

## **ACT OF 9 AUGUST 1996**

### **on the amendment of the Act on cooperation in undertakings**

Pursuant to the decision of Parliament,

Section 1, paragraph 2, Section 2, paragraph 4, the heading and paragraphs 1 and 2 of Section 11 b, Sections 11 c - 11 e, Section 13, paragraph 1 and Section 16, paragraph 1 of the Act on Cooperation in Undertakings issued on 22 September 1978 (1978/725) shall be amended, as amended, Section 1, paragraph 2, Section 2, paragraph 4, the heading and paragraphs 1 and 2 of Section 11 b, Sections 11 c - 11 e and Section 13, paragraph 1, by the Act of 21 December 1990 (1990/1195), as well as Section 16, paragraph 1 by the Act of 12 April 1995 (1995/675), as well as new Sections 11 f and 11 g shall be added to the Act as follows :

#### **“Section 1**

##### *Purpose of the Act*

“The purpose of the cooperation to be observed within a group, hereinafter "group cooperation", shall be to promote the interaction between the group management and the group's employees, as well as among the employees.

#### **“Section 2**

##### *Scope of application*

“Group cooperation shall be governed by Sections 11 b - 11 g. Provisions on national group cooperation shall apply to group cooperation in Finland and provisions on transnational group cooperation to the European Economic Area with the exception of the United Kingdom of Great Britain and Northern Ireland. The area in which the provisions on transnational group cooperation shall apply, shall hereinafter be referred to as the European Economic Area. The provisions on transnational group cooperation shall also apply to undertakings and establishments of a group outside the European Economic Area, if the group has appointed a Finnish undertaking as its representative or, if no representative is appointed, if it employs most of its employees within the European Economic Area.

#### **“ Section 11b**

##### *Definition of a group*

“For the purposes of this Act, a group shall mean a group in accordance with the legislation governing limited companies, banks and insurance companies. If the undertakings belonging to a group exercise control in a corporation which does not belong to the group on the basis of ownership or an agreement, also the latter corporation shall, in the application of this Act, be deemed a subsidiary belonging to the group. The provisions of this Act on a group shall also be applied to groups of undertakings comparable to groups referred to in this paragraph in which the corporate form of the parent undertaking differs from that mentioned above.

“The provisions of this Act on group cooperation shall also be applied to an undertaking which carries on business in different States belonging to the European Economic Area or through operational units, which are located in different places and have independent administrations. The provisions governing subsidiaries shall, in that case, be applied to operational units.

### **“Section 11c**

#### *Group cooperation based on a agreement*

“The terms of an agreement between the group management and the employees' representatives for a fixed period of time or until further notice regarding national group cooperation for Finnish undertakings or independent operational units, in which the number of employees is regularly at least 30, shall apply to a Finnish group in which the number of employees working in Finland is regularly at least 500. If an understanding between the employees' representatives and the group management cannot otherwise be ensured, the agreement referred to above may be concluded at a meeting in which the group management and the employees' representatives from each of the subsidiaries are represented.

“If no agreement on national group cooperation has been concluded in the manner referred to in paragraph 1 within one year from the fulfilment of the requirements on the size of the undertaking referred to in paragraph 1, national group cooperation shall be arranged as provided for in Sections 11 d and 11 e. An agreement on national group cooperation may, however, be concluded also after the said obligations have become binding.

“The terms of an agreement between the group management and the negotiating body provided for in Section 11 f regarding transnational group cooperation shall apply to a Finnish group with at least 1,000 employees in the European Economic Area and at least 150 employees in undertakings in at least two different Member States.

“If no agreement on transnational group cooperation has been concluded in the manner referred to in paragraph 3 within three years from a written request for negotiations presented by at least two undertakings located in two different Member States or by at least 100 wage-earners and salaried employees of an establishment or their representatives or by the group management or if the group management has not started negotiations within six months from the said request for negotiations, transnational group cooperation shall be arranged as provided for in Sections 11 d, 11 e and 11 g. An agreement on group cooperation may, however, be concluded also after the said obligations have become binding.

### **“Section 11d**

#### *Statutory group cooperation*

“Unless otherwise agreed upon in accordance with Section 11 c, national group cooperation shall, with regard to employees employed by the group in Finland and transnational cooperation with regard employees employed by the group in the European Economic Area entail that the respective employees shall be submitted :

- 1) annually a comprehensive financial report which shall include the group accounts or, if it is not necessary under the law to draw one up, a corresponding available report as well as information on the development prospects of production, employment, profitability and cost structure of the group as well as an estimate of the changes expected in the number and type of employees;
- 2) information on decisions by the group management relating to essential expansion, cut-backs or closing of the operations of the undertaking; as well as

- 3) information on decisions by the group management relating to an essential change in the product or service range or another corresponding factor relating to production in a manner that would have an effect on the position of the employees.

“In national group cooperation a member of the group management or a person authorized by it and familiar with the issues to be reported on, shall submit the information referred to in paragraph 1 in a manner that can entail the realization of the interaction between the group management and the employees and among the employees in the handling of the issue. Information on issues referred to in paragraph 1, subparagraphs 2 and 3 shall be submitted to those representatives of the employees that they concern and they have to be submitted in such a manner that negotiations referred to in Section 7<sup>1</sup> may be held in the undertaking in question. The provisions of Section 11, paragraph 6<sup>2</sup> and section 12<sup>3</sup> shall apply, where necessary, to the submission and handling of this information.

“With respect to an undertaking operating outside Finland, national group cooperation shall in addition to the group accounts referred to in this section, only entail the submission of information based on the regular report referred to in paragraph 1, subparagraph 1 with essential significance to the employees in Finland.

“In transnational cooperation the group management shall submit the information referred to in paragraph 1, subparagraph 1 to the meeting of the works council in accordance with Section 11 g in a manner that can entail the realization of the interaction between the group management and the employees and among the employees in the handling of the issue. Information on the issues referred to in paragraph 1, subparagraphs 2 and 3 shall be submitted to the works council or its working committee, if one has been elected, if the information relates to at least two undertakings or establishments located in two different Member States, in which case the works council or the working committee may also meet with the group management or other members of the management better suited for the purpose.

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<sup>1</sup> "Before an employer takes a decision on any matter covered by section 6, he shall discuss the reasons for the action envisaged, its effects and possible alternatives with the wage earners or salaried employees concerned, or their representatives.

Any matter affecting a particular wage earner or salaried employee shall in the first instance be discussed between the employer and the person concerned. Where the employer or the wage earner or salaried employee concerned so requests, the matter shall also be discussed between the employer and the relevant staff representative.

Where the matter falling within the scope of the co-operation procedure is of general concern to the wage earners or salaried employees in a particular unit or department of the undertaking, it shall be discussed with the appropriate staff representatives. Where it is of concern to more than one group of the staff, the discussion referred to in the first paragraph of this section shall take place at the joint meeting attended by the representatives of each such group. Provided that no such meeting shall be arranged where the matter is discussed in the committee referred to in section 4.

In addition to the foregoing provisions of this section the co-operation procedure shall also imply that:

1° the work rules referred to in clause 10° of section 6 and other comparable provisions do not become effective until agreement on the subject has been reached within the co-operation procedure referred to in this Act;

2° action relating to the concept and scope of the training for co-operation referred to in clause 12° of section 6 is taken in accordance with the agreement on the subject reached within the co-operation procedure referred to in this Act; and

3° in so far as no agreement has been reached, decisions relating to matters falling within the scope of welfare activities covered by clause 14° of section 6 are taken in accordance with the position adopted by the staff representatives or, where such decisions affect only one group of the staff by the representatives of that group."

<sup>2</sup> "In bilingual communes the employer shall supply the information and documents (...) in both the national languages, !in so far as there are at least ten persons in the linguistic minority and the number of such persons represents more than 10 per cent of the staff."

<sup>3</sup> "In so far as the wage earners or salaried employees or staff representatives in an undertaking become acquainted in accordance with this Act with information relating to the employer's business or trade secrets and the dissemination of such information would be likely to be prejudicial to the undertaking or to any partner or contracting party associated with the undertaking, and the fact has been indicated by the employer, such information shall be discussed only by the wage earners or salaried employees or staff representatives concerned in the matter and the information shall not be revealed to any other person.

Information relating to a private person's financial situation or state of health or concerning him personally in any other way shall also be kept secret in so far as that person's permission to reveal the information has not been obtained."

Also those members of the works council representing the undertakings or establishments which the measures directly relate to, may take part in the meeting.

### **“Section 11e**

#### *Employees’ representatives in group cooperation*

“Unless otherwise agreed upon in accordance with Section 11 c regarding national group cooperation, the employees of a Finnish undertaking belonging to a group, have the right to elect at least one representative from among themselves for group cooperation. The employees' representatives shall be elected so that all the different employee groups of the group are represented. If an undertaking has several places of business, it is sufficient that an employee represents the employees of the places of business of a certain regional or operational entity.

“In transnational group cooperation, the employees of the group in Finland shall have the right to elect their representatives to a special negotiating body, a co-operational body based on an agreement, or to a works council either by agreement or by an election. Unless the employees can agree on the manner to be observed, the industrial safety delegates representing the largest groups of workers and employees shall together arrange an election or other method of selection so that all group's employees are entitled to participate therein. The employees' representatives from other Member States of the European Economic Area shall be selected in accordance with the national legislation of the place of business. The provisions of this paragraph on the right of Finnish employees to select their representative shall also be applied when the obligation to arrange group cooperation is based on the legislation of another Member State of the European Economic Area than Finland.

“In accordance with paragraph 2 above, the provisions of Section 53, paragraph 2 of the Employment Contract Act on the giving of notice on an employment contract of a representative<sup>4</sup> shall correspondingly apply to the protection against unilateral giving of notice to an employees' representative and his deputy elected for transnational group cooperation.

### **“Section 11f**

#### *Special negotiating body in transnational group cooperation*

“The special negotiating body shall have the task of negotiating with the group management on the arrangement of transnational group cooperation. The agreement thereon shall be adopted by the majority of the negotiating body. The special negotiating body shall convene with the group management at the convocation of the latter. The initiative may come either from the group management or the group's employees in accordance with Section 11 c. The special negotiating body shall have a minimum of three and a maximum of 17 members.

“The special negotiating body shall include a representative elected by the employees from each of the Member States of the European Economic Area in which the group has an undertaking or an establishment. In addition, supplementary members shall be elected in proportion to the numbers of employees working in different countries. The Finnish employees' representatives and the group management shall together agree on the number of supplementary members.

“The special negotiating body may, by a majority of at least two-thirds, decide not to open negotiations for the arrangement of transnational group cooperation or to terminate negotiations already opened. A new request to convene the special negotiating body may be made at the earliest two years after the above-mentioned decision unless the group management and the special negotiating body agree on a shorter period.

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<sup>4</sup> " The contract of employment of a shop steward covered by the preceding paragraph shall not be subject to termination by notice given by the employer except with the consent of the majority of the workers represented by him or when his job ceases to exist and no alternative work can be found for him that would correspond to his qualifications."

## **“Section 11g**

### *Works council in transnational group cooperation*

“The works council shall have a minimum of three and a maximum of 30 members. The works council shall include a representative elected by the employees from each of the Member States of the European Economic Area in which the group has an undertaking or an establishment. In addition, supplementary members shall be elected in proportion to the numbers of employees working in different countries. The number of supplementary members and any changes therein shall be agreed on, together by the works council and the group management. The works council may appoint a working committee with a maximum of three members from among itself.

## **“Section 13**

### *Release from work and compensations*

“An employer shall release the employees' representatives referred to in this Act from their regular work for the time they need for the cooperation procedure or group cooperation as well as for the immediate procedure among the employees' representatives related thereto as well as compensate them for the loss of earnings resulting therefrom.

Any other release from work and compensating for loss of earnings shall be agreed upon in each individual case between the employees' representative in question and the employer. The employer shall also compensate for any other costs resulting from group cooperation in accordance with this Act. These shall also include reasonable costs from experts which the special negotiating body or the works council or its working committee uses in assistance for convening with the group management.

## **“Section 16**

### *Provisions on punishments*

“A member of the group management, an employer or their representative who wilfully or negligently fails to observe the provisions of Sections 7<sup>5</sup>, 9<sup>6</sup>, 11<sup>7</sup> or 11 d or the provisions of Section 13 other than those on the duty to pay, or who essentially fails to observe the provisions of the agreement referred to in Section 11 c, paragraphs 1 or 3, shall be sentenced for a violation of the cooperation obligation to a fine. The responsibility of the employer and his representative shall be determined in accordance with the grounds laid down in Chapter 47, Section 7 of the Penal Code<sup>8</sup>.”

This Act shall enter into force on 22 September 1996.

This Act shall not be applicable to groups where an agreement concerning transnational interaction between the group management and employees and binding all group's employees has been concluded prior to the entry into force of this Act. Unless otherwise agreed upon, the notice of termination of the above agreement shall be six months, after which the obligations provided for in Section 11 c, paragraph 4 shall be observed.

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<sup>5</sup> Co-operation procedure

<sup>6</sup> Recourse to outside labour

<sup>7</sup> Obligation of employers to provide information

<sup>8</sup> "A person whose responsibility the commission or omission is shall be sentenced for the conduct of an employee or representative thereof, which is punishable under this chapter. In the allocation of liability due consideration shall be given to the position of that person, the nature and extent of his duties and competence and also otherwise his participation in the arising and continuation of the situation that is contrary to law."