

Bill

on the involvement of employees in European Companies

(Submitted at the 130th legislative assembly, the Althingi, 2003-2004)

CHAPTER I

Objective and Scope

Article 1 *Objective of this Act*

The objective of this Act is to protect the right of employees of European companies (*Societas Europaea*, SE) to be involved in proceedings and decisions which concern the affairs of the SE they are employed at, and ensure that the establishment of the SE does not entail the disappearance or reduction of existing practices of employee involvement.

When participation rights exist within one or more companies establishing an SE, they should continue to apply in the SE, unless a special body representing the employees for negotiation purposes and representatives of the companies establishing the European company decide otherwise, or Article 16 leads to a different conclusion.

To the end of making sure that the aforementioned objectives are fulfilled, arrangements for the involvement of employees shall be established in every SE in accordance with the negotiating procedure referred to in Chapter II of the Act or, under the circumstances specified in Article 13, in accordance with Chapter III.

Article 2 *Scope*

The legal provisions shall apply to SEs and to undertakings, established in Iceland, intending to participate in the establishment of an SE pursuant to the Act on European Companies and to Council Regulation (EC) No. 2157/2001.

The management of an SE and its subsidiaries or the management of participation companies, where appropriate, and employees' representatives or the employees themselves, as appropriate, shall fulfill the commitments laid down in the Act, irrespective of whether the SE is established in this country.

Article 3

Definitions

For the purposes of this Act:

- a. *European company (SE)*: means any company established in accordance with the Act on European Companies and Council Regulation (EC) No 2157/2001,
- b. *participating company*: means a company directly participating in the establishing of an SE,
- c. *subsidiary*: means an undertaking over which that company exercises a dominant influence defined in accordance with Article 5 of Act No. 61/1999 on European Works Councils in Companies,
- d. *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,
- e. *employees' representatives*: means the union representatives provided for by national law and other representatives appointed by employees of a participating company pursuant to this Act or agreement at the place of work,
- f. *representative body*: means the body representative of the employees set up by the agreements referred to in Article 11 or in accordance with the provisions of Chapter III, with the purpose of informing and consulting the employees of an SE, its subsidiaries and establishments

and, where applicable, of exercising participation rights in relation to the SE,

- g. special negotiating body: means the body established in accordance with Article 5 to negotiate with the competent organ of the participating companies regarding the establishment of arrangements for the involvement of employees within the SE,
- h. *involvement of employees*: means any mechanism, including information, consultation and participation, through which employees' representatives may exercise influence on decisions to be taken within the company,
- i. *information*: means the informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE on questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State. The information shall be provided at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE, unless otherwise required by the provisions of this Act,
- j. *consultations*: means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE,
- k. *participation*: means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of:
 1. the right to elect or appoint members of the company's administrative or supervisory organ, or
 2. the right to recommend and oppose the appointment of some or all of the members of the company's supervisory or administrative organ.

CHAPTER II

Creation of a special negotiating body and negotiating procedure in regard to the elaboration of rules on the participation of employees

Article 4

Initiation of negotiations and information

Where the management or administrative organs of the participating companies draw up a plan for the establishment of an SE, they shall as soon as possible after publishing the draft terms of merger or creating a holding company or after agreeing a plan to form a subsidiary or to transform into an SE, take the necessary steps to start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE.

Management or administrative organs of participating companies shall provide the representatives of employees of those undertakings, affected by the formation of an SE, with information about the identity of the participating companies, concerned subsidiaries or establishments, their legal form, the number of their employees and arrangements for the involvement of employees, as soon as possible after agreeing a

plan to form an SE, and initiate the creation of a special negotiating body, *cf.* Article 5.

Article 5

Creation of a special negotiating body

Before starting the negotiations pursuant to this Chapter, a special negotiating body representative of the employees of the participating companies and concerned subsidiaries or establishments shall be created in accordance with the provisions of this Article.

In electing or appointing members of the special negotiating body, it must be ensured:

- a. that these members are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together;
- b. that in the case of an SE formed by way of merger, there are such further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating company which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SE, in so far as:
 1. the number of such additional members does not exceed 20 % of the number of members elected by virtue of point (a), and
 2. their appointment does not entail that the employees of the participating company concerned acquire more representatives than are due by virtue of point (a).

If the number of such companies, referred to in paragraph (2) (b), is higher than the number of additional seats available, these additional seats shall be allocated to participating companies in different Member States by decreasing order of the number of employees they employ.

If substantial changes are made to the proposed SE to the extent that these affect the geographical allocation of representatives in the special negotiating body, the body shall assess whether reallocation of seats is necessary pursuant to this Article. If reallocation is necessary it shall take place as soon as possible and in such a manner that is least likely to delay the continuance of the negotiations.

Article 6

Union representatives shall elect the representatives in Iceland to become members of the special negotiating body.

Employees who have no union representative shall elect a joint representative to participate in the election of members of the negotiating body.

Those entitled to participate in the election of members pursuant paragraph 1, shall elect from amongst their own group a representative to take a seat in the special negotiating body.

The vote of each union representative or representative shall be weighted in accordance with the number of employees he or she represents.

If no union representatives have been appointed, all employees of a participating company have the right to participate in the election of members of the negotiating body.

If more than one member is to be elected from Iceland to take a seat in the negotiating body it shall be ensured that employees of as many participating companies as is possible are represented therein.

If an additional seat is allocated in the negotiating body, *cf.* Article 5 (2) (b), this Article shall apply to the selection procedure of members, as appropriate.

If the employees of a participating company in Iceland lose their right to a representative, e.g. when the company no longer participates in the formation of an SE, the seat shall be reallocated pursuant to this Article.

Article 7

Functions of the special negotiating body

The special negotiating body and the competent organs of the participating companies shall determine, by written agreement, arrangements for the involvement of employees within the SE.

To this end, the competent organs of the participating companies shall inform the special negotiating body of the plan and the actual process of forming the SE, up to its registration. The body is authorised to decide to inform representatives of interested external associations, including trade unions, that negotiations have started.

The special negotiating body may request experts of its choice, for example representatives of appropriate trade union organisations within the European Economic Area, to assist it with its work. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.

Any expenses relating to the negotiations and the functioning of the special negotiating body, including the cost of at least one expert, shall be borne by the participating companies so as to enable the special negotiating body to carry out its task in an appropriate manner.

Article 8

Decision making within the special negotiating body

In cases other than in paragraph 2, the special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each representative shall have one vote.

However, should the result of the negotiations lead to a reduction of participation rights, the majority required for a decision to approve such an agreement shall be the votes of two thirds of the members also representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States:

1. in the case of an SE to be established by way of merger, if participation covers at least 25 % of the overall number of employees of the participating companies, or
2. in the case of an SE to be established by way of creating a holding company or forming a subsidiary, if participation right covers at least 50 % of the employees of the participating companies.

Reduction of participation rights means that the influence of representatives of employees in regard to the composition of the organs of the SE within the meaning of Article 3(k), is less than the highest proportion existing within the participating companies.

Article 9

Duration of negotiations

Negotiations shall commence as soon as the special negotiating body is established and may continue for six months from its first meeting.

The deadline by which the negotiations shall be concluded pursuant to this Article shall start two months after the representatives of employees received

adequate information pursuant to Article 4 (2), if the first meeting has not been held by that time.

The parties may decide, by joint agreement, to extend negotiations beyond the period referred to in paragraph 1, up to a total of one year.

Article 10

Termination of negotiations

The special negotiating body may decide by the majority set out in paragraph 3 not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the SE has employees.

A decision referred to in paragraph 1 shall stop the procedure to conclude an agreement referred to in Article 11.

Where such a decision has been taken, the provisions of Chapter III shall not apply to the involvement of SE employees, except insofar as the special negotiating body makes decisions pursuant to Article 13, as laws and practices in each Member State where the SE operates shall then apply to information and consultation of employees.

The majority required to decide not to open or to terminate negotiations shall be the votes of two thirds of the members of the special negotiating body, representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States.

The special negotiating body may be reconvened on the written request of at least 10 % of the employees of the SE, its subsidiaries and establishments, or their representatives, at the earliest two years after the aforementioned decision referred to in paragraph 1 is communicated to the competent bodies of the participating companies in which case the provisions of this Chapter shall apply *mutatis mutandis*.

The parties may, however, agree to negotiations being reopened sooner.

If the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, none of the provisions of Chapter III shall apply to the involvement of SE employees.

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

Article 11

Content of the agreement

The competent organs of the participating companies and the special negotiating body shall negotiate in a spirit of cooperation with a view to reaching a written agreement on arrangements for the involvement of the employees within an SE.

The agreement shall specify at least the following:

- a. the scope of the agreement,
- b. the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SE in connection with arrangements for the information and consultation of the employees of the SE and its subsidiaries and establishments,
- c. the functions and the procedure for the disclosure of information to the representative body and consultation with the body,
- d. the frequency of meetings of the representative body,
- e. the financial and material resources to be allocated to the representative body,

- f. if the parties agree to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures,
- g. if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including, the number of members in the SE's administrative organ or, if applicable, its supervisory organ which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights,
- h. the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation.

If the Parties reach an agreement pursuant to this Article, the provisions of Chapter III shall not apply, unless provision is made otherwise therein.

In the case of an SE established by means of transformation, the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the company to be transformed into an SE.

Article 12

Legislation applicable to the negotiation procedure

Except where otherwise provided for in this Act or required by the nature of the matter, 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.

CHAPTER III

Alternate provisions

Article 13

Scope

The provisions of this Chapter shall apply to any SE registered in this country from the date of its registration where either:

- a. the parties so agree; or
- b. by the deadline laid down in Article 9, no agreement has been concluded, and the following conditions have been met:
 - 1. the competent organ of each of the participating companies decides to accept the application of the standard rules in relation to the SE and so to continue with its registration of the SE, and
 - 2. the special negotiating body has not taken the decision provided for in Article 10.

Moreover, the provisions of Article 16 apply only in the following cases if the specified conditions have been met:

- a. in the case of an SE established by way of transformation, if the rules relating to employee participation rights exist in the SE to be transformed,

- b. in the case of an SE established by merger:
 - 1. if one or more forms of participation applied in one or more of the participating companies covering at least 25 % of the total number of employees in all the participating companies, or
 - 2. if one or more forms of participation applied in one or more of the participating companies covering less than 25 % of the total number of employees in all the participating companies and if the special negotiating body so decides,
- c. in the case of an SE established by setting up a holding company or establishing a subsidiary:
 - 1. if one or more forms of participation applied in one or more of the participating companies covering at least 50 % of the total number of employees in all the participating companies, or
 - 2. if one or more forms of participation applied in one or more of the participating companies covering less than 50 % of the total number of employees in all the participating companies and if the special negotiating body so decides.

In exercising its powers pursuant to paragraph 2, the special negotiating body shall decide, with the same majority as provided for in Article 8 (1), which of those forms must be established in the SE.

The special negotiating body shall inform the competent organs of the participating companies of any decisions taken pursuant to this paragraph.

Article 14

Composition of the body representative of employees

In the cases referred to in Article 13 (1), a body representative of employees shall be set up in accordance with the following rules:

- a. The representative body shall be composed of employees of the SE, its subsidiaries and establishments elected from their number by the union representatives and the joint representative of those employees who do not have a union representative or, in the absence of union representatives, by the entire body of employees.
- b. The election of Icelandic representatives in the negotiating body shall, as appropriate, be conducted in accordance with the provisions of Article 6.
- c. If substantial changes are made to an SE, the representative body shall, in consultation with the competent organs of the SE, review the allocation of seats in the body. This applies in particular if there are substantial changes made to the number of employees, ownership or the activities of the SE or if the SE moves and reestablishes itself in another state.
- d. If the size of the body so requires, the representative body shall elect from amongst its group a party of three members as a select committee which will see to any routine communication with the competent organs of the SE, on the basis of rules of procedure adopted by the representative body.
- e. The members of the representative body are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat

per portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together.

- f. The competent organ of the SE shall be informed of the composition of the representative body.
- g. The representative body or the select committee may be assisted by experts of its choice.
- h. In so far as this is necessary for the fulfilment of their tasks, the members of the representative body shall be entitled to time off for training without loss of wages.
- i. The costs of the representative body shall be borne by the SE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner. In particular, the SE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities and the accommodation and travelling expenses of members of the representative body and the select committee.

Four years after the representative body is established, it shall examine whether to open negotiations for the conclusion of the agreement referred to in Article 11 or to continue to apply the standard rules adopted in accordance with this Chapter.

The provisions of Articles 7 to 11 shall apply, as appropriate, if a decision is made to start negotiations on an agreement pursuant to paragraph 2.

Where, by the deadline by which the negotiations come to an end, no agreement has been concluded, the arrangements initially adopted in accordance with the provisions of this Chapter shall continue to apply in the SE.

Article 15

Standard rules for information and consultation

The competence of the representative body shall be limited to questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State.

The meeting of the representative body and the competent organ of the SE shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall have the right to be informed.

The representative body or, for reasons of urgency, the select committee, shall have the right to meet, at its own request, the competent organ of the SE or any more appropriate level of management within the SE, so as to be informed and consulted on measures significantly affecting employees' interests.

Without prejudice to meetings held pursuant to paragraph 3, the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SE at least once a year, on the basis of regular reports, drawn up by the competent organ, on the progress of the business of the SE and its prospects.

The local managements shall be informed accordingly.

The representative body shall be provided with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its shareholders.

Where the competent organ of an SE decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the representatives of the SE with a view to seeking agreement.

In the case of a meeting organised between the select committee and the SE pursuant to paragraph 3, those members of the representative body who represent employees who are directly concerned by the measures in question shall also have the right to participate.

Before any meeting with the competent organ of the SE, the representative body or the select committee, where necessary enlarged in accordance with the paragraph 7, shall be entitled to meet without the representatives of the SE being present.

Without prejudice to confidentiality in Article 19, the members of the representative body shall inform the representatives of the employees of the SE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.

The opinion of the representative body pursuant to this Article shall not affect the prerogatives of the competent organs of an SE.

Article 16 *General rules on participation*

Employee participation in an SE shall be governed by the following rules:

- a. In the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory organ applied before registration, all rules of employee participation shall continue to apply to the SE.
- b. The provisions of this Article shall apply *mutatis mutandis* to that end.
- c. In cases other than in point (a), the employees of the SE, its subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a specific number of members of the administrative or supervisory organ of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE.

If none of the participating companies was governed by participation rules before registration of the SE, the latter shall not be required to establish provisions for employee participation.

The representative body shall decide on the allocation of seats within the administrative or supervisory organ among the members representing the employees according to the proportion of the SE's employees in each Member State.

If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall seek a balanced allocation of the seats and priority given to the employees in a Member State of the SE's registered office if they have not been allocated seats pursuant to the proportional criterion.

The representative body shall lay down rules on how employees' representatives can recommend or oppose the appointment of members of the SE's supervisory or administrative organ, if appropriate.

If employees in Iceland acquire the right to appoint or elect a member pursuant to this Article, the provisions of Article 6 are applicable to that selection.

National legislation of the Member State concerned shall apply to the election or appointment of other members unless there is no such provision therein in which case the representative body shall appoint the representative of employees in that Member State.

Every member of the administrative organ or, where appropriate, the supervisory organ of the SE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the shareholders, including the right to vote.

CHAPTER IV

Miscellaneous provisions

Article 17

Communication between an SE and employees' representatives

The competent organ of the SE and the representative body shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations.

The same shall apply to cooperation between the administrative or, where appropriate, supervisory organ of the SE and the employees' representatives in conjunction with a procedure for the information and consultation of employees.

Article 18

Protection of employees' representatives

The members of the special negotiating body, the members of the representative body and employees' representatives in the organs of an SE should neither be subjected to dismissals nor any other sanctions as a result of the exercise of their functions.

Their right shall be ensured, through an agreement with the employer, to be lawfully absent from their work in order to perform their duties in the making and execution of agreements pursuant to this Act.

This shall apply in particular to attendance at meetings of the special negotiating body or representative body, any other meetings under the agreement referred to in Article 11(1)(f) or any meeting of the organs of the SE, and to the payment of wages for members employed by a participating company or the SE or its subsidiaries or establishments during a period of absence necessary for the performance of their duties.

The employees' representatives who work pursuant to the procedure on information and consultations should enjoy the same kind of legal protection as union representatives pursuant to the Act on Trade Unions and Industrial Disputes No. 80/1938, as appropriate.

Article 19

Confidentiality

Members of the special negotiating body or the representative body, and experts who assist them, are not authorised to reveal any information which has been given to them in confidence.

The same shall apply to employees' representatives in the context of an information and consultation procedure.

This obligation shall continue to apply, wherever the persons referred to may be, even after the expiry of their terms of office pursuant to paragraphs 1 and 2.

Article 20

Information not required

The supervisory or administrative organ of an SE or a participating company, established in Iceland, is not obliged to transmit information pursuant to the provisions of this Act where its nature is such that, according to objective criteria, to do so would seriously harm the function of the SE, its subsidiaries and establishments, or would be prejudicial to them.

Article 21 *Misuse of procedures*

If substantial changes are made to an SE, its subsidiaries or establishments shortly before its establishment, which indicate clearly that the purpose of establishing the SE was to deprive employees of their participation rights or prevent them from acquiring such right, negotiations must be entered into again pursuant to Chapter II.

Substantial changes means a change in the composition of an SE, its subsidiaries or establishments, number of employees or the establishing of the company which would have led to an increase in the participation rights of the employees had it occurred before the SE was established.

If such a change occurs within a year of registration of the SE, the burden of proof that the grounds for the change are other than those specified in paragraph 1 shall lie with the SE.

The following rules shall apply to negotiations pursuant to this Article:

- a. They shall start at the request of the representative body of the employees or the representatives of the employees in new subsidiaries or the branches of the SE.
- b. The provisions of Chapter II shall apply to the negotiations and their preparation *mutatis mutandis*.

Article 22 *Sanctions*

Those who, in spite of the provisions of confidentiality in Article 19, disclose confidential information given to them shall be fined unless this is subject to more severe penalties pursuant to other laws.

If in the business of a legal entity offences are committed against Articles 4, 15, 18 and 21 of this Act this shall be subject to fines, *cf.* Chapter II A of the General Penal Code, if the offence is committed intentionally and is likely to deprive employees of an SE of a right protected pursuant to this Act.

Offences shall be subject to criminal proceedings.

Article 23 *Disagreement*

Disagreements on the implementation of this Act can be subject to judicial appeal, for example in case of a disagreement on the right of employees' representatives to receive information and the right of participating companies or SEs to keep information confidential.

All those specified in Article 18, trade unions concerned and other interested parties shall have the right to take court action.

Article 24 *Regulation*

The Minister is authorised to lay down more detailed provisions in a Regulation on the implementation of this Act.

Article 25
Links to provisions of other Acts

When an SE is an undertaking operating in the European Economic Area or is the controlling undertaking in a group of enterprises which operates there within the meaning of Article 5 of the Act on European Works Councils in Companies No. 61/1999, the provisions of that Act shall not apply to the SE or its subsidiaries, unless the special negotiating body decides, in accordance with Article 10 (1) of this Act, not to enter into negotiations or end negotiations already opened.

Rules on employee participation, *prescribed* by law and/or practice, which do not concern the implementation this Act, shall not apply to SEs.

This Act shall not prejudice:

1. the existing rights to involvement of employees provided for by national legislation and/or practice in the Member States as enjoyed by employees of the SE and its subsidiaries and establishments, other than participation in the organs of the SE;
2. the rules on participation laid down by national legislation and/or practice applicable to the subsidiaries of the SE.

Article 26
Transposition

This Act is for the transposition of Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, referred to in point 32 (e) of Annex XVIII of the EEA Agreement, as amended by Decision of the EEA Joint Committee No. 89/2002.

Article 27
Entry into force

This Act shall enter into force on 8 October 2004.