

NB: Unofficial translation

Ministry of Employment and the Economy

2011

**Act on Co-operation within Finnish and Community-wide Groups of Undertakings
(335/2007; amendments up to 620/2011 included)**

Chapter 1

General provisions

Section 1

Purpose of the Act

This Act lays down provisions on the co-operation procedures between the undertaking's management and personnel of both Finnish and community-wide groups of undertakings utilised to ensure the exchange of opinions and dialogue between the employees' representatives and undertaking's management concerned.

The purpose of the Act is to improve the rights of employees to obtain information and to be consulted with regard to operation of undertakings and groups of undertakings and their future prospects and in particular on matters the decisions of which affect the position of the employees and their employment within the group of undertakings or the undertaking. The purpose of the Act is also to promote joint interaction between the employees of the undertakings and the groups of undertakings.

Section 2

Scope of application

The provisions in chapters 1, 2, 4 and 5 of this Act apply to Finnish groups of undertakings and undertakings referred to in section 7 the operations of which comprise administratively independent operational units.

The provisions in chapters 1 and 3—5 of this Act apply to community-wide group of undertakings and a community-wide undertaking referred to in section 13.

Section 3

Other legislation on the employees' rights of participation

The Act on Employee Involvement in European Companies (SE) and European Co-operative Societies (SCE) (758/2004) provides on the arrangement of employee involvement in European companies and European cooperative societies.

The Act on Personnel Representation in Company Administration (725/1990) provides on the right of the personnel to participate in the administration of companies.

Notwithstanding the provisions of this Act in co-operation between a Finnish undertaking and its personnel the provisions of the Act on Co-operation within Undertakings (334/2007) shall be applied.

Section 4

Group of undertakings and the controlling undertaking

Group of undertakings referred to in this Act means a group, which contains the controlling undertaking and the undertakings in control.

An undertaking, which has decisive influence in another undertaking by ownership, participation in the financing or on the basis of the articles of association or byelaws of the undertaking in control or in another similar way shall be considered as a controlling undertaking.

Unless otherwise established, the undertaking is considered to exercise control in another undertaking:

- 1) when it has the power to directly or indirectly appoint more than half of the members of the undertaking's board of directors or a similar organ;
- 2) when it holds a majority of the undertaking's voting rights on the basis of shares or interests; or
- 3) when it directly or indirectly owns more than half of the undertaking's shares or interests.

If two or more undertakings within the group of undertakings can be considered to exercise control, the control is primarily with the undertaking referred to in section 3(1) and secondarily with the undertaking referred to in section 3(2) unless it can be established that one of the undertakings exercises control on other grounds.

The law applicable to determination of control within a community-wide group of undertakings or an undertaking is laid down in section 16.

Section 5 Counting the number of employees

The number of employees referred to in sections 7 and 13 within a Finnish group of undertakings and an undertaking are calculated, taking into account part-time and fixed-term employees, as an average of the employees employed within the undertaking during the past two (2) years.

Section 6 Labour Council opinions

The Labour Council issues opinions on whether a group of undertakings or an undertaking should be considered such that this Act applies thereto as provided in the Act on the Labour Council and Derogation Permits Concerning Labour Protection (400/2004).

Chapter 2 Co-operation within a Finnish Group of Undertakings

Section 7 Group of undertakings and an undertaking

The provisions of this chapter shall apply to a Finnish group of undertakings, which has a total minimum of 500 employees in Finland. The provisions shall apply to those Finnish undertakings within a group of undertakings which have at least 20 employees.

If the group of undertakings consists of one or more groups of undertakings the provisions of this chapter shall only apply to the uppermost group of undertakings unless the management and employees' representatives of the latter otherwise agree on the arrangement of co-operation.

The provisions of this chapter shall also apply once the number of employees referred to in subsection 1 above is fulfilled to such Finnish undertaking the operations of which consist of administratively independent operational units located in different places in Finland. The provisions relating to an undertaking within a group of undertakings apply to the administratively independent operational units.

If the field of activity of an undertaking belonging to a group of undertakings or an operational unit of an undertaking is not closely connected to the productive or service operations the group of undertakings or the undertaking engages in and the operation of the said undertaking or operational unit is not significant for the position of the employees of the group of undertakings or the undertaking, the said undertaking can be excluded from the co-operation prescribed in this chapter.

Section 8

Agreement on co-operation

Management of a group of undertakings or an undertaking and the employees' representatives can notwithstanding the provisions of sections 9—12 agree on the content and the procedure of co-operation and the quantity and division of the employees' representatives by personnel groups.

Each personnel group of the group of undertakings or the undertaking is entitled to choose one representative among its number to the employees' negotiating body. The personnel groups can jointly agree prior to election of the representatives that a maximum of three additional members are to be elected to the employees' negotiating body. It shall be agreed at the same time which personnel groups are entitled to choose the additional members.

Agreement on co-operation shall be made in writing. The agreement can be in force for a fixed-term or until further notice. The agreement in force until further notice can be terminated by the management of the group of undertakings or the undertaking and by each personnel group's representative referred to in the contractual co-operation. If the personnel group has more than one representative, their consensus is required for the agreement to be terminated. The right of the representatives of the personnel groups to terminate this agreement can be restricted by the agreement on co-operation. The period of notice is eight months unless otherwise agreed.

Once the agreement on co-operation ceases to be in force, the provisions of sections 9—12 shall apply.

Section 9

Standard rules on co-operation within a group of undertakings and an undertaking

The provisions of sections 10—12 shall apply to a group of undertakings and an undertaking, where no agreement has been concluded on co-operation between the management and the employees. Agreement on co-operation within a group of undertakings or an undertaking can be concluded at any time notwithstanding the provisions of sections 10—12.

In a group of undertakings or an undertaking, which fulfils the preconditions for application provided in section 7 after its number of employees has increased, however, the standard rules shall only be applicable after 12 months from the commencement of the negotiations referred to in section 8, nevertheless, at the latest within 24 months from the date the preconditions for application of the Act were fulfilled unless co-operation has been earlier agreed upon.

Section 10

Employees' representatives

The employees of each Finnish undertaking of the group of undertakings are entitled to choose one representative from among their number for the co-operation between the management and employees of the group of undertakings. The employees' representatives shall be elected so that all personnel groups in the group of undertakings have at least one representative.

Section 11 Matters informed of and handled in the co-operation procedure

The employees' representatives of the undertakings operating in Finland belonging to the group of undertakings shall be provided with:

- 1) A comprehensive report on the financial position of the group of undertakings together with the consolidated financial statements or if the group of undertakings is under law not required to prepare the consolidated financial statements a similar report available to the group of undertakings;
- 2) once during the accounting period information on the group of undertakings' prospects for production, employment, profitability and cost structure and an evaluation of probable changes in the number of personnel and the requirements for employees' occupational skills or competences in each personnel group;
- 3) information on the resolutions proposed by the management of the group of undertakings regarding material expansion, reduction or closure of the operations of a undertaking belonging to the group of undertakings; and
- 4) information on the resolutions proposed by the management of the group of undertakings which affect the position of the employees in materially changing the product range, services or other similar activity of the undertaking belonging to the group of undertakings.

An undertaking belonging to the group of undertakings but operating outside Finland shall be given in addition to the information evident from the consolidated financial statements or similar report only such information referred to in subsection 1(2) which has material significance to the position of the group of undertakings' employees working in Finland.

Section 12 Co-operation procedure

A person familiar with the matters informed about who belongs to the management of a group of undertakings or an undertaking referred to in section 7(3) or is appointed by the management, shall provide the information referred to in section 11(1) so that in discussing the matters the joint interaction between the management of the group of undertakings or the undertaking consisting of independent operational units and the employees' representatives can be realised as well as the joint interaction between the employees' representatives.

Information of the matters referred to in section 11(1)(3) and (4) shall be provided for the employees' representatives concerned. The said information shall be provided so that the co-operation procedures and negotiations referred to in chapters 6—8 of the Act on Co-operation within Undertakings can be applied in the undertaking or operational unit concerned.

Chapter 3 Co-operation in a community-wide group of undertakings and an undertaking

Section 13 Community-wide group of undertakings and an undertaking

The provisions of this chapter apply to private or public groups of undertakings and undertakings engaged in economic activity, which have a total minimum of 1,000 employees within the European Economic Area (hereinafter the EEA) when:

- 1) a community-wide group of undertakings has at least two undertakings located in at least two EEA member states and each undertaking has a minimum of 150 employees; or

2) a community-wide undertaking has in each of at least two EEA member states a minimum of 150 employees.

Section 13a (620/2011)
Transnational matter

A transnational matter refers to a matter concerning an entire community-wide group of undertakings or an undertaking, or at least two undertakings of a group of undertakings or an operational unit of a community-wide undertaking located in different Member States of the European Economic Area, and a matter that, regardless of the number of Member States, has a significant effect on the position of the employees or which involves transfers of activities between Member States.

Section 13b (620/2011)
Employees' right to receive information and be consulted

In a community-wide group of undertakings or undertaking, employees must be informed of any transnational matter and be consulted regarding any transnational matter, at the relevant level of management and representation.

Section 13c (620/2011)
Information and consultation

The information must be provided at such time, in such fashion and with such content as to provide employees' representatives with the information necessary in terms of considering the matter, allowing employees' representatives to carry out a sufficient examination thereof and to prepare for the consultation with the competent organ of the community-wide undertaking or group of undertakings.

The consultation must be carried out in the form of a dialogue between employees' representatives and the central management, or another appropriate level of management. The time, fashion and content of consultation must be such as to enable employees' representatives to express an opinion on the basis of the information provided on the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, which may be taken into account within the community-wide undertaking or community-wide group of undertakings when resolving the matter.

Section 14
Derogations due to the EC Merger Regulation

Undertaking referred to in Article 3(5)(a) and (c) of the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings shall not be considered as a controlling undertaking.

Section 15
Effect of the liquidation proceedings on control

Administrator of an estate, who carries out his duties provided in the Bankruptcy Act (120/2004), Restructuring of Enterprises Act (47/1993), Limited Liability Companies Act (624/2006) or similar legislation, is not considered to exercise control referred to in section 4 on the basis of this alone.

Section 16 Control and choice of law

In determining the controlling undertaking the applicable law is the law of the EEA member state applicable to each undertaking separately within the group of undertakings. However, if the law of the member state is not applied to the undertaking, the law applicable to defining control is the law of that member state where the undertaking's appointed representative resides or if none has been appointed the group of undertaking's largest undertaking by number of employees is situated.

Section 17 Central management

Obligations laid down in this chapter concern a controlling undertaking within a community-wide group of undertakings or a community-wide undertaking registered in Finland (*central management*).

If the central management of a community-wide group of undertakings or a community-wide undertaking is located outside the EEA, the obligations laid down in this chapter concern an undertaking in control located in Finland within a community-wide group of undertakings or an operational unit of a community-wide undertaking if the central management of the group of undertakings or the community-wide undertaking has so indicated.

If the central management of a community-wide group of undertakings or a community-wide undertaking located outside the EEA has not indicated which of the undertakings or operational units in its control, located in the EEA, shall be responsible for the obligations provided in this chapter the Finnish undertaking or operational unit in control shall be responsible for the said obligations provided it is the largest undertaking or operational unit of the community-wide group of undertakings or the undertaking on the basis of the number of employees, which is in control and is located within the EEA.

Section 18 (620/2011) Preparatory measures

The central management of a community-wide group of undertakings or an undertaking referred to in section 17 shall work actively together with the employees' representatives to establish a European Works Council or to introduce a corresponding information and consultation procedure.

The central management of a community-wide group of undertakings or an undertaking referred to in section 17 and the management of an undertaking of a community-wide group of undertakings located in Finland and the management of an operational unit of a community-wide undertaking are obliged to ensure that the parties preparing the introduction of an information and consultation procedure obtain the information required for commencing the negotiations referred to in section 22. In particular, this refers to the information concerning the structure of the community-wide group of undertakings or undertaking and the workforce, and the number of employees referred to in section 13.

Section 19 Establishment of employees' negotiating body

The employees are to elect a negotiating body:

1) when the central management of a community-wide group of undertakings referred to in section 17 or an undertaking proposes negotiations to establish a European Works Council or to introduce a

corresponding information and consultation procedure; or
2) when a total of at least 100 employees or their representatives from at least two undertakings or operational units located in at least two EEA member states request for commencement of said negotiations.

Section 20 (620/2011) Composition of the negotiating body and experts

The members of the employees' negotiating body shall be elected in proportion to the number of employees employed in each Member State by the community-wide undertaking or community-wide group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together.

The negotiating body shall report its composition to the central management of the community-wide group of undertakings or the undertaking, as well as to the management of the controlling undertakings within the group of undertakings or to the management of the operational units of the community-wide undertaking and to competent European workers' and employers' organisations.

For the purpose of the negotiations, the negotiating body may request assistance from experts of its choice which can include representatives of competent European-level trade union organisations. Such experts and trade union representatives may be present in an advisory capacity at negotiation meetings, at the request of the negotiating body.

Section 21 Number and selection of members in the negotiating body

The employees' negotiating body has at least three and no more than 18 members unless application of the first sentence of section 20 results in a larger number of members.

The employees of the operational units or undertakings located in Finland of a community-wide group of undertakings or an undertaking select their representatives to the negotiating body by agreement or election. If the employees do not agree upon the selection procedure of their representatives, the industrial safety delegates representing the two largest personnel groups of the undertakings or operational units shall together organise election of the members to the negotiating body or another selection procedure. All employees of the undertakings or operational units have a right to participate in the election organised by the industrial safety delegates.

Employees' representatives in the undertakings or operational units of the community-wide group of undertakings or the undertaking located in other EEA member states are selected pursuant to each state's national legislation or practice.

The employees' negotiating body shall inform its composition to the central management of the community-wide group of undertakings or the undertaking as well as to the management of the controlling undertakings within the group of undertakings or to the management of the operational units of the community-wide undertaking.

Section 22 Negotiations on the arrangement of co-operation

The central management and the employees' negotiating body shall negotiate in the spirit of co-operation for an agreement on the European Works Council or a similar information and consultation procedure.

The central management calls the employees' negotiating body to a meeting, in which the negotiations for an agreement referred to in section 1 above shall be commenced. The central management informs of the negotiation invitation to the management of the other undertakings within the community-wide group of undertakings or to the management of the operational units of the community-wide undertaking.

Central management must also inform competent European workers' and employers' organisations of any invitation to negotiate. (620/2011)

The negotiating body is entitled to convene, through any necessary means, for communication prior to meetings arranged with central management, and thereafter, without the presence of representatives of the central management. (620/2011)

Section 23 Liability for the costs of the negotiating body

Central management is responsible for selection of the members to the employees' negotiating body, the negotiations for an agreement referred to in section 22 conducted by the negotiating body as well as for all reasonable costs incurred from the use of experts by the negotiating body in these negotiations.

Section 24 Abstinence from the negotiations for an agreement

The employees' negotiating body may decide by at least a two-third's majority not to commence the negotiations referred to in section 22 or to discontinue negotiations already commenced. To recommence the negotiations the employees' negotiating body may be convened earliest in two years from the decision unless the central management and the negotiating body have agreed or agree upon a shorter time limit.

If the employees' negotiating body has decided pursuant to subsection 1 above to discontinue the negotiations, the subsidiary rules in sections 27—37 on the co-operation procedure shall not apply to a community-wide group of undertakings or an undertaking.

Section 25 Deciding upon the co-operation agreement within the negotiating body

The employees' negotiating body may conclude an agreement with the central management on one or several European Works Councils or on one or several other information and consultation procedures if it is supported by over half the members of the negotiating body.

Section 26 Agreement on European Works Council or other information and consultation procedure

Written agreement on the European Works Council shall, unless otherwise agreed, prescribe on:
1) the undertakings or operational units within the scope of the agreement;

- 2) the composition of the Works Council, the number of members and the allocation of seats, where possible taking account of the need for balanced representation of employees with regard to their activities, category and gender, and the term of office;
- 3) the tasks of the Works Council and the procedure for information and consultation and its relation to the corresponding national procedure;
- 4) the meeting place or places, frequency of meetings and duration of the meetings of the Works Council;
- 5) the composition, the appointment procedure, the functions and the procedural rules of the Works Council working committee;
- 6) the financial and other material resources to be allocated to the Works Council; and
- 7) the date of entry into force of the agreement and its duration, the arrangements for amending, terminating or renegotiating the agreement and the procedure in case the structure of the community-wide undertaking or group of undertakings changes. (620/2011)

Central management and the employees' negotiating body may agree, in writing, instead of establishing a European Works Council of one or several information and consultation procedures. The agreement shall contain provisions on matters of which the employees' representatives are entitled to receive information and be consulted. Such matters include in particular supranational matters of the community-wide group of undertakings or the undertaking, which have a significant effect on the position of the employees. Procedures as to how the employees' representatives are entitled to gather to discuss the information they have obtained shall also be prescribed in the agreement.

Agreement on a European Works Council or other information and consultation procedure overrides the standard rules in sections 27—38 on co-operation within a community-wide group of undertakings and an undertaking, unless otherwise provided in the agreement. (620/2011)

Section 26a (620/2011)

Information and consultation procedure in relation to other legislation on co-operation

Unless procedures specified in an agreement as referred to in section 26(1)(3) are in place, information and consultation shall be implemented both in a European Works Council and in a procedure pursuant to the Act on Co-operation within Undertakings, whenever decisions that may cause significant changes in work arrangements or contractual relations are under planning.

Section 26b (620/2011)

Adaptation of information and consultation procedure

Where the structure of the community-wide undertaking or community-wide group of undertakings changes significantly, and no provisions, established by agreement, are in place on such a change, or where the relevant contractual provisions conflict with one another, the central management shall initiate the negotiations referred to in section 22 on its own initiative, or at the written request of at least 100 employees or their representatives, in at least two undertakings or operational units in at least two different Member States.

In the negotiations referred to above in subsection 1, at least three members of each European Works Council shall be members of the employees' negotiating body, in addition to the members elected pursuant to section 20.

During the negotiations referred to in subsection 1, the European Works Councils shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council or Works Councils and the central management.

Section 27

Standard rules on co-operation within a community-wide group of undertakings and an undertaking

The provisions of sections 28—38 on a European Works Council shall apply to a community-wide group of undertakings or an undertaking:

- 1) when central management and the employees' negotiating body have agreed upon it;
- 2) unless the central management has commenced negotiations with the employees' negotiating body within six months from the request for negotiations made by the employees or their representatives referred to in section 19(2); or
- 3) if the central management and the employees' negotiating body have not reached agreement in the negotiations on the co-operation referred to in this chapter within three years from the times specified in section 19 except if this is due to a decision by the employees' negotiating body to abstain from the negotiations for an agreement referred to in section 24. (620/2011)

If there is more than one undertaking in control within the community-wide group of undertakings, the European Works Council shall be established only on the level of the undertaking exercising ultimate control unless otherwise provided in the agreement referred to in section 26.

Section 28 (620/2011)

Composition of the European Works Council

The members of the European Works Council shall be elected in proportion to the number of employees employed in each Member State by the community-wide undertaking or community-wide group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10%, or a fraction thereof, of the number of employees employed in all the Member States taken together.

Section 29

Selection of the members to the European Works Council

The employees of the operational units or undertakings located in Finland of a community-wide group of undertakings or an undertaking select among their number their representatives to the European Works Council by agreement or election. If the personnel do not agree upon the selection procedure of their representatives, the industrial safety delegates representing the two largest personnel groups of the undertakings or operational units shall together organise election of the members to the Works Council or other selection procedure. All employees of the undertakings or operational units have a right to participate in the election of the members to the European Works Council organised by the industrial safety delegates.

Employees' representatives in the undertakings or operational units of the community-wide group of undertakings or the undertaking located in other EEA member states are selected pursuant to each state's national legislation or practice.

Section 30

Informing of the composition of the European Works Council

The Works Council shall inform its composition and any changes thereto to the central management of the community-wide group of undertakings or of the undertaking or to the management of the

group of undertakings indicated by the central management or other appropriate management of the undertaking.

Section 31

European Works Council's rules of procedure and working committee

The Works Council confirms its rules of procedure.

The Works Council shall elect a working committee from among its members, comprising at most five members, which shall adopt its own rules of procedure and which must be able to exercise its activities on a regular basis. (620/2011)

Section 32

Right to receive information and to be consulted

The European Works Council and its working committee are entitled to obtain information and to be consulted in matters relating to the entire community-wide group of undertakings or the undertaking or at least two undertakings within the group of undertakings or an operational unit of the community-wide undertaking, which are located in different EEA member states.

Correspondingly, the community-wide groups of undertakings and the undertakings referred to in section 17(2) and (3) only deal with matters relating to either all undertakings or operational units located in the EEA or at least two undertakings or operational units located in different EEA member states.

Section 33

Regular meetings and the matters handled therein

The European Works Council is entitled to convene at least once a year with the representatives of the Finnish central management of the community-wide group of undertakings or the undertaking to obtain information and to be consulted with regard to the group of undertakings' or the undertaking's business operations and future prospects. Central management shall issue prior to the meeting a written report of the matters to be handled in the meeting.

Central management shall inform of the meeting the management of other undertakings or operational units of the community-wide group of undertakings or the undertaking.

The European Works Council must be informed in particular of the structure of a community-wide undertaking or group of undertakings, its economic and financial position and development prospects of operations, production and sales. (620/2011)

Informing the European Works Council and consultation with it concern, in particular, the employment situation and its development prospects, investments, significant organisational changes, introduction of new work and production methods, transfers of production, mergers, the reduction or closure of the production of the undertakings, operational units or any significant parts thereof, and, pursuant to the provisions of national legislation of the state in which each of the undertakings of the community-wide group of undertakings or the operational units of the undertaking are located, the redundancies of employees referred to in the Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies. (620/2011)

The consultation shall be conducted in such a way that the employees' representatives can meet with the central management and obtain a response, and the reasons for it, to any opinion they may express. (620/2011)

Prior to the regular meeting the members of the European Works Council are entitled to assemble among themselves.

Section 34 Extraordinary meetings in exceptional circumstances

Central management must present the working committee with a timely report, for the exchange of opinions, of such exceptional factors or decisions which significantly affect the position of the employees. In particular, such factors include the relocation of operations, the closure of an undertaking or operational unit, and redundancies as referred to in section 33(4). (620/2011)

On request of the working committee the central management or other management with decision-making power in the discussed matters, is to organise a meeting where it informs of the matters referred to in subsection 1 above and exchanges opinions thereof with the working committee. Those members of the European Works Council who do not belong to the working committee have a right to participate to the meeting provided that the employees they represent are directly affected by the matters referred to in subsection 1 above.

The extraordinary meeting has to be called as soon as possible after the report has been issued. Management of the community-wide group of undertakings or the undertaking referred to in subsection 2 above shall prepare for the meeting an account of which the working committee may issue an opinion at the conclusion of the meeting or within a reasonable time from the conclusion of the meeting.

The working committee, if necessary supplemented as referred to in subsection 2 above, is entitled to convene without the management of the community-wide group of undertakings or the undertaking being present.

What is prescribed of the working committee above shall apply to the European Works Council if it has not selected a working committee from among its number.

The provisions of section 43 shall apply to employees' secrecy obligation in situations referred to in subsection 1. (620/2011)

Section 35 Right to use experts

The European Works Council and its working committee are entitled to, insofar as necessary, use experts of their choice in preparing for the meetings referred to in sections 33 and 34 above.

Section 36 (620/2011)

The duty to inform of the members of the Works Council and its working committee

Section 40a shall apply to the duty to inform of the members of the Works Council and its working committee.

Section 37 Liability for costs incurred by co-operation

Central management is liable for costs incurred by operation of the European Works Council and its working committee which include at least organisational and interpreting costs of the meetings as well as travel and accommodation expenses of the members of the European Works Council and working committee unless otherwise agreed.

The central management shall allocate to the members of the European Works Council and its working committee the financial and other material resources necessary for the due discharge of their duties.

The central management is liable for the travel and accommodation expenses of an expert used by the European Works Council and its working committee in the cases referred to in sections 33 and 34 unless otherwise agreed.

Section 38 The European Works Council's evaluation of the agreement negotiations

The Works Council evaluates at the latest in four years from its establishment whether negotiations on the agreement referred to in section 26 should be commenced with the central management.

If the Works Council decides with a single majority to propose negotiations to the central management, the working committee conducts the negotiations instead of the employees' negotiating body. The provisions of sections 22—26 shall otherwise be complied with in the negotiations as appropriate.

Section 39 Effect of the reduction in the number of employees

Even though the community-wide group of undertakings' or the undertaking's number of employees is reduced to less than prescribed in section 13 the agreement concluded in Finland referred to in section 26 on the European Works Council or another information or consultation procedure shall be applied for another six months from the time when the number of employees of the group of undertakings or the undertaking does not continue to fulfil the quota prescribed in section 13 unless otherwise provided in the agreement.

Correspondingly the employees' negotiating body referred to in section 19 and the European Works Council referred to in section 28 maintain their status and duties for six months from when the number of employees of the group of undertakings or the undertaking was reduced to less than provided in section 13.

Chapter 4 Miscellaneous provisions

Section 40 (620/2011) Rights of the employees' representatives

The members of the European Works Council shall have the means required to apply the rights arising from this Act, to wit to represent collectively the interests of the employees of the community-wide undertaking or community-wide group of undertakings. Insofar as necessary for

the exercise of their representative duties in an international environment, the members of the employees' negotiating body and of the European Works Council shall be provided with training.

The employees' representatives referred to in this Act are entitled to sufficient leave of absence from their work in order to carry out their duties and to participate in training. The employer shall compensate any consequent loss of earnings. Any other leave of absence from work and related compensation for loss of earnings shall be agreed upon case by case between the employees' representative concerned and the employer.

Insofar as the employees' representative, outside his working hours, takes part in co-operation negotiations referred to in this Act or performs any other duty agreed upon with the employer, the latter shall pay him compensation for the hours used for carrying out said duty, as per the amount corresponding to his salary for regular working hours.

Section 40a (620/2011) Employees' representatives' duty to inform

Employees' representatives shall inform other representatives of the employees of a community-wide group of undertakings or undertaking, or, if no such representatives have been elected, shall directly inform the employees, of the content and results of information and consultation referred to in chapter 3, unless otherwise provided by the secrecy obligation referred to in section 43.

Section 41 Employees' representatives protection against termination

The provisions of chapter 7, section 10 of the Employment Contracts Act (55/2001) on protection against termination in the case of a shop steward and an elected representative shall apply to protection against termination of the employees' representatives referred to in this Act.

In another EEA member state the protection against termination for an elected employees' representative is determined pursuant to national law of the country in question.

Section 42 Right to conclude agreements

Management of a Finnish group of undertakings or an undertaking referred to in section 7 above and the employees' representatives referred to in section 8 or 10 as well as the group of undertakings or the undertaking referred to in section 13 or the central management of an undertaking referred to in section 17 and the employees' Finnish representatives of the said undertaking are entitled to, notwithstanding the aforesaid provisions, jointly agree in writing of the integration of the content and the procedure of the national and community-wide co-operation procedure.

Section 43 Confidentiality

An employee, who is a member of the employees' negotiating body referred to in section 8 or 20 and the employees' representative participating in the co-operation procedure as well as an expert, referred to in this Act, who assists the employees' representatives have to keep confidential information obtained in connection with the co-operation procedure:

- 1) relating to business and trade secrets of the group of undertakings or the undertaking;
- 2) relating to the financial position of the group of undertakings or the undertaking, the said

information not being public information according to other legislation and dissemination of such information would probably be prejudicial to the employer or any of his business partners or contracting parties;

3) relating to the security of the groups of undertakings and the undertaking and the corresponding security system and the dissemination of such information would probably be prejudicial to the employer or any of his business partners or contracting parties.

Provisions of subsection 1 above do not prevent the persons bound by the obligation of confidentiality after having informed of the confidential nature of the information from disclosing the information to other employees or their representatives or experts assisting them referred to in the said subsection, if necessary in order to carry out the co-operation duties.

A precondition for confidentiality is that:

- 1) the management of the group of undertakings or the undertaking have indicated to the persons bound by the obligation of confidentiality what information is considered as business and trade secrets;
- 2) the management of the group of undertakings or the undertaking have indicated to the persons bound by the obligation of confidentiality referred to in subsection 1 above that the information referred to in subsections 1(2) and (3) is confidential; and
- 3) the person bound by the obligation of confidentiality referred to in subsection 1 above has informed of the obligation of confidentiality to the employees or their representatives or the experts assisting them referred to in subsection 2 above.

The obligation of confidentiality shall continue during the entire duration of the contract of employment of the employee and his representative referred to in subsection 1 above and the expert's obligation of confidentiality shall continue after termination of the task of the expert.

Section 44

Derogations from the duty to inform

The management of the group of undertakings and the central management are not obligated to provide the employees and their representatives with such information the dissemination of which would without prejudice cause significant damage or harm to the group of undertakings, the undertaking or its operations.

Section 45

Controlling undertaking's duty to inform

When the controlling undertaking within the group of undertakings or the community-wide undertaking referred to in section 7(3) or section 13, subparagraph 2 prepares financial or productive decisions due to which a reduction in the number of personnel within an undertaking in control or an operational unit would probably be considered in a manner prescribed in the Council Directive on the approximation of the laws of the Member States relating to collective redundancies, it is to provide adequate information on pending solutions and their alternatives to the undertaking in control or operational unit so that the last-mentioned undertaking or operational unit can duly fulfil its co-operation obligation.

Section 46

Penal provisions

Central management, an undertaking in control or a representative of an undertaking or an operational unit of such an undertaking referred to in section 2(2), who intentionally or negligently

fails to observe or violates the provisions of sections 11, 12 or 13c, 18(2), 22(2), 32—35, 39, 40 or 47, with the exception of the provisions in section 40 on the employer's payment liability, or materially fails to adhere to the provisions of the agreement referred to in section 8 or 26, shall be subject to a fine for *violation of the co-operation obligation of a group of undertakings*. (620/2011)

Punishment for violation of the rights of a co-operation representative referred to in section 41 is laid down in chapter 47, section 4 of the Penal Code (39/1889) and the punishment for obstructing the employees from choosing their representatives to the negotiating or co-operation bodies referred to in this Act is laid down in chapter 47, section 5 of the Penal Code.

Punishment for violation of the obligation of confidentiality referred to in section 43 is imposed pursuant to chapter 38, section 2(2) of the Penal Code unless more severe punishment for the act is prescribed elsewhere than in chapter 38, section 1 of in the Penal Code.

Section 47 Availability

The employer shall keep this Act freely available and accessible to the employees at the place of work.

Section 48 (219/2010) Supervision

Supervision of compliance with this Act shall be exercised by the Cooperation Ombudsman in according to the Act on Cooperation Ombudsman (216/2010) and by the employers', employees' and salaried employees' associations that have concluded a nation-wide collective agreement whose provisions are required to be observed in the employment relationships of the undertaking in according to the Collective Agreements Act (436/1946).

Chapter 5 Transitional provisions and entry into force

Section 49 Entry into force

This Act enters into force on 1 July 2007.

If elsewhere in the legislation reference is made to the provisions on national or international co-operation within undertakings in the Act on Co-operation within Undertakings (725/1978) valid at the time when this Act comes into force, this Act shall be applied instead.

Section 50 Transitional provision

The provisions of this Act shall not apply to those undertakings and groups of undertakings referred to herein which have an agreement on national or international group co-operation referred to in the Act on Co-operation within Undertakings valid at the time when this Act comes into force or an agreement concerning the entire personnel on cross-border interaction between group management and personnel concluded before 22 September 1996. Unless otherwise agreed, the period of notice is six months in the latter agreement after which the obligations of this Act become applicable.

Act 620/2011: This Act enters into force on 15 June 2011.

Except section 26b, this Act shall not apply to community-wide undertakings and groups of undertakings that have, in accordance with Article 13, paragraph 1 of the Council Directive 94/45/EC 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, or Article 3, paragraph 1 of the Council Directive 97/74/EC extending to the United Kingdom of Great Britain and Northern Ireland, Directive 94/45/EC 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, concluded one or several agreements covering the entire workforce and providing for the transnational information and consultation of employees, or wherein said agreements are being revised due to changes in the structure of the undertaking or group of undertakings.

Provisions in force at the time of entry into force of this Act, and section 26b of this Act, shall apply to community-wide undertakings and groups of undertakings which have in force an agreement signed or revised in accordance with Article 6 of the Council Directive 94/45/EC 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 between 5 June 2009 and 5 June 2011.

As the validity of the agreement referred to above in subsections 2 and 3 ends, the parties may agree on extending the agreement as is, or in a revised form. In this case, the provisions given in subsections 2 or 3 will continue to apply to the agreement. Unless otherwise agreed, the agreement referred to in subsection 2 may be terminated to end after six months from the date of termination.