

**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



**Slovenia**

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## Executive summary<sup>1</sup>

Cooperativeness has a long tradition in Slovenia and was developing in line with Austro-Hungarian and later Yugoslavian law on cooperatives. In 1992 the Slovenian Parliament adopted a new law on cooperatives, which is still in force and on its basis there are about 500 cooperatives currently established in Slovenia, mostly in the field of agriculture and business services' sector, and employing about 4000 employees. The latter have a right to participate in managing the cooperatives by electing representatives in the supervisory board, whereas only cooperatives' members may vote at general meetings.

### Implementing legislation

The full transposition of the SCE-Directive has been achieved by a specific legislative instrument – the Participation of Workers in Management of the European Cooperative Society Act (SCE) (Zakon o sodelovanju delavcev pri upravljanju evropske zadruga, ZSDUEZ) – hence SCE-Act, which was adopted by the National Assembly of the Republic of Slovenia at its session on 14 July 2006 and published in the Slovenian Official Gazette on 27 July 2006. This Act entered into force on the fifteenth day following its publication in the Official Gazette of the Republic of Slovenia and started to be applicable on 18 August 2006. This means that Slovenia implemented the SCE-Directive in the due time.

### Points of departure from the SCE-Directive

The SCE-Directive is *in general* faithfully implemented in the Slovenian national legislation. Most of the provisions of the SCE-Act are very similarly stated than in the SCE-Directive, despite changing the structure of the SCE-Act in comparison to the SCE-Directive. It is naturally also very similar to the SE-Act, which was adopted only a few months earlier.

However, there are a few points, where the Slovenian implementing legislation departs provisions of the SCE-Directive, some being more important than others. These points are as follows:

- Firstly, the provision of the SCE-Directive regulating the link between this directive and other provisions (Art 15) was *not transposed* into the Slovenian SCE-Act. Hence, also the provision that the SCE-Act does not prejudice the existing rights to involvement of employees is missing;
- Secondly, the Slovenian SCE-Act does not implement the provision of Article 13 of the SCE-Directive, requiring Member States to take appropriate measures to *prevent misuse of an SCE for the purpose of depriving employees of rights to employee involvement*. The SCE-Act states penalty provisions for breach of its provisions, referring to the cases of not communicating certain information and not performing proper consultation with workers, however, there is no general prohibition of misuse of SCE as a corporate entity;
- Thirdly, it is not specifically stated in the SCE-Act that the penalty provisions apply regardless of whether or not the SCE has its registered office within the Slovenian territory as foreseen in Article 14(1) of the SCE-Directive;

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<sup>1</sup> Report elaborated by Janja Hojnik.

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- Fourthly, the SCE-Act does not emphasise that the provisions on the content of the agreement apply without prejudice to the autonomy of the parties;
- Fifthly, it is not stated in the Slovenian SCE-Act that the central management is not obliged to transmit certain information, which *nature is such that it would seriously harm the functioning of the SCE (...) or its subsidiaries and establishment or would be prejudicial to them* as foreseen in the second paragraph of the Article 10 of the SCE-Directive. Accordingly, there is no such information that the central management could keep in secret. There are consequently also no provisions providing a need for prior authorisation of keeping certain information in secrecy and no provisions for administrative or judicial appeal procedures in this regard;
- Finally, the Slovenian SCE-Act does not specifically define the circumstances, when the employees of the SCE and/or their representatives are entitled to participate in the general meeting as stated in Art 9 of the SCE-Directive – giving the employees the right to vote when the parties so decide in the agreement or when a cooperative governed by such a system transforms itself into an SCE, or when, in the case of an SCE established by means other than transformation, a participating cooperative was governed by such a system.

At the issues, which were open to national legislator, the Slovenian legislation has followed the solutions from the general system of workers' involvement in Slovenia – especially the election and protection of employees' representatives. Accordingly, it is provided that employees' representatives from the Republic of Slovenia shall be elected to the special negotiating body by all employees *by secret ballot*. Employees' representatives are protected by the general national rules on protection of employees' representatives.

Apart from these accessory provisions, it is important to note that the Slovenian Parliament has not adopted the derogation of the third paragraph of Article 7 SCE-Directive, according to which Member States may provide that standard rules regarding participation do not apply in the case of an SCE established by merger.

The Ministry for Labour reports that in consultations with social partners before adopting the SCE-Act no debate arose on the point of workers participation in SCEs and no problematic issues were highlighted in this regard by the social partners. Also after the SCE-Act was adopted it did not get much attention either by corporate law or industrial relations experts.

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## 1. Introduction

### 1.1 National regulation on cooperatives

Cooperatives in Slovenia have more than 100 years of tradition and have developed in a comparable way as in other states of Central Europe. The first law in the area dates in 1873, Law on profitable and economic cooperatives (Austro-Hungarian law) and was followed by the Law on revision of profitable and economic cooperatives of 1903.

The Kingdom of Yugoslavia adopted its law on cooperatives in 1937. A group of at least 10 people could establish a cooperative. The aim of cooperatives was to enhance certain activities and affairs under the principle of mutual assistance among members. Cooperative profit was distributed among the members. Most of the cooperatives at the time were established in the field of pastures, wood, wine and cheese, however, also cooperatives in the financial field started to be established.

After the Second World War the cooperatives were nationalised and had gone away from the original cooperative ideas. The state's role in formation of cooperatives and their activities was in the function of assisting the state when the latter performed its economic plan. After the Second World War most of cooperatives was established in the field of agriculture; their establishment was politically planned. At the end of 1948 there were 1150 of agriculture cooperative. Cooperation of farmers in the cooperatives was practically obligatory and membership rights were very limited, since all the cooperatives were acting as state's property. This strategy has changed in the following years and also the number of cooperatives started to decrease and they were replaced with larger agro-combines. In 1972 a new law on associations of farmers has returned some of the cooperative spirit and the meaning of membership. In the same year also Cooperative Association of Slovenia has been established, which is still active and is a member of the International Cooperative Alliance.

Even though the word 'cooperative' was deeply rooted also in the field of craft and services the Yugoslavian laws mostly reserved them for agricultural field and was also in the 70' and 80' strongly under the state's control. Finally, the Undertakings' Act of 1989 introduced some private initiative and dynamics also in the field of cooperatives. A new Cooperatives Act of 1992 has paved the way back to the original cooperative principles.

Definition, organisation, formation and dissolution procedure of Slovenian national cooperatives are regulated by the Cooperatives Act (*Zakon o zadrugah, Official Gazzette of the Republic of Slovenia, Nos. 13/1992, 7/1993, 22/1994, 35/1996 and 31/2000*). The Act was adopted in 1992, shortly after the independence (one month before the EC Commission published the first proposal on the SCE) by the three houses of the Slovenian Assembly, the precursor of the present National Assembly. The Act regulates the legal status of cooperatives as legal entities and is as such a part of the Slovenian company law. Since this Act had been adopted before the procedures of denationalisation of social property even began, the Act often refers to the legal provisions on property reformation.

The Cooperatives Act was adopted before the Companies Act (in 1993) and therefore refers to the Undertakings Act of 1989, which served as a transformation act enabling private economic activity in Slovenia. When compared to the Companies Act the Cooperatives Act contains relatively few legal provisions, which are mostly of non-binding nature. For this

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reason cooperatives are rather poorly regulated in Slovenia. The Act often refers to the ‘rules on undertakings’, especially as regards name, seat, activity, representation etc. At the time of adoption, this meant the Undertakings Act of 1989; however, the latter ceased to be valid once the Companies Act entered into force. Since then the Companies Act presents the subsidiary provisions on cooperatives.

The Cooperatives Act defines a cooperative as an organisation of in advance undefined number of members, which purpose is to enhance economic benefits of its members. It is based on voluntary entrance and exit, equal cooperation and management of members (Art 1). Slovenian regulation of cooperatives is based on the classical cooperative **principles**, such as **voluntariness, economic solidarity, democracy, coverage of costs** and principles of **identity**.

Accordingly, membership in cooperatives is entirely voluntary and in principle accessible to everyone, under the conditions of having an economic interest for cooperation in a cooperative and of complying with the memberships rules. According to the Act, a cooperative may be established by at least three natural or legal persons, who sign an act of formation.

In addition to this, the formation of cooperatives is free and regulation of the relationships among the members is rather flexible. Economic solidarity requires the members to contribute to the performance of the cooperative activities by paying in the membership’s share. The liability of the members may either be unlimited or limited. The principle of democracy entails all the members with equal vote, notwithstanding the number of the shares a certain member has paid in. The principle of coverage of costs reflects the fact that the purpose of a cooperative is not to make profit, but only to assist their members – nevertheless, the costs of a cooperative must be covered. This, however, does not mean that the cooperatives may not make some profit – what remains after covering all the costs, shall be distributed among the members. Lastly, the principle of identity means that the founding members of a cooperative are at the same time also its business partners. In practice this principle is not always consistently respected.

The Cooperatives Act defines the assembly (*občni zbor*) as the highest organ of a cooperative. It is composed of all the members of the cooperative. The Assembly decides on:

- the rules of the cooperative;
- annual accounts, use of surplus and coverage of loss;
- elections and recall of the cooperative’s president, members of the administrative and supervisory boards and other organs according to the cooperative rules;
- issue of securities;
- statutory changes and dissolution of the cooperative;
- other issues determined by the cooperative rules.

All the members of a cooperative have equal number of votes in the assembly – one member, one vote – however, the cooperative rules may provide, that an individual member or the president has the right to hold more votes than the others (Art 18).

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In addition to the assembly, cooperatives should also have a president of the cooperative, the supervisory board and at least one examiner. Cooperatives with ten or more members must also form an administrative board.

The president is an obligatory organ of a cooperative, which represents the cooperative and is responsible for legitimate performance of the cooperative activity. The president of the cooperative is at the same time also the president of the administrative board, when there is one.

Whereas the administrative board is obligatory in case of cooperatives with ten or more members, the supervisory board is not an obligatory organ. Both boards make decisions by majority voting. The supervisory board is supervising the whole activity of the cooperative, the work of the presidents and other organs. When there is no supervisory board, the cooperative must appoint an examiner. The administrative board (or the president of the cooperative in case there is no administrative board) is responsible for realising the decisions of the assembly; it is in charge of adequate conduct of business and organisation of the activity.

### 1.2 Employees' participation in cooperatives

The Cooperatives Act does not contain any provision on employee participation in cooperatives. In this regard the Workers Participation in Management Act (*Zakon o sodelovanju delavcev pri upravljanju – hereinafter ZSDU, Official Gazette of the Republic of Slovenia, No. 42/1993, 56/2001 and 26/2007*) applies also to cooperatives. It namely guarantees employees the right to take part in the management of commercial companies, irrespective of the type of ownership, and in cooperatives (Article 1).

The works council can elect – and recall – **supervisory board** members who represent employees' interests. The number of workers' representatives is determined by the cooperative's founding act, but may not be lower than **one third** or higher than **one half** of all the members of the supervisory board (Art. 79). The methods of election and recall are determined by the works council's rules of procedure. It must be stressed, however, that the president of the supervisory board is always a representative of the members of the cooperative and has the casting vote.

In practice and theory there has been some dispute on compatibility between the ZSDU and the Cooperatives Act as regards the workers participation in the supervisory board. The former namely states that workers may have their representatives in the supervisory board, whereas the latter states that only elected member of the cooperative, its legal representative or a natural person, contractually related to the legal person being a member of a cooperative, may be members of the supervisory board (Art 26 of the Cooperatives Act). On the basis of a teleological interpretation of the ZSDU there is now an agreement among legal commentators that the ZSDU regulates workers participation in management on the basis of employment relationship and not on the basis of membership, even though the linguistic interpretation shows differently.

The works council is also entitled to propose a **workers' director**, who is a full-member of the management board. On the proposal of the works council the supervisory board (or in the absence of a supervisory board the members themselves) appoints the workers' director. A workers' director should be appointed at cooperatives with more than 500 employees only.

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In cooperatives with fewer than 500 workers a workers' director may be appointed by mutual agreement of employer and employees. The workers' director represents employees' interests in human resource management and in social matters.

At this point, however, it must be emphasized that the Slovenian legislation does not provide for the participation of employees' representatives in the **general meetings** or in the section or sectorial meetings with voting rights, but only the members of the cooperative have the voting right.

## 2. Implementation

### 2.1 Formal aspects

The full transposition of the SCE-Directive has been achieved by a specific legislative instrument – *the Participation of Workers in Management of the European Cooperative Society Act (SCE) (Zakon o sodelovanju delavcev pri upravljanju evropske zadruga - ZSDUEZ)* – hereinafter the *SCE-Act*, which was adopted by the National Assembly of the Republic of Slovenia at its session on 14 July 2006 and published in the Slovenian Official Gazette on 27 July 2006. This Act entered into force on the fifteenth day after its publication in the Official Gazette and started to apply on 18 August 2006. This means that Slovenia implemented the SCE-Directive on time.

The SCE-Act continues the series of so-called 'European Acts' in the field of workers involvement at decision-making of companies. Accordingly, there is a general Workers Participation at Management Act (ZSDU) in force in Slovenia, which presents the fundamental law in the field of workers' involvement, with primarily nation-wide provisions, while particular fields with supranational application are regulated in specific laws – EWC Act, SE-Act and SCE-Act. Each of the four acts is a "stand-alone" measure with its own principles, objectives and legal logic.

The proposal of the SCE-Act has been prepared by the Ministry for Labour, which performed a consultation with social partners before sending the proposal to the Parliament. The proposal has been dealt with at the Economic and social committee, which is the representative body of social partners. The Ministry reports that no debate arose in this regard.

### 2.2 Material aspects

#### 2.2.1 Object and definitions (Arts. 1 and 2 of the Directive)

Article 1 of the Slovenian SCE-Act presents the content and aim of the Act. It is stipulated that the Act regulates the forms of involvement of employees in decision-making of the European Co-operative Society (*Societas Cooperativa Europaea, SCE*), hereby specifically referring to 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 (OJ L 207, 18.8.2003, p. 25).

Article 3 of the SCE-Act defines the main terms of the Act.



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**SCE** is defined as a cooperative society established in accordance with Council Regulation 1435/2003/EC of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (OJ L 207, 18.08.2003, p. 1).

**Participating legal entities** are companies and firms within the meaning of the second paragraph of Article 48 of the EC Treaty (OJ C 325, 24.12.2002), including cooperatives and other legal bodies, directly participating in the establishing of an SCE.

**A subsidiary** of a participating legal entity or of an SCE means an undertaking over which that legal entity or SCE exercises a dominant influence defined in accordance with the Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 254, 30.9.1994, p. 64).

**A concerned subsidiary or establishment** is a subsidiary or establishment of a participating legal entity, which is proposed to become a subsidiary or establishment of the SCE upon its formation.

The Cooperatives Act defines a cooperative as an organisation of in advance undefined number of members, which purpose is to enhance economic benefits of its members. It is based on voluntary entrance and exit, equal cooperation and management of members (Art 1).

There is no specific definition of *establishment* in Slovenian legislation. Nevertheless, the general Workers Participation at Management Act (WPMA of 1993 as amended) states in Article 1 that it governs the methods of and conditions for worker participation in the management of commercial companies, irrespective of the type of ownership, and cooperatives. Under the provisions of this Act the right to participate in management is also to be exercised by workers in public commercial companies, banks and insurance companies, unless stipulated otherwise by a separate law. Additionally, it is stated that workers in institutes shall exercise their right to participate in management as individuals in accordance with the provisions of the WPMA, and collectively in accordance with a separate law. The provision of the Slovenian Constitution does not prohibit different acts on workers participation at management, however, these laws may not regulate this right substantially different, irrational and in contrast to its purpose.

There were some problems in relation to the ambit of the WPMA and groups of workers that are entitled to participation. Namely the statutory provision referring to the companies before April 2007 did not also bind sole entrepreneurs. This has recently changed, so that the amended WPMA now refers also to “*sole entrepreneurs employing at least 50 workers*”.

For the past thirteen years workers participation in institutes has often been debated, where no specific Act as foreseen in the WPMA has been adopted. The ‘temporary’ solution as provided in Article 111 WPMA enables formation of works councils on the basis of a collective agreement; however, this is not very effective for reasons of its non-binding nature. Management of institutes therefore unilaterally decides on whether to enable works councils formation or not, what is not acceptable in long run. In 1996 a proposal for Workers participation in institutes Act has been sent into the Parliament, however, it has for no particular reason been withdrawn. Formal reason for this fact refers to the *‘fact that*

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*constitutional right of workers in institutes is already sufficiently realised by their possibility to participate in the institutes' councils'. Notwithstanding the fact that such an Act would certainly be beneficial to the workers employed in the institutes the present situation does not contravene the Directive 2002/14/EC since the workers may nevertheless exercise their right to be informed and consulted on the basis of the WPMA, since these are their individual rights. Formal basis for establishing works councils would, however, enhance and strengthen these rights and their performance in practice.*

*In addition to this, certain provisions relate to units of business within a company. In this regard Article 28 of the WPMA states that a works council may in its rules of procedure determine that candidates for the council be nominated and elected separately by individual groups of employees (e.g. women, invalids, young employees etc.), by individual organisational units or segments of the working process, and by parts of the company located outside the headquarters. The same Act also states that the works council may set up committees for individual organisational units of the company and segments of the working process, or for parts of the company outside the headquarters if at least ten employees having the right to vote are working in such a unit.*

The Slovenian SCE-Act does not specifically define the term '**employees' representatives**'. However, the general ZSDU adopted a broad meaning of employees' representatives, who can either be members of works councils, a workers representative, a member of a supervisory board representing workers, a workers representative in the council of an institution and also appointed or elected trade union representative. Following Article 41 of the SCE-Act, which regulates protection of employees' representatives, the latter also include the members of the special negotiating body, the members of the works council of the SCE, the employees' representatives who perform functions in connection with the information and consultation procedure and the employees' representatives in the administrative or supervisory bodies of the SCE, and employees' representatives in the general meeting or section or sectorial meetings in the Republic of Slovenia (Article 41).

The SCE-Act defines a **works council** of an SCE to be the **body that represents employees** and is established with a view to informing and consulting the employees in the SCE and its subsidiaries and establishments and, in specified cases, to enforce the rights of employees to participation in the SCE;

A **special negotiating body** is defined as a body established to negotiate with the management of participating legal entities on arranging the means of involvement of employees in the decision-making of the SCE.

Furthermore, **involvement of employees** in decision-making is defined as any procedure, including information, consultation and participation, through which employees may exercise an influence on decisions to be taken within a legal entity.

**Information** means the informing of the works council of the SCE or other employees' representatives by the management of the SCE about questions that concern the SCE or any of its subsidiaries or establishments in another Member State and about questions that exceed the powers of the decision-making bodies in a single Member State. Information provision shall be carried out at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact of the decisions and, where appropriate, prepare consultations with the management of the SCE.

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**Consultation** is defined as the establishment of dialogue and the exchange of views between the works council of the SCE or other employees' representatives and the management of the SCE at a time, in a manner and with a content which allows the employees' representatives, on the basis of the information provided, to express an opinion on measures envisaged by the management of the SCE. The opinion may be taken into account in the decision-making process within the SCE.

**Participation** under the SCE-Act means the influence of the works council of the SCE or of the other employees' representatives in the affairs of a company by way of:

- the right to elect or appoint individual members of the company's administrative or supervisory bodies, or
- the right to recommend and/or oppose the appointment of some or all of the members of the legal entity's administrative or supervisory bodies.

It follows that the Slovenian SCE-Act faithfully transposes the abovementioned definitions from the SCE-Directive.

### 2.2.2 Provisions that apply to SCE based in the Member State

#### Field of implementation (art. 15 of the SCE-Directive)

The provision of the SCE-Directive regulating the link between this directive and other provisions was *not transposed* into the Slovenian SCE-Act. The latter therefore does not explain the relations between the SCE-Act at the one hand and the EWC-Act and the ZSDU on the other. It is, however, stated in a positive way that the SCE-Act applies to the SCEs that have, or will have, their registered office in the Republic of Slovenia (Art 2).

More importantly, however, second and third paragraph of Article 15 are not implemented in the Slovenian SCE-Act, hereby missing the provision that the SCE-Act does not prejudice the existing rights to involvement of employees provided for by the ZSDU. There are consequently no measures guaranteeing that the structures of employee representation in participating legal entities, which will cease to exist, are maintained after the registration of the SCE.

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

##### a. Start and responsibility of procedure (art. 3.1 of the SCE-Directive)

Article 4 of the SCE-Act includes provisions regarding the creation of a special negotiating body. It is stated that following the publication of a proposal for the establishment of an SCE, in accordance with Regulation 1435/2003/EC and the provisions of the law governing cooperatives, the management of all participating legal entities shall start negotiations with the employees' representatives of the participating legal entities, as soon as possible, on the arrangements for the involvement of employees in the decision-making of the SCE.

For this purpose, the management of all the participating legal entities must inform in due time the employees' representatives or, where there are none, all employees directly of:

- the identity and structure of the participating legal entities, concerned subsidiaries and establishments and their distribution across the Member States;

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- the number of employees, participating legal entities, subsidiaries and establishments by Member State;
- the details of the existing employees' representatives in the participating legal entities, subsidiaries and establishments; and
- the number of employees entitled to participate in the bodies of the participating legal entities, subsidiaries and establishments (Art 4(2)).

The SCE-Act therefore explicitly requires more extensive information to be provided to employees' representatives than the SCE-Directive itself.

### b. Constitution and composition of the SNB (art. 3.2 of the SCE-Directive)

Third paragraph of Article 4 states that in order to conclude an agreement on the arrangements for employees' involvement in the decision-making of the SCE, *a special negotiating body* that is representative of the employees of the participating legal entities, concerned subsidiaries and establishments *is to be created*.

The SCE-Act states that the number of members of the special negotiating body from the Member State must be proportionate to the number of employees employed in participating legal entities, concerned subsidiaries and establishments in that Member State (Art 5). Employees in each Member State shall be granted one seat on the special negotiating body per share of employees employed in that Member State which equals 10%, or a fraction thereof, of the total number of employees employed by the participating legal entities, concerned subsidiaries and establishments in all the Member States taken together.

If an SCE is formed by way of **merger**, there shall be such **additional members** from the participating legal entities of each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating cooperative which is registered and has employees in that Member State and which will cease to exist as a separate legal entity following the registration of the SCE.

The number of additional members of the special negotiating body may not exceed 20% of the number of members designated in accordance with the general rule and may not entail double representation of employees. If the number of participating cooperatives exceeds the number of additional seats available in accordance with the general rule, the additional seats must be allocated to cooperatives in different Member States that do not yet have a representative on the special negotiating body and have the most employees (Art 6).

In order to *calculate the number of SNB members* account must be taken of the number of employees at the time of adoption of the proposal for the establishment of the SCE (Art 7). It is emphasised, however, that if such *changes* occur in the structure or number of employees of participating legal entities, concerned subsidiaries or establishments during the functioning of the special negotiating body as to make it necessary to change the composition of the special negotiating body, the special negotiating body must be appropriately re-established. Management is obliged to immediately inform the special negotiating body of such changes, whereas the provisions regarding the primary formation of the SNB apply *mutatis mutandis*.

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

Article 9 of the Slovenian SCE-Act contains provisions on negotiations. It is stated that the management of participating legal entities is obliged to *inform* the special negotiating body of the proposal and the process of establishing the SCE, up to its registration. On the basis of this, the special negotiating body and the management of the participating legal entities shall *negotiate in a spirit of cooperation* with a view to reaching an agreement on arrangements for the involvement of employees in the decision-making of the SCE. The agreement must be in *written form*.

Article 14 of the SCE-Act regulates the *decision to suspend negotiations*. It provides that the special negotiating body may decide by a majority of at least two thirds of the votes of its members representing at least two thirds of employees in at least two Member States *not to start negotiations* or to *suspend ongoing negotiations*, and that the provisions of the law governing European works councils shall apply in the SCE.

If such a decision is adopted, the procedure for reaching an agreement on arrangements for the involvement of the employees in the decision-making of the SCE is to be stopped and the standard provisions of the Act do not apply.

It is specifically stressed that where an SCE is established by *transformation*, it is not possible to take the decision to suspend negotiations, if participation already exists in the cooperative that will be transformed.

In cases of suspension of negotiations, two years after this decision being taken, the special negotiating body must reconvene at the written request of at least 10% of employees in the SCE, its subsidiaries and establishments or their representatives. If the parties so agree, the negotiations may recommence beforehand. If the special negotiating body decides to restart negotiations with the management of the SCE, but no agreement is reached as a result of these negotiations, the standard provisions do not apply.

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

*Voting within the special negotiating body*

Article 12 of the SCE-Act states that the special negotiating body shall take decisions by a majority of the votes of its members, who shall also constitute a majority of all employees, except where the Act stipulates otherwise. Each member of the special negotiating body shall have one vote.

The members of the special negotiating body who have been elected or appointed in an individual Member State shall represent all employees of participating legal entities, concerned subsidiaries and establishments from that Member State.

*Particular features of decision-making*

If negotiations result in a *reduction in participation rights*, the special negotiating body shall reach decisions by a majority of at least *two thirds* of its members representing at least *two third* of employees from at least two Member States, where:

- a SCE is established by merger and at least 25% of the total number of employees in the participating legal entities have the right to participation, or

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- a SCE is established by any other way and at least 50% of the total number of employees in the participating legal entities are entitled to participate (Art 13(1)).

A reduction in participation rights is defined as a reduction in the proportion of members of the administrative or supervisory bodies of the SCE over which employees exert influence to below the level of the highest proportion in the participating legal entities.

If there are *several forms of participation* within the various participating legal entities, the special negotiating body may decide which of these forms is to be used in the SCE. If the special negotiating body does not take a decision, the form of participation that applied to the majority of employees in all participating legal entities, concerned subsidiaries and establishments is to be used in the SCE (Art 13(4)). The special negotiating body is obliged to inform the management of the participating legal entities of all decisions taken in this regard.

### *Experts and costs*

For the purpose of the negotiations, the special negotiating body may request experts of its choice, for example representatives of trade unions at European-Union level, to assist it in its work. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body. The special negotiating body may decide to inform the representatives of appropriate external organisations of the start of the negotiations (Art 10).

*All costs* relating to the negotiations and the operation of the special negotiating body are to be borne by the participating legal entities. Notwithstanding this, participating legal entities are obliged to bear the *costs of only one expert*, who assists the SNB in its work (Art 11).

### e. Duration of negotiations (art. 5 of the SCE-Directive)

The SCE-Act states that negotiations shall commence as soon as the special negotiating body is established and may last for *up to six months*, except where the parties decide by common accord to extend negotiations, but negotiations may not last for more than *one year* from the date of establishment of the special negotiating body (Art 9(3)).

The *date of establishment of the special negotiating body* is the date on which management convened the constituent meeting of the special negotiating body.

### f. Involvement agreement (art. 4 of the SCE-Directive)

#### *Content of the agreement*

The written agreement on the arrangements for employees' involvement in the decision-making of the SCE that is concluded by the special negotiating body and the management of the participating legal entities shall according to Article 16 of the SCE-Act include the following information:

- the scope of the agreement;
- the composition, number of members and allocation of seats on the works council of the SCE, which will be the discussion partner of the management of the SCE in connection with the information and consultation of the employees of the SCE and its subsidiaries and establishments;

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- the tasks of the SCE works council and the arrangements and procedure for the information and consultation of the works council of the SCE;
- the frequency of meetings of the works council of the SCE;
- the financial and material resources that must be provided to the works council of the SCE;
- the arrangements for implementing procedures of information and consultation if, during negotiations, the parties decide to adopt these procedures instead of setting up a works council of the SCE;
- the date of entry into force of the agreement and its duration, the cases in which the agreement should be renegotiated (e.g. relevant structural changes, relevant change in the number of employees in the SCE, its subsidiaries and establishments or change of the SCE seat, which occurs after the formation of the SCE) and the procedure for its renegotiation.

The SCE-Act does not emphasise that these provisions apply without prejudice to the autonomy of the parties. It is emphasised, however, that if, during negotiations, the parties agree on participation, they shall reach an *agreement on the arrangements for participation*, including the number of members in the SCE's management or supervisory bodies which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights. The agreement is not subject to the standard provisions of the SCE-Act, unless the special negotiating body and the management of the participating legal entities decide otherwise.

In the case of an SCE established by *transformation*, the agreement on the involvement of employees in the decision-making of the SCE must foresee *at least the same level of involvement* of employees in decision-making as already exists in the cooperative that will be transformed into an SCE (Article 17).

### 2.2.3 Reference provisions (standard rules)

Standard rules are provided for in Chapter IV of the Slovenian SCE-Act, titled '*Participation of Employees in Decision-making of an SCE on the Basis of the Law*' (Articles 18-34).

#### a. Field of implementation (art. 7 of the SCE-Directive)

Regarding the application of standard provisions Article 18 states that these provisions apply to an SCE registered in the Republic of Slovenia from the date of its registration if:

- the parties so agree, or
- no agreement is reached within the legally determined period on the arrangements for the involvement of employees in the decision-making of the SCE and the management of the participating legal entities decides to apply the standard provisions and continue the procedure of registration of the SCE, provided that the special negotiating body has not decided to suspend negotiations.

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### **b. Employees' representative bodies: competences, composition and standard rules (annex 1 and 2 of the SCE-Directive)**

#### Establishment and responsibilities of a works council of an SCE

Article 19 of the SCE-Act states that in the cases, when standard provisions apply, **a works council** of an SCE shall be established on the basis of the law with a view to information provision and consultation.

The responsibility of the works council of the SCE for information provision and consultation is *limited to issues relating to the SCE and any subsidiary or establishment* in another Member State and to issues that exceed the powers of the decision-making bodies in the individual Member State.

#### Composition of the works council of the SCE

According to the SCE-Act, the members of the works council of the SCE may only be employees of the SCE, its subsidiaries and establishments (Art 20(1)). Employees in each Member State are granted one seat on the works council of the SCE per share of the total number of employees employed in participating legal entities, concerned subsidiaries and establishments in all the Member States together when the information regarding the proposal for the establishment of an SCE was provided, equalling 10% or a fraction thereof.

The SCE-Act provides that as soon as the members of the works council of the SCE have been appointed, the management of the SCE shall convene *a constituent meeting* of the works council of the SCE. At that meeting, the works council of the SCE shall elect a chairperson and a deputy chairperson from among its members. The chairperson or, in his absence, the deputy chairperson, shall represent the works council of the SCE as regards decisions taken and shall report the decisions of the works council of the SCE to the management of the SCE (Article 20(3)).

#### Method of operation of the works council of the SCE

The SCE-Act stipulates that in cases where a works council of an SCE has more than ten members, it may elect a committee of three members from among its members to deal with day-to-day affairs of the works council of the SCE (Art 21(3)). The works council of an SCE shall adopt, by a majority of the votes of its members, rules of procedure for the works council of the SCE. The works council of an SCE shall be obliged to inform the management of the SCE of its composition.

#### *Notification of changes*

Once a year, the works council of an SCE shall examine whether changes to the number of employees in the SCE, its subsidiaries and establishments require changes in the distribution of seats in the works council of the SCE. In such case the works council of an SCE is obliged to change its composition.

#### *Decision to restart negotiations*

Four years after its establishment, the works council of an SCE shall decide whether to start negotiations with a view to reaching an agreement with the SCE's management or to continue working in accordance with the standard provisions. If the works council of an SCE decides to start negotiations, the provisions of the SCE-Act regarding first negotiations apply *mutatis mutandis*, with the works council of the SCE taking on the role of the special negotiating body. If the agreement is not reached within the legally determined period, the



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works council of the SCE shall continue working in accordance with the standard provisions (Article 23).

### Information and consultation on the basis of the law

#### *Information and annual consultation*

The management of an SCE is obliged to inform the works council of the SCE of the regular reports of the competent bodies and to provide the agendas of meetings of the administrative or supervisory bodies of the SCE as well as copies of all documents presented to the general meeting of the SCE's members.

The works council of the SCE is entitled to meet with the management of the SCE at least once a year in order to discuss the regular report on the business results and the future development of the SCE. It is necessary to inform the management in the individual Member States thereof.

The SCE-Act states that the annual consultation shall cover, in particular, the structure, the economic and financial position, the likely development of business, production and sales, initiatives regarding the social corporate responsibility, position and likely development of employment, investment and essential changes affecting the organisation, the introduction of new working methods or production processes, transfers of production, mergers, down-sizing or winding-up of companies, establishments or important parts thereof and the dismissal of a considerable number of employees for business reasons (Art 24).

#### *Information and consultation in exceptional circumstances*

In the case of exceptional circumstances with major consequences for the interests of employees, especially in the event of off-shoring, transfers, the winding-up of establishments or companies or the dismissal of a considerable number of employees for business reasons, the works council of the SCE shall be entitled to be informed thereof in due time.

The works council of the SCE is entitled to meet, at its own request, the management of the SCE or another appropriate level of decision-making that has decision-making power on certain matters concerning information and consultation about measures that have a major effect on the interests of employees.

The committee of the works council of the SCE also has the right to meet management of the SCE, where the works council of the SCE so decides, especially in urgent cases. Those members of the works council of the SCE who represent employees that are directly affected by the measures having major consequences for the interests of employees are also entitled to take part in the meeting organised by the committee of the works council of the SCE.

If the management of the SCE decides not to follow the opinion expressed by the works council of the SCE, the works council of the SCE is entitled to a further meeting with the management of the SCE with a view to reaching an agreement. Opinions of the works council of the SCE or of its committee may not encroach on the powers of the management of the SCE.

The works council of the SCE or its committee, which is extended where necessary, is entitled to *meet in the absence of representatives of the management* of the SCE before the meeting with the management of the SCE (Art 25).

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### *Information of employees*

The works council of the SCE is obliged to inform the employees' representatives or the employees of the SCE and its subsidiaries and establishments of the content and outcome of the information and consultation processes (Art 26).

### *Experts and costs*

The works council of the SCE or its committee may be assisted by experts chosen by it. In addition to this, the members of the works council of an SCE are entitled to *training*, where necessary, for the performance of their tasks together with the right to paid absence from work (Arts 27, 28).

The *costs of the works council* of the SCE are to be borne by the SCE, which is obliged to provide the members of this body with the financial and material resources that they require in order to perform their tasks correctly. Except where agreed otherwise, the SCE bears, *in particular*, the costs of the organisation of meetings and the provision of interpretation services and the travel and accommodation expenses of the members of the works council of the SCE and its committee. The SCE also bears these expenses *for one expert* that the works council of the SCE or its committee may invite to assist it.

### **c. Participation of employees (annex 3 of the SCE-Directive)**

#### Conditions

Article 30 of the SCE-Act provides that the participation of the employees in the SCE shall be organised in the following cases:

1. In a SCE that is established *by transformation* if the employees in the company had the right to participation prior to the transformation into an SCE;
2. In an SCE established *by merger*,
  - if one or more forms of participation existed in one or more participating cooperatives prior to the registration of the SCE for at least 25% of the total number of employees in all participating cooperatives, or
  - if one or more forms of participation existed in one or more participating cooperatives prior to the registration of the SCE for less than 25% of the total number of employees in all participating cooperatives and if the special negotiating body so decides;
3. In an SCE that is established by any other way,
  - if one or more forms of participation existed in one or more participating legal entities prior to the registration of the SCE for at least 50% of the total number of employees in all participating legal entities, or
  - if one or more forms of participation existed in one or more participating legal entities prior to the registration of the SCE for less than 50% of the total number of employees in all participating legal entities and if the special negotiating body so decides.

In the last two cases, the special negotiating body is obliged to inform the participating legal entities of decisions taken.

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Additionally, it is explicitly stated in the SCE-Act that where no provisions on participation existed for any of the participating legal entities prior to the registration of the SCE, the SCE is not required to introduce rules on the participation of employees.

The Slovenian Parliament has not adopted the derogation of the third paragraph of Article 7 SCE-Directive, according to which Member States may provide that standard rules regarding participation do not apply in the case of an SCE established by merger.

### Forms of participation

In an SCE established *by transformation*, all the forms of participation of employees that were applicable prior to registration apply.

In *other cases* of the establishment of an SCE, the works council of the SCE or the employees in the SCE, its subsidiaries and establishments have the right to elect, appoint, recommend or oppose the appointment of a proportion of the members of the *administrative or supervisory bodies* of the SCE, the proportion of such members being the same as *the highest applicable proportion* in participating legal entities prior to registration of the SCE (Article 31).

As has already been mentioned above (regarding the work of SNB), the SCE-Act states that if there are *several forms of participation* within the various participating legal entities, the special negotiating body may decide which of these forms is to be used in the SCE. If the special negotiating body does not take a decision, the form of participation that *applied to the majority of employees* in all participating legal entities, concerned subsidiaries and establishments is to be used in the SCE (Art 13(3)). The special negotiating body is obliged to inform the management of the participating legal entities of all decisions taken in this regard.

### Distribution of seats

The works council of the SCE decides on the distribution of seats in administrative or supervisory bodies of the SCE from among the employees' representatives from the various Member States in accordance with the proportion of employees employed in the individual Member State in the SCE, its subsidiaries and establishments. If this leads in a Member State being granted several seats and the employees of one or more other Member States being deprived of a seat, the works council of the SCE is obliged to redistribute the seats in such a way that the representatives of that Member State(s) are granted a seat. In this context, it is necessary to ensure that a seat is granted to the employees from the Member State in which the SCE will have its registered office. If a seat is already granted to this Member State under the provision of the first paragraph, the seat is to be granted to the Member State that does not have one and in which the highest proportion of employees is employed.

If the number of members of administrative or supervisory bodies of the SCE *changes*, the works council of the SCE shall decide once again on the number of employees in the light of the abovementioned rules, dismissing superfluous representatives or granting additional seats to representatives of employees from individual Member States.

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## 2.2.4 Common Provisions

### a. Confidentiality of information (art. 10 of the SCE-Directive)

The SCE-Act emphasises that the management of an SCE and the works council of the SCE shall work together in spirit of cooperation with due respect for their mutual rights and duties. The same applies to cooperation between administrative or supervisory bodies of an SCE and employees' representatives in connection with the procedure for informing and consulting employees (Article 39).

The members of the special negotiating body and the works council of the SCE and the experts that assist them are obliged to *respect the confidentiality* of all information specifically designated by the management as a trade secret. This obligation also remains in force after the end of their term of office and is applicable *mutatis mutandis* where an agreement is concluded on the methods of involvement of employees in the decision-making of an SCE (Art 40).

These are the only provisions on respect of confidentiality included in the Slovenian SCE-Act. Provisions of the second, third and fourth paragraphs of Article 10 SCE-Directive are not implemented in the SCE-Act. It is hence not stated in the Slovenian SCE-Act that the central management is not obliged to transmit certain information, which *nature is such that it would seriously harm the functioning of the SCE (...) or its subsidiaries and establishments or would be prejudicial to them* as foreseen in the second paragraph of the Article 10 of the SCE-Directive. At this point also the ZSDU does not regulate the matter of confidentiality into more detail. Article 68 of this Act simply states that works council members and persons referred to in Article 61 of this Act shall be bound to keep company business secret.

Accordingly, there is no such information that the central management could keep in secret. There are consequently also no provisions providing a need for prior authorisation of keeping certain information in secrecy and no provisions for administrative or judicial appeal procedures in this regard. These rules are the same as the ones that apply for national representative bodies.

Furthermore, there are no particular provisions for SCEs in the Slovenian territory, which pursue the aim of ideological guidance as provided in paragraph three of Article 10 SCE-Directive. Being an optional clause, no breach on the part of the Slovenian government occurred in this respect.

### b. Spirit of cooperation (art. 11 of the SCE-Directive)

As mentioned above, the SCE-Act obliges the special negotiating body and the management of the participating legal entities to negotiate in a spirit of cooperation with a view to reaching an agreement on arrangements for the involvement of employees in the decision-making of the SCE (Art 9(2)).

### c. Protection of employees' representatives (art. 12 of the SCE-Directive)

As regards the protection of employees' representatives, the SCE-Act refers to the Article 67 of the ZSDU and Article 113 of the Employment Relationship Act (Official Gazette of the Republic of Slovenia, No 42/2002).

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Members of the SNB, members of the SCE works council, are therefore protected by the general Slovenian provisions on protection of workers' representatives. Article 67 of the ZSDU, to which the SCE-Act refers to, states that if a works council member behaves in a proper way it is not possible to lower his salary, institute disciplinary or indemnification proceedings against him or place him in any other way in a less favourable or subordinate position if he behaves in accordance with the effective laws and collective agreements. Until the 2007 amendments of ZSDU it has also been stated in the same Article of the WPMA that a works council member who during the discharge of his duties may not without the consent of the works council be assigned to another work post or another employer or be included among any redundancies. The exclusion of this provision is under the consideration by the Constitutional Court. In addition to this, Article 67a states that if the employer changes following the **legal transfer** of a company or part thereof, a works council's members preserve their status provided that the conditions exist at the transferee for their appointment. This does not apply if conditions are fulfilled for the new appointment of works council members. A works council member whose term of office ends due to the change of employer enjoys the abovementioned protection for a **further nine months** after they have ceased to hold office, as well as protection against dismissal.

In addition to this, Article 113 of the Employment Relationships Act, to which the SCE-Act also refers to, states that the employer may not terminate the employment contract:

- to a member of a works council, a workers representative, a member of a supervisory board representing workers, a workers' representative in the council of an institution and
- to an appointed or elected trade union representative, without the consent of the body whose member he is or without the consent of the trade union, if this person acts in accordance with the law, the collective agreement and the employment contract, except in the case of termination due to business reason he rejects the offered appropriate employment or in the case of termination due to the procedure of the employer's termination.

The protection against termination for these persons applies the entire period of their term of office and another year after its expiry.

The SCE-Act states that these provisions apply *mutatis mutandis* concerning the protection of the members of the special negotiating body, the members of the works council of the SCE, the employees' representatives who perform functions in connection with the information and consultation procedure and the employees' representatives in the administrative or supervisory bodies of the SCE, and employees' representatives in the general meeting or section or sectorial meetings in the Republic of Slovenia (Article 41).

### **d. Misuse of procedures (art. 13 of the SCE-Directive)**

The Slovenian SCE-Act does not implement the provision of Art 13 of the SCE-Directive, requiring Member States to take appropriate measures to prevent misuse of an SCE for the purpose of depriving employees of rights to employee involvement. The SCE-Act states penalty provisions for breach of its provisions, referring to the cases of not communicating certain information and not performing proper consultation with workers, however, there is no general prohibition of misuse of SCE as a corporate entity. The SCE-Act contains

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provisions on adjusting to changes in an SCE; however, this is not enough to prevent all forms of misuse of procedures.

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

#### **a. Sphere of implementation**

The Act applies to SCEs that have, or will have, their registered office in the Republic of Slovenia. Irrespective of where the SCE has its registered office, the Act also applies to the employees of an SCE employed in the Republic of Slovenia in participating legal entities, subsidiaries and establishments of an SCE that has, or will have, its registered office in another Member State of the European Union or of the European Economic Area (Art 2).

In addition to this the SCE-Act states, that the national legislation of the Member State in which the registered office of the SCE is to be located shall apply to the negotiating procedure, except where this Act stipulates otherwise (Art 15).

#### **b. Identification of national employees' representatives (art. 2.1.e of the SCE-Directive)**

As mentioned above, the Slovenian SCE-Act does not specifically define the term '**employees' representatives**'. However, considering general Slovenian legislation on workers involvement, this term is not unknown or difficult to define. The ZSDU refers to employees' representatives, when providing the rights of members of works councils, individual employees' representatives and members of companies' boards.

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

Article 8 of the SCE-Act states the provisions for election of members of the **special negotiating body** from the Republic of Slovenia. It is provided that employees' representatives from the Republic of Slovenia shall be elected to the special negotiating body by all employees *by secret ballot*. Works councils, representative trade unions in a participating legal entity, concerned subsidiary and establishment and at least 50 employees in a participating legal entity, concerned subsidiary and establishment are entitled to nominate candidates for membership of the special negotiating body. Hence, the Slovenian SCE-Act guarantees that also the employees not being formally organised may be nominated candidates for membership of the SNB, hereby providing the threshold of at least 50 employees. There is, however, no specific provision ensuring that, as far as possible, such members of the SNB from Slovenia should include at least one member representing each participating legal entity which has employees in Slovenia.

The SCE-Act states furthermore, that as far as possible the participants must endeavour to achieve equal representation of both genders. This provision is not stated in the SE-Act.

In a similar way, Article 21 of the SCE-Act regulates the elections and method of operation of the **works council of the SCE**. It is stated that the members of a works council of an SCE from the Republic of Slovenia are to be elected by all employees by secret ballot. Works councils, representative trade unions in a participating legal entity, subsidiary and establishment and at least 50 employees in a participating legal entity, subsidiary and establishment are entitled to nominate candidates for membership of the works council of an

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SCE. Also they should endeavour to achieve equal representation of both genders (Art 21(2)).

### Appointment of employees' representatives to **administrative or supervisory bodies of an SCE** with its registered office in the Republic of Slovenia

The employees' representatives on the administrative or supervisory bodies of an SCE with its registered office in the Republic of Slovenia are to be elected or nominated by the works council of the SCE in accordance with the law governing the involvement of employees in decision-making, in the part governing the involvement of employees at board level, and with the law governing cooperatives, in the part governing the system of decision-making of cooperatives (Art 33).

### Distribution of seats in the Republic of Slovenia

If additional seats are available in the administrative or supervisory bodies of an SCE for representatives of employees from the Republic of Slovenia, the works council of the SCE shall distribute them in line with the number of employees in the SCE, its participating legal entities and establishments in the Republic of Slovenia. The appointment of employees' representatives to administrative or supervisory bodies of an SCE with its registered office in the Republic of Slovenia from Member States that have no arrangements for this area is to be carried out by the works council of the SCE. The works council of an SCE and the management of an SCE must be informed of the elected or designated members of administrative or supervisory bodies of an SCE (Art 34).

Each member of an administrative or supervisory body of an SCE with its registered office in the Republic of Slovenia who is elected, appointed or recommended by the works council of the SCE is a full member having the same rights and obligations as the members representing members of cooperatives, including the right to vote.

### **d. Establishment of administrative and judicial appeal procedures (art. 8.4);**

Article 42 of the SCE-Act gives the Employment Tribunal jurisdiction for settling disputes in connection with the implementation of the SCE-Act. The Employment Tribunal is a specialised court, dealing with matters related to the employment relations, including cases of individual and collective nature.

In addition to this, the generally applicable Slovenian ZSDU states in Article 99 that disputes between the works council and the employer shall be settled by arbitration. The arbitration panel shall be composed of an equal number of persons appointed by the works council and the employer and a neutral chairman whose appointment has been agreed to by both parties to the dispute.

Furthermore, Article 100 ZSDU states that the works council and the employer may by mutual agreement set up a permanent arbitration body in the company. If a company has set up a permanent arbitration body the workers' council and the employer shall make a list of arbitrators for individual arbitrations. Whenever an arbitration procedure has been initiated the workers' council and the employer shall each appoint their arbitrators from the list.

### **e. Compliance with Directive obligations (art. 14);**

The SCE-Act provides a fine of at least 5 million SIT (i.e. about 20.000 EUR) for a participating legal entity or an SCE for a violation if *its management*:

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1. does not communicate the information regarding the plans of establishing an SCE, communicates incorrect or incomplete information or does not communicate the information in due time;
2. does not communicate the information regarding the change of the number of employees, communicates incorrect or incomplete information or does not communicate the information in due time.
3. in violation of standard rules on information and consultation, does not inform and consult annually or communicates incorrect or incomplete information or does not communicate the information in due time;
4. in violation of standard rules on information and consultation in exceptional cases, does not inform and consult in exceptional circumstances or communicates incorrect or incomplete information or does not communicate the information in due time.

A *responsible person* of a legal entity who commits any of these acts may also be held liable to a fine of at least SIT 500 000 (i.e. 2000 EUR). A natural person participating at the formation of a SCE may also be held liable to a fine of at least SIT 100 000 (i.e. 400 EUR) for the above-stated misdemeanours. It is not specifically stated in the SCE-Act that this applies regardless of whether or not the SCE has its registered office within the Slovenian territory.

For a comparison the 2007 amended ZSDU states that a legal entity is to be fined for a misdemeanour between 4000 and 20.000 eur, whereas the penalty for the responsible person of a legal entity is between 1000 and 2000 eur. In addition to this, a single entrepreneur breaching the Act may be fined with a penalty of 2000 to 4000 eur. Accordingly, the maximum penalties for breaching the obligations determined by the ZSDU are stated as minimum penalties for breaching the SCE-Act.

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

The SCE-Act states in Article 35 that the provisions of this law apply *mutatis mutandis* also for the SCEs, established exclusively by natural persons or by a single legal entity and natural persons, which together employ at least 50 employees in at least two Member States. In addition to this, the provisions on participating legal entities apply *mutatis mutandis* to natural persons, participating in the formation of an SCE.

In the case of an SCE having its seat in the Republic of Slovenia and being established exclusively by natural persons or by a single legal entity and natural persons, which together employ fewer than 50 employees, or employ 50 or more employees in only one Member State, employee involvement is governed by the provisions on employee involvement at management of cooperatives (Art 36(1)). If such an SCE having its seat in another Member State, has its subsidiaries and establishments in Republic of Slovenia, employee involvement in those subsidiaries and establishments is governed by the provisions on employee involvement at management of cooperatives (Art 36(2)).

In the case of transfer from one Member State to another of the registered office of an SCE governed by participation, at least the same level of employee participation rights continues to apply.



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If, after the registration of an SCE having its seat in the Republic of Slovenia and being established exclusively by natural persons or by a single legal entity and natural persons, which together employ fewer than 50 employees, or employ 50 or more employees in only one Member State, at least one third of the total number of employees of the SCE and its subsidiaries and establishments in at least two different Member States so requests, or if the total number of employees reaches or exceeds 50 employees in at least two Member States, the provisions on negotiations, formation of an agreement and subsidiary provisions are to be applied, *mutatis mutandis*. In this case, the SCE assumes the role of a participating legal entity, and the roles of a concerned subsidiary and establishment are assumed by the SCE subsidiary and SCE establishment.

### **g. Participation in the General Meeting or Section or Sectorial Meeting (art 9)**

The SCE-Act states that if the employees of the SCE having its seat in another Member States are entitled to participate in the general meeting or in the section or sectorial meeting of the SCE in accordance with the EC Regulation 1435/2003, then also the employees from the subsidiaries and establishments in Slovenia have the right to participate at such meetings (Art 37). The representatives from Slovenia are elected by the assembly of all the employees using secret ballots. The Slovenian SCE-Act therefore does not specifically define the circumstances, when the employees of the SCE and/or their representatives are entitled to participate in the general meeting as is the case with Art 9 of the SCE-Directive.

## **3. Effects of implementation**

Taking into account that the SCE-Act entered into force only a few months ago, it can be expected that it is still too early to discuss its impact on the Slovenian industrial relations. Nevertheless, considering the Slovenian legislation on cooperatives it cannot be concluded that the SCE regulation and directive provide wide statutory autonomy. Comparing the SCE-Regulation and the national Cooperatives Act it can be concluded that the latter in many ways contains more modest provisions. SCE provisions are important also because they regulate certain issues that are not expressly regulated in the Cooperatives Act and open certain choices, e.g. system of management, transfer of seat etc., not foreseen by the national law on cooperatives. Since 1999 members of the Slovenian Parliament have on more than one occasion filed proposals for amending the Cooperatives Act. Some of those were not successful, whereas others were. Notwithstanding this fact, the proposals made were rather poorly explained and were regulating only very specific issues. Consequently, there is a wide agreement among the commentators that the Cooperatives Act does not take effects in accordance with its purpose. Many things have changed as regards the development of law and economic activities in Slovenia since 1992. Consequently, it is widely believed that a new law on cooperatives is needed in Slovenia. It is quite certain that when this will happen the SCE-Act will impact the adopted legal solutions.

## **4. Practical application**

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

Since 1992 cooperatives are developing in the market economy environment and this development was quite successful, since the number of cooperatives, as well as employees is raising constantly. Since 2001 the number of employees in cooperatives is in slight decrease, however joint incomes nevertheless increase. Vast majority of the cooperatives have limited liability, since there are only 10 per cent of cooperatives without liability.

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**Table 1. Number of cooperatives per activity, Slovenia, 1991 - 2005**

Year	Total	Agriculture, forestry	Manufacture	Building	Commerce	Transport	Real estate, Business services	Other activities
1991	78	12	8	4	4	0	50	0
1992	184	97	15	6	8	0	58	0
1993	314	165	30	11	18	8	82	0
1994	346	179	31	13	21	10	91	1
1995	363	179	32	17	21	11	100	2
1996	475	153	52	29	70	17	147	7
1997	493	158	53	29	71	21	152	9
1998	514	162	56	32	75	22	156	11
1999	523	165	56	34	77	23	157	11
2000	539	168	57	35	80	23	161	14
2001	537	165	55	35	80	24	163	14
2002	534	155	57	35	80	25	165	17
2003	501	150	49	33	78	24	150	16
2004	499	151	46	31	81	24	148	18
2005	499	151	46	31	79	24	147	21

**Table 2. Number of employees in cooperatives and income, Slovenia, 1998 - 2003**

Year	Number of Employees	Market income, in Mio euro
1998	5171	497
1999	5214	517
2000	5107	547
2001	4913	587
2002	4530	619
2003	4362	616

Source: Čeferin E., Avsec F.: Zadružništvo pri nas in v nekaterih evropskih državah, 2006

All these cooperatives now have a new opportunity to associate with groups with the same interests across borders and it is expected that several entities will use the possibility offered by the European Cooperative, especially after the facts about the SCE are disseminated across Slovenia.

**b. Position of employers' and trade union organizations**

The Ministry for Labour reports that in consultations with social partners before adopting the SCE-Act no debate arose on the point of workers participation in SCEs. The Act was seen as a twin of the SE-Act and no specific problematic issues were highlighted in this regard by the social partners. Also after the SCE-Act has been adopted there were no discussions about workers participation in SCEs. Associations of Cooperatives in Slovenia have recently put the SCE topic on the timetable of their general meetings, mostly in form of presenting

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fundamental corporation and industrial relations issues regarding the SCE, so that no positions were adopted in this respect.

### **c. Statistical information on impact**

There is no information on any SCEs having its seat in Slovenia.

### **d. Case law**

Consequently also no cases on SCE's employee involvement issues came before the Slovenian tribunals.

## **5. Assessment**

Comparing the provisions of the Slovenian **Participation of Workers in Management of the SCE-Act** and those of the SCE-Directive, it can be concluded that the Directive is *in general* faithfully implemented in the Slovenian national legislation. Most of the provisions are namely very similarly stated, what reflects the opinion of our legislator that the Directive 2003/72 does not leave much freedom to national regulation. It has consequently followed the Directive, although changing the structure of the act, especially because the standard rules were included in the main provisions of the SCE-Act and were not implemented in the form of Annex. As regards the issues, which were open to national legislator, the Slovenian legislation has followed the solutions from the general system of workers' involvement in Slovenia.

However, there are few points, where the Slovenian implementing legislation departs provisions of the SCE-Directive. The provision of the SCE-Directive regulating the link between this directive and other provisions was *not transposed* into the Slovenian SCE-Act. The latter therefore does not explain the relations among the SCE-Act at the one hand and the EWC-Act and general ZSDU on the other. More importantly, however, *second and third paragraph of Article 15 are not implemented in the Slovenian SCE-Act*, hereby missing the provision that the SCE-Act does not prejudice the existing rights to involvement of employees provided for by the general ZSDU. There are consequently no measures guaranteeing that the structures of employee representation in participating legal entities, which will cease to exist, are maintained after the registration of the SCE. Furthermore, the SCE-Act does not emphasise that the provisions on the content of the agreement apply without prejudice to the autonomy of the parties.

It is also not stated in the Slovenian SCE-Act that the central management is not obliged to transmit certain information, which *nature is such that it would seriously harm the functioning of the SCE (...) or its subsidiarity and establishment or would be prejudicial to them*' as foreseen in the second paragraph of the Article 10 of the SCE-Directive. Accordingly, there are no such information that the central management could keep in secret – relying on the confidentiality principle that should prevent any harm or damage. There are consequently also no provisions providing a need for prior authorisation of keeping certain information in secrecy and no provisions for administrative or judicial appeal procedures in this regard.

In addition to this, the Slovenian SCE-Act does not implement the provision of Article 13 of the SCE-Directive, requiring Member States to take appropriate measures to *prevent misuse of an SCE for the purpose of depriving employees of rights to employee involvement*. The

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SCE-Act states penalty provisions for breach of its provisions, referring to the cases of not communicating certain information and not performing proper consultation with workers, however, there is no general prohibition of misuse of SCE as a corporate entity. The SCE-Act contains provisions on adjusting to changes in an SCE, however, this is not enough to prevent all forms of misuse of procedures. It is also not specifically stated in the SCE-Act that the penalty provisions apply regardless of whether or not the SCE has its registered office within the Slovenian territory as foreseen in Article 14(1) of the SCE-Directive. There is also no specific provision ensuring that, as far as possible, members of the SNB from Slovenia should include at least one member representing each participating legal entity, which has employees in Slovenia.

Finally, The Slovenian SCE-Act does not specifically define the circumstances, when the employees of the SCE and/or their representatives are entitled to participate in the general meeting as stated in Art 9 of the SCE-Directive – giving the employees the right to vote when the parties so decide in the agreement or when a cooperative governed by such a system transforms itself into an SCE, or when, in the case of an SCE established by means other than transformation, a participating cooperative was governed by such a system.

## 6. Recommendations

The European Commission should bring the abovementioned points, where the Slovenian implementing legislation departs the provisions of the SCE-Directive, to the attention of the Slovenian Ministry for Labour. These points should consequently be brought in line with the European legislation.

## Bibliography

- Avsec F., Nekaj misli k dograjevanju združnega prava, Podjetje in delo 2/2000, p. 369.
- Avsec F., Societas Cooperativa Europaea (SCE) – Evropska zadruga, Podjetje in delo 1/2004, p. 72.
- Čeferin E., Avsec F., Zadržništvo pri nas in v nekaterih evropskih državah, 2006.
- Ivanjko Š., Kocbek M., Korporacijsko pravo, Pravni položaj gospodarskih subjektov, GV Založba, Ljubljana 2003, p. 1111.

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## Annex I: Transposition of the SCE-Directive into the ZSDUEZ<sup>2</sup> (Slovenia) - Table of correspondence

Content	Articles in the Directive	National implementing provisions
Objective	1	1
Definitions	2	3
Creation of a special negotiating body	3.1	4 (1,2)
	3(2)	4(3)
	3(2) (a) (i)	5
	3 (2) (a) (ii)	6
	3(2) b	8
	3(3)	9 (1,2), 16(1)
	3(4)	12 (1,2), 13(1,2)
	3(5)	10
	3(6)	14
	3(7)	11
Content of agreement	4	9(2), 16, 17
Duration of negotiations	5	9 (3,4)
Legislation applicable to the negotiation procedure	6	15
Standard rules	7	18, 30, 13(4,5)
	Annex part 1. a)	19 (1), 20(1)
	Annex part 1. b)	21 (1,2), 22
	Annex part 1. c)	21(3)
	Annex part 1. d)	21(4)
	Annex part 1. e)	20(2)
	Annex part 1. f)	21(5)
	Annex part 1. g)	23
	Annex part 2 a)	24-29
	Annex part 2 a)	19 (2)
	Annex part 2 b)	24
	Annex part 2 c)	25
	Annex part 2 d)	20 (3,4)
	Annex part 2 e)	26
	Annex part 2 f)	27
Annex part 2 g)	28	

<sup>2</sup> Slovenia has implemented the SCE-Directive by the Participation of Workers in Management of the European Cooperative Act (SCE) (Zakon o sodelovanju delavcev pri upravljanju evropske zadruga - ZSDUEZ).

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<b>Content</b>	<b>Articles in the Directive</b>	<b>National implementing provisions</b>
	Annex part 2 h)	29
	Annex part 3	30-34
Rules applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons	8	35, 36
Participation in the general meeting or section or sectorial meeting	9	37, 38
Reservation and confidentiality	10	40
Operation of the representative body and procedure for the information and consolation of employees	11	39
Protection of employees' representatives	12	41
Misuse of procedures	13	43
Compliance with this directive	14	not transposed
Link between this Directive and other provisions	15	not transposed

## **Annex II: List of implementation law(s)**

Participation of Workers in Management of the European Cooperative Society Act (SCE) (ZSDUEZ), adopted by the National Assembly of the Republic of Slovenia, published in the Official Gazette of the Republic of Slovenia, No 79, 27.07.2006

Worker Participation in Management Act (Official Gazette RS, N. 42/93, 61/2000 and 56/01)

Cooperatives Act (Zakon o zadrugah, Official Gazette of the Republic of Slovenia, Nos. 13/1992, 7/1993, 22/1994, 35/1996 and 31/2000)