

# THE CROATIAN PARLIAMENT

1876

Pursuant to the Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

## DECISION

### **PROMULGATING THE ACT ON EMPLOYEE INVOLVEMENT IN DECISION MAKING IN THE EUROPEAN COMPANY (SE) AND THE EUROPEAN CO-OPERATIVE SOCIETY (SCE)**

I hereby promulgate the Act on Employee Involvement in Decision-Making in the European Company (SE) and the European Cooperative Society (SCE), passed by the Croatian Parliament at its session on 15 July 2014.

Class: 011-01/14-01/113

Reg. No: 71-05-03/1-14-2

Zagreb, 18 July 2014

President

of the Republic of Croatia

Ivo Josipović, m.p.

### **THE ACT ON EMPLOYEE INVOLVEMENT IN DECISION MAKING IN THE EUROPEAN COMPANY (SE) AND THE EUROPEAN CO-OPERATIVE SOCIETY (SCE)**

#### I. GENERAL PROVISIONS

*Objective*

Article 1

(1) This Act regulates the manner of employee participation in decision-making in the European Company (Societas Europaea - SE) (hereinafter: SE) and the European Cooperative Society (Societas Cooperativa Europaea - SCE) (hereinafter: SCE).

(2) Notwithstanding their grammatical gender, the terms used in this Act are gender-neutral and shall apply equally to male and female gender.

## Article 2

By this Act the following Directives of the European Union shall be transposed into the legal order of the Republic of Croatia:

- Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European Company with regard to the involvement of employees (OJ L 294, of 10 November 2001)

- Council Directive 2003/72/EC of 22 July 2003 amending the Statute for a European Cooperative Society with regard to employee participation in management (OJ L 207, 18 August, 2003).

### *Application of the Act*

## Article 3

(1) This Act shall apply to an SE or an SCE which has or will have its registered seat in the Republic of Croatia.

(2) By way of derogation from paragraph 1 of this Article, the provisions of this Act shall apply, regardless of the registered office of the SE or the SCE, to the employees of the SE employed in the Republic of Croatia by the participating undertaking, subsidiary or concerned subsidiary or establishment of the SE or SCE which has or will have its registered office in another Member State of the European Union or a State party to the Agreement on the European Economic Area (hereinafter referred to as Member State).

## II. EMPLOYEE INVOLVEMENT IN DECISION-MAKING IN THE SE

### 1. EMPLOYEE RIGHTS IN THE SE

The right of employees to participate in decision-making in the SE

## Article 4

Employees employed in an SE or in an SE's participating company, subsidiary or concerned subsidiary or establishment which has or will have a registered office in the Member State shall be entitled to participate in decision-making in the affairs of the SE.

*The concept of the SE*

Article 5

(1) SE means any company established in accordance with Council Regulation 2157/2001/EC of 8 October 2001 on the Statute of the European Council (SE) (OJ L 294 of 10 November, 2001) or a special law.

(2) Participating company means any company directly participating in the establishing of an SE.

(3) Subsidiary means an undertaking over which another company exerts, directly or indirectly, a dominant influence.

(4) Concerned subsidiary or establishment means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the SE upon its formation.

(5) The company which has a dominant influence, in terms of paragraph 3 of this Article, is a legally independent company which may:

1) appoint more than half the members of the management, supervisory board or board of directors of the subsidiary, or

2) hold the majority voting rights in the subsidiary, or

3) have a majority equity interest in the subsidiary.

(6) Where more than one undertaking complies with the requirements of paragraph 5 of this Article, the undertaking that meets the requirements referred to in paragraph 5, subparagraph 1 of this Article shall be deemed the company with a dominant influence.

(7) In addition to the appointment and voting rights referred to in paragraph 5, subparagraphs 1 and 2 of this Article, the corresponding rights of all controlled undertakings and the rights of all natural and legal persons acting in their own name and on behalf of the controlling or controlled undertakings shall be taken into account when determining the controlling undertaking.

(8) Controlling interest shall not be deemed true if the relations between two undertakings are not considered a concentration of undertakings under the competition law.

(9) The law applicable in determining whether an undertaking is a controlling undertaking shall be the law of the Member State wherein that undertaking is established. Where the law governing that undertaking is not that of a Member State, the law applicable shall be the law of the Member State wherein the representative of the controlling undertaking is established or, in the absence of such a representative, where the central management of the group undertaking that employs the greatest number of employees is situated.

*Employees' participation in decision-making*

Article 6

(1) Involvement of employees in decision-making in the SE means the procedure of information, consultation and participation of employees, as well as other regulated procedures through which employees may exercise an influence on decisions to be taken within the company.

(2) 'Information' referred to in paragraph 1 of this Article means informing works councils or other employees' representatives on the matters that concern the SE and the undertakings referred to in Article 5 hereto situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time and in a manner which allows the employees' representatives to undertake an assessment of the possible impact and, where appropriate, prepare for consultations.

(3) 'Consultation' referred to in paragraph 1 of this Article means the establishment of dialogue and exchange of views between the body representative of the employees or other employees' representatives and the competent organ of the SE, at a time and in a manner which allows the employees' representatives to express their opinion on the proposed measures, for the purpose of harmonising their views during decision-making process in the SE.

4) 'Participation' referred to in paragraph 1 of this Article means the right to appoint or elect employees' representatives into the company's organ which supervises business management (supervisory board, board of directors or other competent body), or the right to recommend or oppose the appointment of some or all of the members of the company's organ which supervises business management.

## 2 NEGOTIATION PROCEDURE

### *Creation of a negotiating committee*

#### Article 7

(1) All participating companies shall, within eight days from the date of publication of the proposal to establish an SE, start negotiations with the representatives of their employees and the representatives of employees working for the companies referred to in Article 5, paragraphs 2 and 4 hereof on arrangements for the involvement of employees in decision-making in the SE.

(2) Prior to start of the negotiations referred to in paragraph 1 of this Article employees' representatives shall be informed of:

1) information regarding the legal form, affiliation and the registered office of the companies referred to in paragraph 1 of this Article

2) the number of employees in each company referred to in paragraph 1 of this Article

3) appointed or elected employee representatives in the companies referred to in paragraph 1 of this Article and

4) the number of employees' representatives eligible to participate in the decision-making in organs which supervise business management (supervisory board, board of directors or other competent body) of companies referred to in paragraph 1 of this Article.

(3) If in the companies referred to in paragraph 1 of this Article there are no employees' representatives, such a company shall notify its employees of the questions referred to in paragraph 2 of this Article.

(4) The negotiating committee means the committee established for the purpose of regulating the procedure of involvement of employees' representatives' in decision-making in the SE.

(5) Employees' representatives in the negotiating committee shall be elected or appointed in accordance with the law of the Member State.

#### *Number of members of the negotiating committee*

#### Article 8

(1) The number of members of the negotiating committee shall be determined in proportion to the total number of employees employed by the participating company, subsidiary or concerned subsidiary or establishment, so that employees from each Member State shall be entitled to one representative for each 10 %, or a fraction thereof, of the total number of employees employed in the said companies in all Member States.

(2) If an SE is formed by way of merger, employees from each Member State may be eligible for an additional representative which will ensure the representation of employees employed in each participating company which it is proposed will cease to exist as a separate legal entity following the registration of the SE.

(3) The number of additional representatives referred to in paragraph 2 of this Article shall not exceed 20 % of the total number of members of the negotiating committee nor result in double representation, or representation based both on this paragraph and paragraph 2 of this Article, of employees employed in each participating company which it is proposed will cease to exist as a separate legal entity following the registration of the SE.

(4) If the number of participating companies which will cease to exist as separate legal entities following the registration of the SE is larger than the total number of additional seats available in accordance with the paragraph 3 of this Article, these additional seats shall be allocated to companies in different Member States by decreasing order of the number of employees they employ.

(5) The number of employees employed in participating companies means the number of employees employed on the date of publication of the proposal for the establishment of the SE.

(6) When electing or appointing the members of the negotiating committee the equitable representation of all groups of employees (by gender, age, education, jobs they perform, etc.) shall be taken into account.

*Croatian employees' representative in the negotiating committee*

## Article 9

(1) Croatian employees' representative in the negotiating committee is elected by the employees of a participating undertaking, subsidiary or concerned subsidiary or establishment, by secret ballot in free and direct elections.

(2) The following groups shall have the right to nominate candidates for the election to the negotiating committee: the works council, the unions in the participating company, its subsidiary or establishment or a group of employees supported by at least 20 % of employees employed in the participating company, its subsidiary or establishment.

(3) The election procedure of the Croatian employees' representative into the negotiating committee and its dismissal therefrom shall be regulated by an Ordinance issued by the Minister of Labour.

*Cooperation between the companies and the negotiating committee*

Article 10

(1) The participating companies shall inform the negotiating committee of the plan and the actual process of establishing the SE.

(2) The negotiating committee and the participating companies may, unless otherwise agreed, negotiate a written agreement on the arrangements for employee involvement in decision-making in the SE for up to a total of six months from the establishment of the negotiating committee.

(3) If the negotiating committee and participating companies do not reach an agreement referred to in paragraph 2 of this Article, the negotiations may last no longer than one year from the date of establishment of the negotiating committee.

*Working conditions of the negotiating committee*

Article 11

(1) The costs of establishment and the operating expenses of the negotiating committee shall be borne by participating companies.

(2) The negotiating committee may on matters within its competence request an opinion or professional assistance of experts and notify the trade union association of the start of the negotiations.

(3) The participating companies shall allow persons referred to in paragraph 2 of this Article to attend meetings of the negotiating committee, and bear the costs of one expert.

(4) The participating companies shall provide the necessary space, staff, financial and material resources needed to enable the negotiating committee

to perform their duties, including the salary reimbursement, travel expenses, accommodation and translation expenses.

*Decision-making process in the negotiating committee*

Article 12

(1) The negotiating committee decides by majority vote representing the majority of the total number of employees employed in all participating companies.

(2) A member of the negotiating committee appointed or elected in each Member State shall have one vote and represent all employees employed in the participating company in that state.

(3) Notwithstanding the provisions of paragraph 1 of this Article, when deciding on the reduction of the participation rights of employees, the majority required for approving such a decision shall be the votes of two thirds of the members of the negotiating committee representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States, in the case of an SE to be established by way of:

1) merger, if participation covers at least 25 % of the overall number of employees of the participating companies, or

2) creating a holding company or forming a subsidiary, if participation covers at least 50 % of the overall number of employees of the participating companies.

(4) Reduction of the participation rights referred to in paragraph 3 of this Article means a proportion of the number of employees' representatives in the organs of the SE which is lower than the highest proportion existing within the participating companies.

(5) In the case of an SE established by way of transformation, the paragraph 3 of this Article shall not apply if there is participation in the company to be transformed.

(6) If participating companies have different participation procedures and the negotiating committee fails to decide which one shall be used in the SE, the participation procedure used by the majority of employees in all participating



companies shall be used, of which the negotiating committee shall notify all the companies within eight days.

*Termination of negotiations*

Article 13

(1) The negotiating committee may decide, by a majority vote of two-thirds of the members representing two thirds of employees employed in companies in at least two member states, not to open negotiations or to terminate negotiations already opened.

(2) Notwithstanding the provisions of paragraph 1 of this Article, if there is a process of employee involvement in decision-making in a company to be transformed into SE, the negotiating committee may not decide as prescribed.

(3) If it is decided as prescribed in paragraph 1 of this Article, special regulations governing employee involvement in decision-making through the European Works Council shall apply to information and consultation.

(4) After the decision referred to in paragraph 1 of this Article, negotiating committee shall be reconvened upon the written request of at least 20 % of the employees of the SE, or their representatives, at the earliest two years after the decision referred to in paragraph 1 of this Article, unless the parties agree to negotiations being reopened sooner.

*Application of national legislation*

Article 14

The legislation applicable to the negotiation procedure shall be the legislation of the Member State in which the registered office of the SE is to be situated.

3 EMPLOYEE INVOLVEMENT IN DECISION-MAKING BASED ON  
AGREEMENT

*AGREEMENT ON EMPLOYEE INVOLVEMENT IN DECISION-MAKING IN THE SE*

Article 15

(1) The negotiating committee and the participating companies shall determine, by written agreement, arrangements for the involvement of employees within the SE.

(2) An agreement referred to in paragraph 1 of this Article shall contain the following information:

1) the scope of the agreement

2) the composition, number of members and allocation of seats on the body representative of the employees of the SE which participates in decision-making through information or consultation

3) the manner and course of the information and consultation procedures with the body representative of the employees of the SE

4) the venue, frequency and duration of meetings of the body representative of the employees of the SE

4) the resources needed for operation of the body representative of the employees of the SE

6) the term of the agreement

7) cases in which the agreement is to be renegotiated and the procedure thereof

8) the procedure for making amendments to the Agreement in the event of exceptional circumstances affecting the employees' interests to a considerable extent

(3) If in the agreement referred to in paragraph 1 of this Article, the parties decide to establish one or more information and consultation procedures, instead of establishing a body representative of employees of the SE, the content and the manner of implementation thereof shall be determined in the agreement.

4) By way of agreement referred to in paragraph 1 of this Article the parties to negotiations may establish arrangements for employee participation, including the number of employees' representatives in the company's organ which supervises business management and the right to recommend or oppose the appointment of some or all members of the company's organ which supervises business management.

*Establishment of an SE by transformation*

Article 16

(1) In the case of an SE established by way of transformation, the agreement referred to in Article 15 hereof shall provide for at least the same level of employee involvement in decision-making as the ones existing within the company to be transformed into an SE.

(2) The provisions of Chapter 4 hereof shall not apply to the procedures of employee involvement in decision-making in the SE regulated by the agreement referred to in Article 15 hereof, unless otherwise determined in the agreement.

#### 4 EMPLOYEE INVOLVEMENT IN THE STATUTORY DECISION-MAKING

##### *Application of this Act*

##### Article 17

(1) The provisions of this chapter shall apply to the SE based in the Republic of Croatia if:

1) the parties so agree or

2) if within the time limit referred to in Article 10, paragraphs 2 and 3 hereof, no agreement was reached on the procedures of employee involvement in decision-making in the SE, and participating companies opt for the application of the provisions of this Act and resume the process of establishing the SE, and the negotiating committee has not made a decision under Article 13, paragraph 1 hereof.

(2) The provisions of this chapter shall not apply if, after the resumption of the negotiations referred to in Article 13, paragraph 4 hereof, the agreement on the employee involvement in decision-making in the SE was not concluded.

##### *Works council of the SE*

##### Article 18

(1) In the case referred to in Article 17 hereof a works council of the SE shall be established for the purpose of employee involvement in the information and consultation procedures.

(2) The works council of the SE participates in decision-making on questions related to the SE and the companies referred to in Article 5 hereof situated in

another Member State or questions which exceed the powers of the decision-making organs in a single Member State.

*Composition of the works council of the SE*

Article 19

(1) The works council of the SE shall be composed of the representatives of employees employed in the SE and its subsidiaries and establishments.

(2) The number of council members referred to in paragraph 1 of this Article shall be determined in proportion to the total number of employees employed in the companies referred to in paragraph 1 of this Article at the time of notification referred to in Article 7, paragraph 2 hereof, so that for each 10 %, or a fraction thereof, of the total number of employees employed therein one representative is appointed to the works council of the SE.

(3) The works council of the SE shall adjust the number of its members, in accordance with paragraph 2 of this Article, on the basis of the annual report on the number of employees employed in the SE.

(4) Croatian employees' representative in the works council of the SE shall be elected by the employees of all companies, their establishments or affiliated companies by secret ballot in free and direct elections.

(5) The lists of candidates for the representative of employees referred to in paragraph 4 of this Article may be proposed by trade unions whose members are employed in the companies, affiliated companies or establishments or a group of employees supported by at least 10 % of the employees employed in companies, affiliated companies or establishments.

(6) The Minister of Labour shall, by virtue of the Ordinance referred to in Article 9 paragraph 3 hereof, regulate the election and dismissal of Croatian employees' representatives from the works council of the SE.

*Operation of the works council of the SE*

Article 20

(1) Appointed or elected members of the works council of the SE shall inform the company's organ which supervises business management of the appointment or election, no later than eight days after the appointment or election.

(2) The company's organ which supervises business management shall, within thirty days of receipt of the notification referred to in paragraph 1 of this Article, convene the inaugural meeting of the works council of the SE wherein the members shall, by a majority vote, elect the president, vice president and adopt the rules of procedure.

(3) The works council of the SE is represented by the President or, in his absence, the Vice President.

(4) The Works Council of the SE may, if comprising more than ten members, regulate the establishment of the tripartite board by following the Rules of Procedure referred to in paragraph 2 of this Article.

(5) The works council of the SE shall, within four years after the establishment, decide whether to start negotiations for the conclusion of the agreement referred to in Article 15 hereof or to continue to operate in accordance with this Act.

(6) If the works council of the SE decides to start negotiations referred to in paragraph 5 of this Article, it shall have the same rights and obligations as the negotiating committee.

(7) If within the time limit referred to in Article 10, paragraphs 2 and 3 hereof, no agreement has been reached on the employee involvement in decision-making in the SE, works council of the SE shall continue to operate in accordance with this Act.

#### *Powers of the works council of the SE*

### Article 21

(1) The works council of the SE or its board may hold an annual meeting with the company's organ which supervises business management for the purpose of information and consultation in connection with questions relating to operation and development plans of the SE or companies referred to in Article 5, paragraphs 3 and 4 hereof, which have a registered office in another Member State or questions which exceed the powers of the decision-making organs in a single Member State.

(2) The company's organ which supervises business management shall regularly provide the works council of the SE with the reports on the operation of the SE and its development plans, agendas for sessions of the company's organ which supervises business management, as well as

documentation on the work of the general assembly of the founders of the SE and it shall also inform the management boards of participating companies, their subsidiaries and establishments.

(3) The business report and the development plans referred to in paragraph 1 of this Article shall apply to:

- 1) the situation in the SE and the results of its operations
- 2) the introduction of new technologies, development plans and their impact on the economic and social position of employees
- 3) the number and structure of employees by the type of the employment contract, and the employment plan
- 4) redundancy support plan
- 5) the organizational and status changes of the SE
- 6) the change of the registered office of the SE and the transfer of economic activity or a part of economic activity.

(4) The works council of the SE or its board shall inform the employees' representatives employed in the SE on the content and outcome of the participation procedures in decision-making in the SE, and if such representatives have not been elected or appointed, they shall inform all the employees employed in the SE.

*Involvement in the decision-making in the SE in exceptional circumstances*

## Article 22

(1) The company's organ which supervises business management shall, in a timely manner, inform the works council of the SE or its committee, if it has been established, on exceptional circumstances affecting the employees' interests, provide the relevant documentation and consult with it on the matter in a special meeting.

(2) As exceptional circumstances referred to in paragraph 1 of this Article shall particularly be regarded:

- 1) the change of the registered office of the SE and the transfer of economic activity or a part of activity.

2) the status change of the SE

3) redundancy support

(3) If the body responsible for the management of the SE does not accept an opinion or a suggestion of the works council of the SE, the works council of the SE shall be entitled to another meeting with the body which supervises the management of the SE for the purpose of reaching an agreement.

(4) The members of the works council of the SE who are representatives of the employees whose interests are affected by special cases referred to in paragraph 2 of this Article shall be entitled to participate in meetings referred to in paragraphs 1 and 3 of this Article, if such meetings are held with the board.

(5) Prior to the meeting referred to in paragraphs 1 and 3 of this Article, works council of the SE or the Board referred to in paragraph 4 of this Article may hold a preparatory meeting without the presence of other members of the body which supervises the management of the SE.

*The cooperation between the competent organ of the SE and the works council of the SE*

#### Article 23

(1) The provisions of Article 10 hereof shall apply accordingly to the cooperation of the competent organ of the SE and the works council of the SE.

(2) The provisions of Article 11 hereof shall apply to working conditions of the works council of the SE.

(3) The provisions of Article 29 hereof shall apply accordingly to the members of the negotiating committee, the members of the works council of the SE, employees' representatives in the organs which supervise business management of the SE.

*participation of employees in the SE*

#### Article 24

(1) The provisions of this Act shall apply to participation referred to in Article 6, paragraph 4 hereof if the SE is established by:

1) transformation, and the employees prior to the transformation were entitled to participation in the administrative or supervisory body of the company transformed into an SE

2) by merger, if prior to the registration of the SE at least 25 % of employees employed in participating companies had the right to participate or if prior to the registration in one or more of these companies less than 25 % of employees had the right to participate, if the negotiating committee so decides

3) as a holding company or a subsidiary, if prior to the registration of the SE at least 50 % of employees employed in participating companies had the right to participate or if prior to the registration in one or more of these companies less than 50 % of employees had the right to participate, if the negotiating committee so decides.

(2) In the SE referred to in paragraph 1, subparagraph 1 of this Article the participation procedure in place prior to the transformation of participating companies into the SE shall continue.

(3) In the SE referred to in paragraph 1, subparagraphs 2 and 3 of this Article, when there are several participation procedures in participating companies, the negotiating committee, works council or employees employed in the SE or companies referred to in Article 5, paragraphs 2, 3 and 4 hereof shall choose the participation procedure in the SE, including the appointment or election of their representatives in the company's organ which supervises business management, provided their share is smaller than the share of employees' representatives in the organs of participating companies.

(4) The negotiating committee, works council of the SE or employees employed in the SE shall notify the participating companies within eight days after adopting the decision on the participation procedure.

(5) By way of derogation from the provisions of paragraphs 1, 2, 3 and 4 of this Article, it is not necessary to regulate the right to participation of employees in the SE if such a right did not exist in any participating company prior to the formation of the SE.

*Employee representation in the organ which supervises business management of the SE*

## Article 25



(1) The works council of the SE shall decide on the allocation of seats among employees' representatives in the organ which supervises business management of the SE, by appointing or electing employees' representatives from different Member States, in proportion to the share of employees employed in participating companies in a particular Member State in the total number of employees employed in the SE.

(2) If during the decision-making referred to in paragraph 1 of this Article employees of participating companies of one Member State are overrepresented, and at the same time employees in participating companies in other Member States are not represented, the works council of the SE shall decide on the new allocation of seats to employees' representatives.

(3) When deciding on the new allocation of seats to employees' representatives referred to in paragraph 2 of this Article it is necessary to ensure the representation of employees of participating companies from Member States which have not been represented previously.

(4) In the case referred to in paragraph 3 of this Article, it is necessary to ensure representation of employees employed in participating companies from the Member State in which the SE is to have a registered office, and if these employees are already represented, it is necessary to ensure the representation of employees in participating companies in the Member States who have not been represented but have the highest proportion of employees.

(5) If the composition and the number of members in the organ which supervises business management of the SE changes, the works council of the SE shall decide on the new allocation of seats to employees' representatives.

(6) An employees' representative appointed or elected to the organ which supervises business management of the SE shall have the same legal position as other appointed members of that organ.

*The employee representative from the Republic of Croatia in the organ which supervises business management of the SE*

## Article 26

The employee representative from the Republic of Croatia in the organ which supervises business management of the SE with the registered office in the Republic of Croatia shall be appointed or elected by the works council of the SE, in accordance with the general provisions of the labour law regulating the

involvement of employees' representatives in the competent organ of the undertaking.

*Preventing the abuse of the procedure for establishing an SE*

Article 27

(1) The procedure for establishing the SE shall not deprive employees referred to in Article 4 hereof of their right to participate in decision-making .

(2) If by a decision of a competent court it has been determined that the abuse of the procedure for establishing an SE resulted in the suspension or denial of employees' rights to participate in decision-making, the SE or participating companies shall go through the negotiation process again, in accordance with the provisions hereof.

(3) Court jurisdiction and deadlines for adopting the decision referred to in paragraph 2 of this Article shall be determined in accordance with the general provisions of the labour law which prescribe court jurisdiction and deadlines for adopting decisions on invalidating elections, disbanding works councils and dismissing any of their members.

5 PRINCIPLES OF EMPLOYEE INVOLVEMENT IN DECISION-MAKING AND PROTECTION OF EMPLOYEES' REPRESENTATIVES

*Cooperation between employers and employees' representatives*

Article 28

(1) Cooperation between the organ which supervises business management of the participating companies and employees' representatives shall be based on mutual trust.

(2) The provision of paragraph 1 of this Article shall apply to the cooperation between the organ which supervises business management of the participating companies and employees' representatives within the scope of information, consultation and participation procedures.

(3) Members of the negotiating committee shall not disclose after the expiry of their term any confidential business information that they have learned while performing the duties hereunder.

(4) The duty of confidentiality referred to in paragraph 3 of this Article shall apply to:

1) employees' representatives within the scope of information, consultation and participation procedures

2) experts and translators

3) employees' representatives in the works council of the SE.

(5) The duty of confidentiality referred to in paragraph 3 of this Article shall not apply to:

1) the implementation of information, consultation and participation procedures with other members of the works council of the SE and with employees' representatives in participating companies, subsidiaries and establishments

2) relations with the employees' representatives in the competent organs of the company

3) the translators or experts who assist employees' representatives.

(6) The duty of confidentiality referred to in paragraph 4 of this Article shall not apply to:

1) employees' representatives with regard to experts and translators

2) employees' representatives within the scope of information, consultation and participation procedures with regard to translators and experts who assist them, as well as in relation to employees' representatives in participating companies, subsidiaries and establishments.

#### *Protection of employees' representatives in the Republic of Croatia*

### Article 29

With regard to rights and protection, general provisions of the labour law which prescribe working conditions of the works council, prohibition of discrimination of the members of the works council including the right to participate in meetings of the negotiating committee or the works council, or meetings arranged by the agreement referred to in Article 15 hereof shall apply accordingly to employees' representatives who participate in information, consultation and participation procedures and are employed in a participating company, subsidiary or establishment in the Republic of Croatia.

### III EMPLOYEE INVOLVEMENT IN DECISION-MAKING IN THE SCE

#### *Employees' right to participate in decision-making in the SCE*

#### Article 30

Employees employed in the SCE or in a participating undertaking, subsidiary or concerned subsidiary or establishment of the SCE which has or will have a registered office in the Member State shall be entitled to participate in decision-making in the affairs of the SCE.

#### *The concept of the SCE*

#### Article 31

- (1) SCE means any cooperative society established in accordance with a special law.
- (2) Participating undertaking means a company or a cooperative which directly participates in the establishment of the SCE.
- (3) Subsidiary means a company over which the participating company exercises a dominant influence within the meaning of Article 5, paragraph 3 hereof.
- (4) Concerned subsidiary or establishment means a subsidiary or establishment of a participating undertaking which is proposed to become a subsidiary or establishment of the SE upon its formation.
- (5) The company which exercises a dominant influence is, within the meaning of paragraph 3 of this Article, a company referred to in Article 5, paragraph 5 hereof.

#### *Employees' participation in decision-making*

#### Article 32

- (1) The employee involvement in decision-making in the SCE means the procedure of information, consultation and participation of employees, as well as other regulated procedures through which employees may exercise an influence on decisions to be taken within the company.
- (2) Information referred to in paragraph 1 of this Article means the informing of the works council or other employees' representatives on questions related

to the SCE and to undertakings referred to in Article 31, paragraphs 2, 3 situated in another Member State or questions which exceed the powers of the decision-making organs in a single Member State, at a time and in a manner which allows the employees' representatives to undertake an assessment of the possible impact and, where appropriate, prepare for consultations.

(3) Consultation referred to in paragraph 1 of this Article means the exchange of views and establishment of dialogue between the works council or other employees' representatives and the competent organ of the SCE, at a time and in a manner which allows the employees' representatives to express their opinion on the proposed measures, for the purpose of harmonising their views during decision-making process in the SCE.

4) Participation of employees referred to in paragraph 1 of this Article means the right to appoint or elect employees' representatives into the organ which supervises business management of the SCE (supervisory board, board of directors or other competent body), or the right to recommend or oppose the appointment of some or all representatives into the organ which supervises business management of the SCE.

*Application of the provisions on the employee involvement in decision-making in the SCE*

### Article 33

(7) The provisions of Title II hereof, namely provisions of Article 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 shall apply accordingly to the involvement of employees in decision-making in the SCE.

*SCE established by natural persons or a single legal entity and natural persons*

### Article 34

(1) In the case of an SCE established exclusively by natural persons or by a single legal person and natural persons, which together employ at least 50 employees in at least two Member States, the provisions referred to in Title III hereof shall apply.

(2) In the case referred to in paragraph 1 of this Article natural persons or a single legal entity and natural persons shall be deemed to be participating undertakings referred to in Article 31, paragraph 2 hereof.

(3) In the case of an SCE with a registered office in the Republic of Croatia, established exclusively by natural persons or by a single legal entity and natural persons, which together employ less than 50 employees or employ 50 or more employees in only one Member State, employee involvement in decision-making shall be governed by appropriate application of the provisions referred to in Title III hereof.

(4) In the SCE established in accordance with paragraph 3 of this Article, which has its registered office in another state and has a subsidiary or an establishment in the Republic of Croatia, the provisions of Title III hereof shall be applied on employee participation in decision-making, as appropriate.

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

(6) If, after the registration of an SCE referred to in paragraph 3 of this Article, at least one third of the total number of employees of the SCE and its subsidiaries or establishments in at least two Member States so requests or if the total number of employees reaches or exceeds 50 employees in at least two Member States, the provisions of Title III this Act shall apply.

*Participation in the general meeting or sectorial meeting*

Article 35

(1) The employees shall be entitled to participate in the general or sectorial meeting of the SCE if, by the agreement on employee involvement in decision-making in the SCE, participation of employees has been agreed in such a way that employees are entitled to appoint or elect their representatives who participate in the general or sectorial meeting with the right to vote, with the restriction that, in accordance with a special regulation, these representatives cannot control more than 15 % of votes.

(2) Apart from the case referred to in paragraph 1 of this Article, employees shall be entitled to appoint or elect employees into the general or sectorial meeting when:

- 1) a cooperative governed by such a system transforms itself into an SCE
- 2) such a participating system already exists in one of the participating undertakings.

(3) Employees shall be entitled to the right referred to in paragraph 2 of this Article if:

(1) within the period referred to in Article 10, paragraphs 2 and 3 hereof, parties to the negotiations have not reached an agreement, but have agreed on the application of the existing participation procedures

2) a participating undertaking governed by such a system has the highest proportion of participation.

#### IV IMPLEMENTATION SUPERVISION

##### *Administrative supervision*

##### Article 36

Administrative supervision of the implementation of this Act and the regulations made thereunder is performed by the central state office responsible for labour affairs, if not otherwise stipulated by other laws.

##### *Inspection*

##### Article 37

(1) Inspection of the implementation of this Act and the regulations made thereunder shall be conducted by the central state office responsible for labour affairs, if not otherwise stipulated by other laws.

(2) The labor inspector conducting the inspection shall have powers under the law or the regulations made thereunder.

#### V PENAL PROVISIONS

##### Article 38

(1) An undertaking as a legal entity shall receive a misdemeanor fine from HRK 7000.00 to 15,000.00 in the following cases:

1) if within the prescribed deadline it fails to start negotiations with employees' representatives on employee involvement in decision-making in the SE and decision-making in the SCE or if prior to negotiations fails to inform employees' representatives of all the prescribed information (Article 7, paragraph 1 and 2)

2) if it fails to ensure working conditions of the negotiating committee in a manner prescribed by this Act (Article 11 and Article 33)

3) if within the prescribed time limit it fails to convene the inaugural meeting of the works council of the SE or the works council of the SCE (Article 20, paragraph 2 and Article 33)

4) if it fails to regularly submit reports and prescribed documentation to the works council of the SE or to the works council of the SCE (Article 21, paragraphs 1, 2 and 3 and Article 33)

(5) if it fails to timely inform the works council of the SE or the SCE, or its committee, if established, of special circumstances affecting the employees' interests to a considerable extent or fails to present relevant documentation or to consult it on the matter in a special meeting (Article 22. paragraph 33)

6) if it fails to ensure conditions needed for the works council of the SE or the SCE, or their board, to perform their duties in a manner prescribed by this Act (Article 23 and Article 2)

(2) The undertaking as a natural person and the responsible person of the legal entity shall receive a HRK 2,000.00 fine for the misdemeanour laid down in paragraph 1 of this Article.

## VI TRANSITIONAL AND FINAL PROVISIONS

### Article 39

(1) The procedure for the election of employees' representatives to a body where employees participate in the decision-making, which was initiated before this Act entered into force, shall be conducted and completed in accordance with the provisions of the Labour Act (Official Gazette 149/09, 61/11, 82/12 and 73/13), and the members of such a body shall remain in office until their term expires.

(2) The Minister of Labour shall, within three months of the date of entry into force of this Act, issue the Ordinance referred to in Article 9 Paragraph 3 hereof.

(3) Pending the entry into force of the ordinance referred to in paragraph 2 of this Article, the Ordinance on Electing Representatives of Employees from the Republic of Croatia to Bodies for Implementing Employee Participation



in the Decision-making at the Transnational Level (Official Gazette 122/13) shall apply.

#### Article 40

This Act shall enter into force on the eighth day after the day of its publication in the Official Gazette.

Class: 022-03/14-01/15

Zagreb, 15 July 2014

#### THE CROATIAN PARLIAMENT

President

of the Croatian Parliament

Josip Leko m.p.