 2006:
  - **Section I (General provisions):** purpose (Article 1), scope of application (Article 2), definitions (article 3)
  - **Section II (Fundamentals of Involvement of Employees in Decision-Making in European Companies):** conditions for the involvement of employees in the decision making of a ECS (article 4); implementation of the involvement of employees in the decision making in a ECS (Article 5); principles of co-operation (Article 6); right to information (Article 7), protection of the rights and guarantees of the representatives of employees (Article 8);
  - **Section three (Organisation of negotiations):** Initiation of negotiations and information (Article 9), Composition of the special negotiating committee (Article 10); formation of the special negotiating committee (Article 11); organisation of the activities of the special negotiating committee (Article 12); meetings of the special negotiating committee (Article 13); expenditure for the formation and activities of the special negotiating Committee (Article 14); competence of the special negotiating committee (Article 15); beginning of negotiations (Article 16); duration of negotiations (Article 17); procedures of negotiating meetings (Article 18); outcome of the negotiations (Article 19); the right of employees to participate in general or sectoral meetings of the members (Article 20), the enforcement of the right of employees to participate in general or sectoral meetings of the members (Article 21).
  - **Section four (Standart rules):** the preconditions for application of standards rules (Article 22); composition and formation of the works council of a ECS (Article 23); beginning and end of the membership in the works council of a ECS (Article 24); notification of the composition of the works council of a ECS (Article 25); term of office of the works council of a ECS (Article 26); organisation of the activities of the works council of a ECS (Article 27); meetings of the works council of a ECS and of the committee of the works council of a ECS (Article 28); participation of experts (Article 29); expenditure for the formation and activities of the works council of a ECS (Article 30); regular information and consultation (Article 31); information and consultation under extraordinary circumstances (Article 32); Participation (Article 33); information of the employees' representatives (Article 34); end of the activities of the works council of a European company (Article 35);
  - **Section five (Final provisions):** responsibility for the violations of this Law (Article 36).
2. **The Labour Code, approved on June 24<sup>th</sup>, 2002, came into force on January 1<sup>st</sup>, 2003. The relevant articles are:**
  - Articles 20-22 (general principles of representation of employees);

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- Article 40.2 (principles of social partnership);
  - Article 134 (special protection of workers' representatives against termination of the contract);
  - Article 47 (information and consultation, confidentiality)
- 3. Code of Administrative Penalties of the Republic of Lithuania**, adopted in 1984, in force since January 1<sup>st</sup>, 1985. Article 41-9 of the Code consolidates the administrative fines for the breach of Law no X-200 on the Involvement of Employees in Decision-Making in European Companies.
  - 4. Law on on Taxes on Profits of Legal Persons** (Article 21) the definition of a business trip.

## Annex II: National glossary of terms

- *Central management* - a competent managing or administrative organ of a ECS.
- *Collective agreement on national, sectoral and territorial level* - an agreement concluded in writing between the trade union organisations (association, federation, centre, etc.) and employers' organisations (association, federation, confederation, etc.).
- *Collective agreement on enterprise level* – a written agreement between the employer and the staff of the enterprise about the work, remuneration for work and other social and economic conditions.
- *Concerned subsidiary or establishment* means a subsidiary or an establishment of the participating legal person that will become a subsidiary or an establishment of the ECS upon its formation.
- *Consultation* means exchange of views and the establishment and development of a dialogue between ECS-Works council, the committee of ECS-Works council and/or employees' representatives and the central management or the management of another level.
- *Cooperative society* is a economic entity established by natural and (or) legal entities in accordance with laws, for the purpose of satisfying economic, social and cultural needs of its members.
- *Employee* is a natural person possessing legal capacity in labour relations, employed under employment contract for remuneration.
- *Employees' representatives*: enterprise level trade unions, sectoral level trade unions and works councils.
- *Employer*: a natural person having legal capacity or an enterprise, agency, organisation or any other organisational structure irrespective of the form of ownership, legal form, type and nature of activities, which has labour capacity of employer.
- *Enterprise level trade union* – trade union which unites employees employed by one particular employee.
- *European Cooperative Society* means a legal person established under Council Regulation (EC) no 1435/2003 of 22 July 2003.
- *Information* means communication of information (data) to the ECS-Works council, to the committee of ECS-Works council and/or the representatives of employees on matters related to the ECS or one of its subsidiaries, concerned establishments located in another Member State, or matters that exceed the powers of decision making organs in one Member State in order to inform them on the core of the problem
- *Involvement of employees* any way, including information, consultation and participation, in which the representatives of employees may affect the decisions taken in the ECS

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- *Management of another level*, i.e. the managing or administrative organ of the subsidiary of a ECS or the manager of a establishment of a ECS or of the establishment of the the subsidiary of a ECS
- *Participation* means the influence of the representatives of employees on the management of the ECS or participating legal entities realised through the right to elect, appoint members of the supervisory or administrative organs of the ECS or participating legal persons, nominate them for appointment and/or object to their appointment.
- *participating natural person* is a natural person directly participating in the establishing of ECS.
- *participating legal person* is cooperative society or another legal person directly participating in the establishing of ECS
- *Representative body* of employees - a ECS-Works council and any representative organ established on the basis of the legal acts of another Member State through which the right of employees of a ECS established in another Member State, its subsidiaries or establishments to information, consultations and participation is implemented.
- *Secoral trade union* – trade union, organised on the sectoral level.
- *special negotiating committee* (SNC) means an organ formed under the provisions of the this Law for the purposes of negotiating with the competent organ of participating legal entities or the central management of ECS on the involvement of employees in decision-making within ECS
- *subsidiary of participating legal person* or the *subsidiary of ECS* means a legal person over which another company has a dominant influence as defined in Article 4 of the Law on the European Works Council of the Republic of Lithuania
- *Trade union* – association of employees aiming at defending their professional, labour, economic and social rights and representing their interests.
- *Works council* – at the general meeting of employees employed by particular employer elected body of employees’ representation which defends employees’ professional, labour, economic and social rights and representing their interests.

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## Annex III: Correspondence table

Content	Articles in the Directive	Sections in Law no X-935 on Employees Involvement in Decision-Making in European Cooperative Societies
Objective	1.1	-
	1.2	4.1
Definitions	2	3
Creation of a special negotiating body	3.1	9
	3.2 a	10
	3.2 b	11
	3.3	19 (1)
	3.4	12(2) – 12 (4)
	3.5	14 (4)
	3.6	15
	3.7	14 (1)
Content of agreement	4.1-4.2	6 (1), 19(2)
	4.3-4.4	19 (5), 19 (4)
Duration of negotiations	5	17
Legislation applicable to the negotiation procedure	6	2 (1)
Standard rules: 7 and annex	Annex part 1	23, 24, 25, 26, 27, 28, 29, 30
	Annex part 2	31, 32
	Annex part 3	33
Rules applicable to ECS established by natural persons or by a single legal entity and natural persons	8	9 (2)
Participation in general meeting or sectoral meeting	9	20, 21
Reservation and confidentiality	10	7, Section 47 Labour Code
Operation of the representative body and procedure for the information and consolation of employees	11	6 (1), (also Article 40 of the Labour Code)
Protection of employees' representatives	12	8, (also Article 134 of the Labour Code)
Misuse of procedures	13	6 (4)
Compliance with this directive	14	34 (also Article 41-9 Code of Administrative Penalties)
Link between this Directive and other provisions	13	-