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Estonia - Report on the transposition of the cross border merger directive into national law

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The draft of [the Commercial Code](#) and Related Acts Amendment Act transposing Directive 2005/56/EC on cross-border mergers of limited liability companies into Estonian law was elaborated by the Ministry of Justice in spring 2007. During the legislative drafting process, there were no significant discussions on either commercial law or labour law issues. The *Riigikogu* (Estonian Parliament) adopted [the Commercial Code](#) and Related Acts Amendment Act on 21 November 2007. The Act entered into force on 15 December 2007.

[The Commercial Code](#) and Related Acts Amendment Act adds §41² to [the Community-scale Involvement of Employees Act](#) (hereinafter: TÕÜKS), which establishes norms on employee participation in case of the cross-border merger of limited liability companies. It is important to mention that in Estonian law there are no rules about the participation of employees, except for the regulation concerning SEs and SCEs.

Pursuant to Article 16 of Directive 2005/56/EC, TÕÜKS provides for the following principles:

- (1) If a private limited company or a public limited company registered in Estonia is involved in a cross-border merger as the acquiring company, then the right of the employees' organisation to participate in the management of the acquiring company for the purposes of TÕÜKS §46¹ is determined by Article 12 (2)–(4) of Regulation (EC) No. 2157/2001 and the TÕÜKS regulation concerning the establishment of an employees' representative body and employee participation, as well as a number of specific issues (the prohibition on hindering employee

¹ TÕÜKS §46 states that employees' participation means the influence of the employees' representative body or the employees in the affairs of an SE or SCE by way of:

- 1) the right to elect or appoint some of the members of the supervisory, administrative or management boards of an SE or SCE, or
- 2) the right to recommend or oppose the appointment of some or all of the members of the supervisory, administrative or management boards of an SE or SCE.

involvement, confidential information, guarantees of employees' representatives participating in involvement, state supervision and liability).²

- (2) However, the abovementioned rule (1) is applied where:
- at least one of the merging companies has, in the six months before publication of the cross-border merger agreement, an average number of employees that exceeds 500 and is operating under an employee participation system for the purposes of TÜüKS §46;³
 - all merging companies from other Member States are operating under an employee participation system for the purposes of TÜüKS §46.⁴
- (3) In the cases described in clause (2), the managements of the companies in question may decide that, from the date of registration of the merger, the rules on employee participation of the Member State where the acquiring company has its registered office shall be applied.
- (4) In the cases described in clause (2), the special negotiating body may decide, by a majority of two thirds of its members representing at least two thirds of the employees (including the votes of members representing employees in at least two different Member States), not to open negotiations or to terminate negotiations already opened, and to rely on the rules on employee participation of the Member State where the acquiring company has its registered office.
- (5) If the private limited company or the public limited company which is registered in Estonia resulting from the cross-border merger is operating under an employee participation system for the purposes of TÜüKS §46,⁵ that company is obliged to take measures to ensure implementation of an appropriate employee participation system in the event of merger with a company which is registered in Estonia for a period of three years after the date of the registration of the merger.

There is no special regulation concerning Article 16 (2) b), (4) c), (5) and (6) of Directive 2005/56/EC in TÜüKS.

As follows from the principles described above, Estonia has transposed Article 16 of Directive 2005/56/EC almost word for word.

² This is the TÜüKS regulation that transposes Directive 2001/86/EC into Estonian law; in more detail: TÜüKS §41 (1) and (3); §§50–59; §61; §62 (1), (2) 1), 7) and 8), (3), (5) and (6); §63; §64 (1), (3) 1), (6), (7); §75 (2); §§76–80, and §§83–88.

³ See note 1.

⁴ See note 1.

⁵ See footnote No 1.