

# The status of transposition of SE-legislation in Estonia

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## 1. Transposition of the SE Directive into Estonian Law

### 1.1 Legislative Drafting Process

Estonia began to make preparations for the transposition into national law of Directive 2001/86/EC supplementing the Statute for a European Company with regard to employee involvement (hereinafter: the SE Directive) in October 2002 when a commission was set up at the Ministry of Social Affairs in order to elaborate the Social Dialogue Act. The draft of the Social Dialogue Act was completed at the end of 2003 and harmonised Estonian labour law with three EC directives: Directive 94/45/EC on the establishment of a European Works Council or of a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (hereinafter: the EWC Directive), Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, and the SE Directive.

On 11 March 2004, the Estonian social partners – the Confederation of Estonian Trade Unions and the Estonian Employers' Confederation – made a joint declaration stating that the parts of the draft of the Social Dialogue Act that deal with employee involvement at European level may be adopted without essential amendments, but the national system for informing and consulting employees (i.e. the rules arising from Directive 2002/14/EC) must be regulated in a separate act.

The Estonian Ministry of Social Affairs took the position of the social partners into account: the Ministry removed the regulation on the national information and consultation system from the draft of the Social Dialogue Act, renamed the draft the Employee Involvement Act and sent it to the *Riigikogu* (the Estonian Parliament) at the beginning of November 2004.

The draft of the Employee Involvement Act passed three readings in the *Riigikogu* without extensive debate. The *Riigikogu* adopted the act on 12 January 2005, renaming it the Employee Involvement in the Activities of Community-Scale Undertakings, Community-Scale Groups of Undertakings and European Company Act (hereinafter: the IEA). The IEA will be published in the *Riigi Teataja* (State Gazette) on 1 February 2005 and will enter into force on 11 February 2005.

### 1.2 Involvement of employees in the activities of Community-scale undertakings, Community-scale groups of undertakings and European Company act

As already stated, the IEA harmonises Estonian law with two EC directives: the EWC Directive and the SE Directive. The act consists of six chapters:

1. General provisions.
2. Employee involvement in Community-scale undertakings or Community-scale groups of undertakings.
3. Employee involvement in the European Company.
4. State supervision.
5. Liability.
6. Implementation provisions.

Thus, the SE directive is transposed into Estonian law by the third chapter of the IEA: Employee involvement in the European Company. The structure of this part of the act is as follows:

**Division 1.** General provisions.

**Division 2.** Establishment of the representative body and procedure of employee involvement.

Subdivision 1. Negotiations on employee involvement.

Subdivision 2. Agreement on employee involvement.

Subdivision 3. Statutory representative body and employee involvement.

Sub-subdivision 1. General provisions.

Sub-subdivision 2. Representative body.

Sub-subdivision 3. Employee involvement.

**Division 3.** Special provisions.

According to the IEA, employees' representatives are elected to the special negotiating body and the statutory representative body by a general meeting of employees. The Confederation of Estonian Trade Unions does not approve of this solution, stating that it should be the trade unions' prerogative to elect employees' representatives to these bodies. However, given the fact that in Estonia trade unions have been established in relatively few companies (only about 13 per cent of the workforce are members of trade unions) it is reasonable to give the right to elect employees' representatives to a general meeting of employees.

## **2. Implementation of Regulation (EC) No. 2157/2001 in Estonia**

The most important act on companies in Estonia is the Commercial Code (available in English at <<http://www.legaltext.ee/>>). However, the Estonian Ministry of Justice took the view that the addition of the implementing provisions on European Companies to the Commercial Code would not be rational, as Regulation (EC) No. 2157/2001 on the Statute for a European Company (SE) constitutes a legal basis for European Companies which is independent of national law.

Therefore, in order to harmonise Estonian company law with Regulation (EC) No. 2157/2001 the Estonian Ministry of Justice prepared the draft of the Council of the

European Union Regulation (EC) No. 2157/2001 on the European Company Statute (SE) Application Act (hereinafter: the ECA) in the first half of 2004. The draft of the ECA was sent to the *Riigikogu* in July 2004 and passed on 10 November 2004. The ECA entered into force on 10 December 2004.

As already mentioned, the ECA lays down rules on the implementation of Regulation (EC) No. 2157/2001 in special cases when the place of foundation of the European Company is Estonia. The ECA consists of five chapters: General provisions, Transfer of the SE's registered office, Establishment of the SE, SE organs, and Winding Up of the SE.

The ECA mostly concerns regulation of SE organs. According to Regulation (EC) No. 2157/2001, an SE may have a one-tier or a two-tier management system. The Estonian Commercial Code provides only for a two-tier management system (a management board and a supervisory board) for public limited liability companies. Therefore, it is necessary to issue a regulation on the one-tier management system in Estonia (a member state has this right in conformity with Article 43 (4) of the Regulation). The ECA states that the administrative organ managing an SE under the one-tier system shall be an administrative board. The act also provides detailed rules on the legal status of this body.

### **3. Concluding remarks**

Taking into account the economic situation in Estonia, it is unlikely that many SEs will be established. The main importance of transposition of the SE directive into Estonian law lies in the possibility of electing employees' representatives in participating companies and subsidiaries or establishments that are situated in Estonia.

Last but not least, over the next few months both the IEA and the ECA will be translated into English and will be available on the Internet at <http://www.legaltext.ee/>.