



Country report:

Poland

**Transposition of the European Cooperative
Society (SCE) Regulation and
Directive in Poland**

by Dr. Dagmara Skupień
University of Łódź, Faculty of Law and Administration, Poland

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Transposition of the SCE Regulation and Directive in Poland

1. The Law on the European cooperative company of 22 July 2006 (ustawa z dnia 22 lipca 2006 r. o spółdzielni europejskiej) entered into force on 18 August 2006. This Law implements under Polish law Council Directive 2003/72/EC, and in some respects also clarifies Council Regulation 1435/2003/EC. The Law has been published in the Polish Journal of Laws (Dz.U. 2006.149.1077) and is also available (but only in Polish) on the Parliament website: www.sejm.gov.pl.

2. The Law's provisions concern: a) the registration procedure, b) the governing bodies of the SCE, c) transfer of the statutory seat of the SCE, d) employee involvement in the SCE, e) protection of employees' rights, and f) sanctions for non-compliance.

a) The registration procedure for SCEs under Polish Law takes place according to the rules governing registration of Polish joint-stock companies. The competent tribunal is the registration tribunal of the statutory seat of the SCE. The Law lays down the documents required for registration, including the agreement on employee involvement and the decision of the SNB to halt negotiations or refuse to start them; these documents are not demanded by the tribunal if the motion to register the SCE is lodged after the periods prescribed for negotiations, that is, six months or one year (if the parties agree to extend it).

b) The Law complies with the Regulation by giving a choice of a monistic or dualistic system. In the SCE under Polish legislation, under the dualistic system the SCE management board may confer the day-to-day running of the business on the executive director; the supervisory board should consist of at least three members of the SCE; and the SCE statutes may provide that members of the management board be appointed or dismissed by the general assembly. In the monistic system, the administrative board should consist of at least three members; its members may be dismissed or suspended by the general assembly; and the administrative board may appoint an executive director from its members.

- c) These provisions concern the protection of creditors in case of the transfer of the seat of the SCE from the Polish territory to another country and lay down the formalities related to the transfer of the SCE seat to or from Poland.
- d) **SNB and negotiations:** The representative trade unions have priority in selecting SNB members. Only if there are no representative trade unions in the undertaking, or there is more than one organisation and they cannot reach agreement on nominations are the SNB members selected by the employees. However, in the latter situation selection is from candidates proposed by the trade unions. Besides, the main Polish trade unions (*NSZZ Solidarność* , *OPZZ*, and *Forum Związków Zawodowych*) may nominate their officials who are not employees to the SNB. If selection does take place by employee ballot, such a ballot should be direct and secret and is valid only if at least 50% of employees participate. If this threshold is not reached a new ballot should be organised after a month and shall be valid regardless of the number of participants. The first meeting of the negotiating parties should be called within 14 days of the SNB being selected. The negotiations according to the Polish Law should be conducted in good faith and with a view to reaching an agreement. In case of difficulties, the parties may appoint a mediator. As to the agreement on employee involvement, it must be in writing and, on the employees' side, should be signed by the SNB chairman and at least one of its members.

Standard rules: Polish employee representatives to the representative body are selected according to rules governing the selection of Polish members to the SNB, that is, priority is given to the representative trade unions' nominations. Reviews of the membership and distribution of seats on the representative body should take place every two years. The representative body's members are entitled to paid leave not exceeding two months during their term of office. Coverage of the cost of calling in experts shall as a rule be restricted to one expert only, unless the SCE and the representative body decide otherwise. If the employees of the SCE have the right to be represented on a supervisory board or an administrative board, the representatives of the Polish employees are selected by all the employees in a direct and secret ballot . The employee members of the supervisory or administrative board have the same rights and obligations as the members representing the

cooperative members.

Confidential information: The SNB, the representative body or other employee representatives have the right to apply to the district commercial court (sąd rejonowy-sąd gospodarczy) to lift the confidentiality obligation imposed on them or to order access to information. At the request of the management, in these proceedings the court may decide to limit the right of access to the evidence provided by the management if access to such materials would risk disclosing the SCE's secrets.

- e) The provisions on the protection of employees' rights include the protection of employee representatives and measures against the abuse of employees' rights. As regards the protection of employee representatives, the employer cannot terminate an employment contract and cannot change employment conditions (including salary) to the detriment of an employee if the employee is a member of the SNB (or a representative body or is an employee representative on the supervisory board or the administrative board) and for a year after expiry of that membership without the consent of a trade union (if the trade union represents the employee) or the labour inspectorate (if no trade union represents the employee). Employee representatives who are members of the above listed bodies are entitled to absences from work due to duties resulting from that membership. As regards the measures against the abuse of employees' rights, if substantial changes are made regarding the SCE or its dependent companies that may result in the limitation or termination of employee involvement in the SCE, new negotiations aimed at reaching a new agreement on employee involvement in the SCE should be initiated.

According to the Law, persons who breach provisions of the Law or act to the detriment of the SCE (members of the management board, supervisory board, administrative board or liquidators of the SCE) shall be subject to a fine, various restrictions or even an outright prohibition. The Polish Law on the SCE penalizes with a fine or various restrictions any attempt to deprive workers of their employees' involvement rights. This may include attempts to prevent or obstruct the setting up or functioning of the SNB or representative body. Acts of discrimination against members of the SNB or of the representative body or employees representatives are also included.