The new Act on Co-operation within Undertakings
Negotiations in the spirit of co-operation

Introduction

Co-operation at the work place aims to develop the operations of the undertaking and the working conditions and to improve the co-operation between the employer and the personnel as well as the joint co-operation among the personnel. A central measure is the employer's obligation to negotiate prior to decision-making with the employees on any plans which either directly or indirectly affect the position of the personnel. The objective of the co-operation procedure is to create a negotiation process which has a positive effect on both the development of the work place and its personnel. Research shows that an environment based on trust lies behind productive and efficient work.

In Finland the organisation for the co-operation between the employer and the employees has been adapted to the line organisation at the work place and to the negotiation systems already in use at the work places.

The new Act on co-operation within undertakings, the *Co-operation Act* (334/2007) entered into force on 1 July 2007. It shall be applied to undertakings employing 20-29 employees from the beginning of 2008. However, if such an undertaking terminates the contracts of employment of at least 10 employees, the Act shall apply as of 1 July 2007.

In Finland there are approximately 230 000 undertakings, which employ slightly over 1.3 million persons. Within the scope of application of the Co-operation Act there are just under 900 000 wage-earners, who are employed with approximately 8 000 undertakings.

Act on Co-operation within Undertakings

In the Co-operation Act the provisions in the same set of provisions have been arranged in different chapters (10). This aims to clarify the structure of the Act and to facilitate the application of the provisions.

A central goal of the Co-operation Act is to improve the operation and operational environment as well as productivity of the undertakings and increase open interaction. The purpose of the Act is also to improve joint co-operation among the personnel groups at the work place.

CHAPTER 1.
GENERAL PROVISIONS

Scope of application (section 2)

The Act shall apply to an undertaking normally employing at least *20 employees*.

In calculating the number of employees part-time employment relationships valid until further notice are taken into account on head count. Fixed-term employees carrying out tasks within the undertaking's regular course of business are also included in the calculation. Only those fixed-term employees employed with the undertaking to carry out exceptional or temporary tasks or seasonal work for a relatively short period can be excluded from the number of employees. The fixed-term employees working as substitutes during the time off of an employee in a permanent employment relationship are included, but then the employee who has time off is not calculated in the number as otherwise the employees alternating in the performance of a particular task would be calculated twice as part of regular personnel.

Small undertakings are in a privileged position. All of the provisions of the Act shall not apply to the undertakings employing 20-29 employees. Such provisions include:

- discussion of the principles and procedures followed in employment (section 15)
- the continuing negotiation procedure for the use of temporary agency work force (section 17(3) and (4))
- the co-operation procedure for internal communication of the undertaking (section 18),
- discussion of plans, principles and practises based on other legislation (section 19)
- rules for work and suggestion schemes and allocation of accommodation (section 27 (1)(2-4)).

Undertaking (section 3) and derogations from the scope of application (section 4)

Besides various types of undertaking (for example, a limited company, a commandite company and a partnership) an undertaking refers to all corporations, foundations and natural persons engaged in financial operation regardless of whether the operation is intended profitable or non-profitable. The nature of the actual operation is decisive not its financial goals or which instance finances the operation.

Due to this wide definition of an undertaking the Act shall apply to institutions offering various services and to other similar institutions regardless of their legal form or form of finance. The Act shall also apply to non-profit, artistic, scientific, religious and other denominational institutions as well as for example organisations whose purpose is mainly in industrial policy, in labour policy, general political or humanitarian. The Act shall be applicable for example within collective industrial organisations, associations offering caretaking, social, cultural and educational services, foundations or other institutions.

However, the provisions of the Act shall not be applied to preparation of decisions for the purpose of non-profit etc institutions or ideological or other similar goals. Therefore, for example, questions related to the planning of programs for an instance producing cultural services or the purposes of a humanitarian organisation's relief action are not within the scope of the co-operation negotiation procedure whereas their effects on the personnel are.

Other legislation on the employees' rights of participation (section 5)

The Co-operation Act makes reference to provisions in other legislation regarding the employees' right of participation. Such Acts are

- Act on Co-operation within Finnish and community-wide groups of undertakings
- Act on Personnel Representation in Company Administration and the Act on Employee Involvement in European Companies (SE)
- Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces
- Occupational Health Care Act
- Act on the Contractor's Obligations and Liability when Work is Contracted Out
- Securities Markets Act.

Other legislation may also contain references to the Act on Co-operation within Undertakings in which case certain procedures under the Co-operation Act are principally required to be followed.

Labour Council opinion (section 6)

The Labour Council issues opinions on whether the Co-operation Act applies to an undertaking.

CHAPTER 2.
PARTIES TO CO-OPERATION

Parties to co-operation are the employer and the personnel of the undertaking, which is composed of the undertaking's employees in an employment relationship referred to in the Employment Contracts Act and the Seamen's Act with the employer.

General provision (section 7)

The main principle is that co-operation is carried out on one hand within the scope of the undertaking's operational organisation and on the other between the representatives, such as a shop steward, of the employer and the personnel. Co-operation mainly takes place within the undertaking's existing organisations. The Act does not require that the personnel representatives select a representative or representatives for co-operation in particular.

The employer's representatives may vary depending on the extent of the discussed matter. The employer’s representative may be a supervisor in charge of the line of business, whose task is within his powers to take care of the discussed matter. In more extensive matters the employer’s representative shall be from a management level on which the decisions in matter shall be taken. The employer decides who represents the undertaking.

Parties to the co-operation procedure include the employee, whom the matter discussed in the co-operation negotiations concerns and his superior. If the matter concerns more than one employee parties normally include the representative of the personnel group and the employer’s representative competent in the matter discussed. If the matter concerns more than one personnel group, the representatives of the personnel groups concerned shall represent the employees. Thus, the employees are represented by the employee himself or the representative of the personnel group he belongs to.

Representatives of the personnel groups (section 8)

Usually in larger undertakings the personnel consists of personnel groups, which are “employees”, “salaried employees” and ”higher-ranking salaried employees”. The grouping is frequently determined in accordance with the scope of the collective agreements, but it can also be determined pursuant to the position of the work duties, specified in the employment contracts, within the undertaking’s operational organisation.

The personnel group is a not a legal person, which means that it cannot in its name, for instance, bring or respond to an action in a court of law.

The employees normally form a personnel group together even in the case that the employer is bound by more than one collective agreement concluded on the terms and conditions of the employees’ employment relationships. The salaried employees also form a personnel group together, which includes the employees within the scope of the collective agreement concluded on the terms and conditions of the employment relationship of the salaried employees in the said field regardless of whether certain salaried employees are members of another union than the one which has concluded the collective agreement or non-union employees. However, at times the decisive factor is the actual work duties and position within the undertaking’s operational organisation instead of the collective agreement. This can be the case in particular with higher-ranking salaried employees.

As the co-operation procedures are performed in accordance with the undertaking’s operational organisation, the employer’s representative can also be a salaried employee such as a supervisor. Regardless, the salaried employee in a supervisory position is naturally also an employee within his own personnel group.

In the co-operation procedures a shop steward usually represents all those employees in whose employment relationships the employer is bound to apply the provisions of the collective agreement on the basis of which the shop steward was elected. In practice the employer may be bound by several different collective agreements also in respect of employees within one personnel group. In the aforesaid scenario several shop stewards elected pursuant to various collective agreements could participate in the co-operation negotiations as representatives of such a personnel group.

A representative of a personnel group can alternatively be the elected representative referred to in chapter 13, section 3 of the Employment Contracts Act. The said representative can be elected when the employees do not have a shop steward referred to in a collective agreement binding on the employer pursuant to the Collective Agreements Act. The representative of a personnel group can also be an occupational safety delegate, if the matter discussed in the co-operation negotiations concerns health and safety of the employees and the matter has not been discussed in the co-operation negotiations on occupational safety and health.

Due to the scope of the collective agreements and unionisation of the employees a situation may arise where a majority of a personnel group within the undertaking is not entitled to participate in the election of a shop steward because they do not belong to the trade union which concluded the applicable collective agreement. A majority of such a personnel group may at their discretion elect from among their own number a *co-operation representative* for a maximum of two years at a time. A prerequisite is that the majority of this majority so decides. The employees belonging to the majority of the majority also have to organise an election or another procedure for choosing the representative in order to select a co-operation representative so that all members belonging to the aforesaid group have an opportunity to take part in the election of the said representative.

If the employees have not elected a shop steward or an elected representative, the employees of a personnel group or a part thereof are entitled to elect from among their own number a co-operation representative for two years at a time. The right to elect a co-operation representative is limited to situations in which the said personnel group or a part thereof has a right to elect a shop steward or an elected representative but they have not done so.

If the personnel do not elect any kind of representative, the employer may fulfil his co-operation obligation by organising a co-operation procedure together with all the employees. The said situation may occur particularly within small undertakings. If the employees do not have a representative they have an opportunity to choose a representative to particular negotiations. However, such representative does not have the position of a co-operation representative.

When a shop steward or an elected representative is a representative of a personnel group his protection against arbitrary dismissal is determined either pursuant to the provisions of the Employment Contracts Act or of the applicable collective agreements. Chapter 7, section 10 of the Employment Contracts Act provides on the protection against arbitrary dismissal of a shop steward and an elected representative. A co-operation representative elected for a particular term enjoys the same protection against arbitrary dismissal as the shop steward. This enhanced protection against arbitrary dismissal only applies to a co-operation representative elected for a particular term, not to a representative chosen for certain ad hoc negotiations.

Joint meeting and committee (section 9)

If the matter discussed in the co-operation negotiations concerns more than one personnel group, it shall be discussed in a joint meeting between the employer and the representatives of the personnel groups concerned. Thus the co-operation negotiations

are conducted between the employer and the representatives of the personnel groups, whom the matter concerns.

The co-operation negotiations can also be conducted in a joint meeting, where the representatives of all personnel groups are present even when the discussed matters do not concern all the personnel groups. The said procedure can be realised only when it is separately agreed upon between the representatives of the appropriate personnel groups and the employer.

The employer and the representative of a personnel group are also entitled to agree that the matters shall be discussed in a committee between the employer and the representatives of the personnel groups, which is a more permanent body for the matters to be discussed in co-operation. The establishment of the committee, the matters discussed therein, its composition and term have to always be agreed upon with a separate agreement for a fixed-term or until further notice, the period of notice of the said agreement being six months, unless otherwise agreed.

CHAPTER 3.
INFORMATION PROVIDED TO REPRESENTATIVES OF THE PERSONNEL GROUPS

Information on the financial position of the undertaking (section 10)

The employer shall provide the representatives of the personnel groups information on the financial position of the undertaking, such as:

- the undertaking's financial statements or revenue accounts referred to in the Securities Markets Act immediately after their publication,
- the financial statements of unlisted undertakings at the latest once audited or, if
- the financial statements are not required to be audited, at the latest once the tax return becomes due.

The employer shall also provide the representatives of the personnel groups at least *twice in the course of the accounting period a comprehensive report on the undertaking's financial position.* The report also includes the interim reports of listed companies. It must show at least the development prospects for the undertaking's production, service or other operation, employment, profitability and cost structure. The report shall be issued in a form which the representatives of the personnel groups can understand.

The employer shall on request of the representatives of the personnel groups present to the undertaking's entire personnel the development prospects available from the aforesaid report. The objective is openness and increased interaction between the employer and the entire personnel. The principles and practices of the undertaking's internal communication are followed in informing the entire personnel. The said report can be a summary of a more extensive report issued to the representatives of the personnel groups.

In small undertakings with 20-29 employees the said report may be directly presented in a joint event arranged for the undertaking's entire personnel instead of giving it first to the representatives of the personnel groups. The Act does not require for the report to be in writing.

The employer shall also inform the representatives of the personnel groups of any material changes to the general development prospects presented in the report. For the above to have any significance the employer shall inform of the changes without delay from when the changes were detected.

Salary information (section 11)

The employer shall annually provide the representatives of the personnel groups with *statistical data* on the salaries paid to the employees. The purpose thereof is to give the representatives of the personnel groups an opportunity to obtain the average salary information in accordance with the general labour market practise or the undertaking’s other practise. It does not require any changes to the content or methods of the undertaking’s compilation of statistics.

The salary information shall be given to the representatives of the appropriate personnel groups. If the employees of a personnel group are represented by two representatives the employer shall provide both the representatives with the salary information of all employees in the said personnel group so that differentiation does not violate against the protection of freedom of organisation.

In undertakings in which the employer belongs to an employers’ association, the provisions on compilation of salary statistics agreed in the agreements between the central collective industrial organisations, such as the co-operation agreement on statistics, shall be applied on which basis the information shall also be provided. Other employers may provide the said information under another compilation of salary statistics carried out by the undertaking.

To enable field and occupation specific monitoring, the employer shall, on request of the representative of the personnel group, provide the salary information classified by occupational groups. Personnel or occupational classification of the salary information provided to the representatives of the personnel groups has to be prepared so that it does not reveal the salary information of an individual employee.

Information on the undertaking’s employment relationships (section 12)

The employer shall quarterly provide the representatives of the personnel groups, on their request, a report on the number of employees in fixed-term and part-time employment relationships with the undertaking.

Report of the principles for use of external labour (section 13)

The employer shall annually present the representatives of the personnel groups, on their request, with a report of the principles applied within the undertaking on the use of external labour.
The report applies to the use of subcontracted labour as referred to in section 2(1)(2) of the Act on the Contractor's Obligations and Liability when Work in Contracted Out. This Act shall apply to a contractor, at whose work premises or site in Finland the employee works, who is employed by the employer who has concluded the subcontracting agreement with the contractor and whose work tasks relate to the usually performed work tasks in the contractor's operations or the transport services connected to the contractor's usual business operations.

The report issued by the employer shall also indicate the work sites and tasks and the period or periods, if known, in which the said labour shall be used.

If the use of external labour affects the personnel of the undertaking the employer shall also follow the provisions of chapters 6 and 8 of the Co-operation Act.

Right to additional information of the representatives of the personnel groups (section 14)

The employer has to provide an opportunity for the representatives of the personnel groups to obtain a report on matters within the scope of the duty to inform of this chapter, if the representatives of the personnel groups ask further questions thereupon. The employees have a similar right in the case where they are directly informed of the undertaking's financial position.

The representatives of the personnel groups have to be given sufficient time to consider the questions for example together with the employees they represent. However, the questions have to be asked fairly soon after receipt of the information depending on the type and extent of the information. Thus there is a possibility to establish an exchange of opinions and dialogue between the representatives of the employees and the employer for example on the employment situation within the undertaking and its probable development.

CHAPTER 4.
UNDERTAKING'S GENERAL PLANS, PRINCIPLES AND GOALS

The provisions of this chapter apply to the general plans, principles, programs, goals and rules of the undertaking to be discussed within the co-operation procedure. The matters in question are mainly performed periodically or intended to be valid for a reasonably long time without regular amendments.

Principles and practises applied in recruitment (section 15)

The general principles followed in recruitment are within the scope of the co-operation procedure only if the undertaking employs at least 30 employees. In larger undertakings besides the general recruitment principles the recruitment procedures classified by personnel or occupational groups or by work tasks are within the scope of the co-operation procedure. The recruitment procedures utilised include, for instance, internal application, use of the employment office, newspaper advertisements and internet.

The necessary information provided for the new employee to get oriented in the work place and the undertaking is to be discussed in the co-operation negotiations. The said information usually comprises of introduction of the undertaking and useful practices for the employee on the general operational methods and arrangements at the work place as well as using the occupational health care, possible catering service at work and other similar matters.

In addition, principles and practices followed by the undertaking on what information is collected of the employee at recruitment and during the employment relationship have to be discussed in the co-operation negotiations. The provisions of the Act on the Protection of Privacy in Working Life which further provides what information on the employee the employer is allowed to collect and how to use the said information have to be taken into account in the negotiations. This Act applies to all employers regardless of their size. Besides general information collected on the employees the practices to be followed pursuant to this section include, for example, the purpose and necessity of the use of aptitude tests.

Plan regarding personnel and training objectives (section 16)

The undertaking shall *annually* adopt a plan regarding personnel and training objectives in order to maintain and improve the occupational skills of its employees. The plan and objectives have to be discussed in the co-operation procedure.

In preparing the plan regarding personnel the foreseeable changes in the operation of the undertaking likely to be relevant for the composition, number or occupational skills of the personnel shall be taken into account. In the preparation of the personnel plan the matters shall be discussed in anticipation of the effects and measures thereof on the entire personnel of the undertaking. The plan aims to prepare for imminent changes so that the employees of the undertaking also have an opportunity to influence and to prepare for them as early as possible insofar as the changes concern them. The plan has to take into account, for example the foreseeable

- the closure of the undertaking or any part thereof
- expansion or reduction of its operations
- acquisitions of machinery and equipment
- changes in production and service structure and
- rearrangement of work.

The content of the plan regarding personnel can change depending on the size of the undertaking. In smaller undertakings, which do not have particular expertise in human resources management, the plan is not required to be as extensive as with larger

undertakings. In an undertaking normally employing 20-29 persons in an employment relationship, the matters regarding the personnel plan and training objectives can be agreed to be discussed in an event or events organised for the entire personnel without the matter first having to be discussed separately with the representative of the personnel group or groups.

The plan regarding personnel and the training objectives shall include at least

- the composition and number of personnel in the undertaking as well as an estimate of their development. The age structure and any needs arising thereof can also be considered in the estimate.
- the principles of use for various forms of employment relationships, such as part-time and fixed-term. The concept of the form of employment also covers the so-called new forms of employment such as remote work and e-work which is conducted over the information network and is thus not bound to any specific location as well as general principles on the possibilities for shortened working time or part-time pension.
- the estimate of the need to develop the employees' occupational skills and the changes taking place in the occupational skills requirements and the grounds thereof as well as the annual training objectives for each personnel group based on this estimate. The principal matters discussed include the needs and possibilities for the employees' further and continuing education and re-training as well as the annual implementation plan.
- The monitoring procedures for the discussed matters. Monitoring of the realisation of the previous year's goals is thus a part of the annual preparation process for the plan regarding personnel.

In preparing the plan regarding the personnel and the training objectives the particular needs of the aging employees have to be taken into account. In addition, attention needs to be paid to the measures and opportunities for employees to balance work and family life.

If an employer terminates the contracts of employment of employees for financial or productive reasons the necessary changes shall be made to the plan regarding personnel and the training objectives in conjunction with the co-operation negotiations on termination of contracts. Provisions on these negotiations are laid down in chapter 8 of the Co-operation Act. The plan regarding personnel and the supplementing training objectives are updated in this respect as soon as possible. The purpose is to clarify whether the termination of contracts on one hand and the prospective reorganisation of operations on the other change the tasks and training needs of the remaining employees.

Principles of temporary agency work, communication and continued negotiation procedure (section 17)

The employer shall annually provide a report on the principles regarding the use of subcontracted labour to the representatives of the personnel groups, thus the matter is within the scope of the employer's duty to inform (chapter 3). Whereas the principles regarding the use of temporary agency work force have to be discussed in the co-operation procedure.

If the employer contemplates concluding a contract on the use of temporary agency work force, he has to separately inform the representatives of those personnel groups whose employees' work would be affected by the work of the temporary agency workers. Such communication has to be issued each time prior to conclusion of an agreement on the use of temporary agency work force. The communication shall include

- the number of temporary agency workers
- their duties and work site
- the duration of the contract and
- the period or periods when the said work force will be used.

The employer shall ensure that the time of issuing the communication can be verified later because the representative of the appropriate personnel group after having received the communication has a right to request by the end of the second working day following the employer's communication for the contract contemplated by the employer to be discussed in the co-operation negotiations. The co-operation negotiations are to be conducted within a week from the submission of the request. The matters discussed in the negotiations include, for example, grounds for the contract contemplated by the employer, its effects on the employer's own employees and alternatives concerning the extent of temporary agency work force. During this time the employer is not permitted to conclude the contract under discussion on the use of temporary agency work force.

The personnel representative is not permitted to request for the co-operation negotiations if the employer has the temporary agency workers to carry out work that it is not the established practice for the employees of the undertaking to perform. The same limitation shall apply if the work in question is urgent and of short duration or involves installation, repair or maintenance tasks that cannot be performed by the employees of the undertaking.

The aforesaid negotiations do not need to be conducted within an undertaking which has 20-29 employees. However, such employer has a duty to inform of the contract regarding temporary agency work force.

Internal communication in the undertaking (section 18)

The principles and practices of internal communication in the undertaking are to be discussed in the co-operation negotiations, if the undertaking employs at least 30 employees. Internal communication includes, for instance, arranging information meetings, newsletters, notice boards and their use and matters relating to other means of communication, such as electronic mail and possible uses of intranet.

Discussion of plans, principles and practices based on other legislation (section 19)

The measures relating to provisions in other legislation require to be discussed in the co-operation procedure prior to the employer's decision-making. The procedure has to be implemented only in undertakings employing at least 30 employees.

Prior to introduction of the potential measures the below matters have to be discussed in the co-operation procedure:

- the equality plan referred to in section 6 a of the Act on Equality between Women and Men if the plan is intended to be adopted as a part of the plan regarding personnel.
- the work tasks referred to in sections 7 and 8 of the Act on the Protection of Privacy in Working Life in which the applicant or employee is either obliged to provide, or may consent to provide, a drug test certificate to the employer. The co-operation procedure has to be implemented prior to the approval of a comprehensive action plan on alcohol and drugs referred to in section 11(4) of the Occupational Health Care Act.
- the purpose, implementation and methods used in camera surveillance, access control and other technical employee monitoring. The prerequisites for camera surveillance are provided in the Act on the Protection of Privacy in Working Life (chapter 5).
- the principles of use of electronic mail and data networks. With regard to e-mail the provisions in chapter 6 of the Act on the Protection of Privacy in Working Life on retrieving and opening e-mail messages belonging to the employer need to be observed and provisions on confidentiality of communication in the Act on the Protection of Privacy in Electronic Communications. The principles of use of electronic mail and data networks are within the scope of the co-operation procedure. These mainly refer to principles and practices on how the data networks and e-mail can be used and utilised at the work place.
- the Act on Personnel Funds provides that establishment of a personnel fund and a bonus profit system and discontinuance of the bonus profit system and dissolution of the personnel fund have to be discussed in the co-operation procedure.

Co-operation negotiations (section 20)

Prior to implementing plans, principles, goals or any other arrangement referred to in this section within the undertaking the matter shall be discussed in the spirit of co-operation in order to obtain consensus. If the plans, principles or goals require to be amended also the amendments have to be discussed. The grounds, goals, purposes and effects of the plans and other equivalent matters shall be discussed in the co-operation negotiations with the representatives of the personnel groups concerned. The plans and their contents as a whole are discussed in the negotiations. Discussion of the said matters often requires several meetings.

If the matter under discussion applies to one personnel group only it shall be discussed with the representative of the said personnel group. If the matter under discussion applies to more than one personnel groups, it shall be discussed in a joint meeting with the representatives of the personnel groups concerned, unless otherwise agreed.

Employer’s initiative (section 21)

The employer shall take initiative to commence the co-operation negotiations. There are no set formalities for the initiative and no specified time-limit between presenting of the

initiative and commencement of the negotiations. At least within larger undertakings it is useful to prepare in writing.

The initiative has to be made in good time before commencement of the co-operation negotiations to enable the representatives of the personnel groups to sufficiently prepare for the said negotiations. If the matter in the initiative concerns more than one personnel group, the initiative has to be presented so that the representatives of all personnel groups concerned have an opportunity to discuss the matter with each other prior to commencement of the co-operation negotiations.

In estimating what is a sufficient time for the aforesaid preparation it has to be taken into account that preparation by the representative of a personnel group requires examining the background to the discussed matter and joint preparation by the representatives of the personnel groups and often consulting the represented employees. The extent of the matter, number of employees represented by the representative of the personnel group and the location and number of the place or places of business and the various working times in use at the work place. As a rule several days have to be reserved for preparation to the negotiations.

The employer shall inform in the initiative or when presenting it the commencement time and place for the co-operation negotiations.

Information provided for the representatives of the personnel groups (section 22)

Prior to commencement of the co-operation negotiations, the employer is to provide the representatives of the personnel groups concerned with available information necessary for the discussion of the matter. The information is primarily to be attached to the employer’s initiative to commence the negotiations. It can also be given separately prior to commencement of the co-operation negotiations because in certain situations it is appropriate to inform as early as possible that the matters will be discussed, even though the employer cannot yet provide further information on the matter. The employer and the representatives of the personnel groups concerned can also agree otherwise on the provision of information.

Right of initiative of a representative of a personnel group (section 23)

The representative of the personnel group also has a right of initiative in the matters referred to in this chapter. Even though the initiative comes from the representative of the personnel group, the employer, nevertheless, has to initiate the commencement of the co-operation procedure as soon as possible. What has been stated above on making an initiative and providing information to the representatives of the personnel groups shall be followed.

The employer can also refrain from the negotiations initiated by the personnel group. In this scenario the employer shall issue a report to the person initiating the procedure on what basis he does not consider the co-operation procedure necessary. The report has to be issued without delay and in writing.

Registering the outcome of the co-operation negotiations (section 24)

Provisions on registering the outcome of the co-operation negotiations are laid down in chapter 9, section 54 of the Act.

Fulfilment of the co-operation obligation (section 25)

The employer has fulfilled his co-operation obligation, when he has followed the aforesaid and the matters have been discussed in the spirit of co-operation in order to reach consensus. This requires that, for example, the representatives of the personnel groups have duly received prior to the negotiations from the employer both the initiative as well as all necessary information available to the employer on the matter to be discussed in the negotiations.

Communication (section 26)

After the co-operation procedure it is important that the personnel of the undertaking are informed of the results thereof. Therefore, the employer has a duty to inform either the representatives of the personnel groups concerned or all the employees concerned after termination of the co-operation negotiations the detailed content and time for entry into force of a decision reached. The objective is that a decision could be made on the basis of the consensus reached in the negotiations, but this is not obligated by the Act. The employer may alternatively inform of the matter through the practices of internal communication of the undertaking.

Whether the employer informs the representatives of the personnel groups or all employees depends on the discussed matter and its content. Though openness is a central objective of co-operation, there may be matters discussed in the co-operation negotiations which cannot be communicated to all employees.

CHAPTER 5.
AGREEMENT AND DECISIONS OF PERSONNEL

This chapter deals with the matters connected to the co-operation procedure which have to be primarily agreed upon with the employer and the representatives of the personnel groups.

Initiative for negotiations and matters to be discussed (section 27)

The employer or a representative of a personnel group may present an initiative for negotiations pursuant to which the matters referred to in this chapter need to be negotiated. The initiative for negotiations also has to clarify the main points of the matter to be discussed in the negotiations and the grounds thereto.

The intention is to strive to agree on the matters. In practice it may happen that agreement cannot be reached which is why agreement is not required.

The following are within the scope of the agreement procedure:

- the amount, content and allocation of the co-operation training annually to each personnel group. The employer shall decide upon the funds allocated to this activity prior to the negotiations. The co-operation training is training which advances co-operation at the workplace and which can take place at the work place or elsewhere as agreed.
- the working rules and any amendments thereto complied within the undertaking or a part thereof. In this respect the co-operation procedure shall not apply to undertakings employing 20-29 persons. The working rules are in general guidelines determining and specifying the procedures at the work place and the code of conduct and rules of the game within the undertaking, which the employees and the employer shall abide by. Matters agreed in the working rules include, for instance the following: how a contract of employment is concluded, how to inform of sick leave, family leave and being late for work, how the occupational health care is used, how and which situations the employee is given a potential warning, which code of conduct prevails at the work place and how it is to be followed.
- rules for suggestion schemes and amendments thereto. Usually this refers to initiatives by the employees regarding development of work or the undertaking's products or services of which the employee received a separate remuneration in accordance with the rules of the game at the work place.
- Principles to be followed in the allocation of company accommodation, determination of shares by personnel groups and allocation of accommodation. Agreement and negotiation do not, however, apply to accommodation intended for use of the members of the undertaking's management. This rule shall not be applied to undertakings employing 20-29 employees.
- Planning and use of staff rooms and other similar premises at the work place within the limits of the funds earmarked by the employer. If the employer has allocated funds for catering at work or for instance to the arrangement of childcare also these matters are within the scope of the agreement procedure.
- The general principles for allocation of contributions reserved by the employer for hobbies, recreational and holiday activities of the personnel. These include, for example, subsidising in various forms sports and culture as hobbies, clubs and societies and the like at the work place and the use of time-shares.

Negotiations and agreement (section 28)

Regardless of which party has taken the initiative the employer has to be active in commencing the negotiations. The employer has to after having presented an initiative for negotiations or received one from a representative of a personnel group first and foremost provide the representatives of the personnel groups concerned necessary information for the discussed matter.

If the employer considers the negotiations referred to in the initiative by a representative of a personnel group unnecessary, he has to inform without delay the representative of the personnel group concerned of his view and the grounds thereto.

The employer shall present the invitation to negotiations. Such an invitation can be given in connection with the provision of information or thereafter. Then the negotiations shall be commenced with the objective of reaching agreement on the discussed matter.

The outcome of the negotiations shall be registered in the minutes as is provided in section 54 of the Act.

Agreement made in the co-operation negotiations has to be *in writing* unless the content thereof is evident from the minutes or their appendices. The agreement can be made for a fixed-term or until further notice. The employer or the representative or representatives of the personnel group is allowed to terminate the agreement made until further notice. The period of notice is six months unless otherwise agreed.

Validity of the agreement (section 29)

Agreement on the *working rules and rules for suggestion schemes* and any amendments thereto are binding on the employer as well as those employees within the scope of the agreement whose personnel group representative has concluded the agreement. The agreement shall be followed as part of each employee's contract of employment unless otherwise provided in the applicable collective agreement. However, the said agreement does not override provisions, more favourable for the employee, of an applicable collective agreement.
The agreement on the working rules and rules for suggestions schemes or any particular provisions therein do not override an express provision, more favourable for the employee, of a contract of employment provided it has been agreed upon between the employer and the employee.
The employer has to inform of the concluded agreement and the content thereof in an appropriate manner at the work place so that each employee is informed of the agreement applicable to him. The agreement shall enter into force in a month from the employer informing thereof, unless otherwise agreed.

Decisions by the representatives of the personnel groups (section 30)

The representatives of the personnel groups concerned shall decide the matter if agreement cannot be reached with the employer on

- the content of the co-operation training and its application to each personnel group,
- the allocation of company accommodation,
- the planning and use of staff rooms and other similar premises at the work place, the arrangement of childcare and catering at work
- the general principles for allocation of contributions to hobbies, recreational and holiday activities of the personnel.

The objective is that the representatives of the personnel groups make the decision together if the matter concerns several personnel groups. The power of decision is restricted by the fact that the employer can decide upon on the funds reserved for the co-operation training and matters relating to social activities.

Decisions by the employer (section 31)

The employer shall within his power decide the matter, if agreement cannot be reached on

- matters within the working rules in general,
- the rules for suggestion schemes or any amendments thereto
- the principles for allocation of company accommodation or determination of the shares for each personnel group.

The employer has no right to unilaterally confirm the working rules complied within the undertaking or any amendments thereto. The employer can under his right of management and supervision issue provisions on the manner of performing the work, its quality and the time and place for its performance, thus, the employer is entitled to decide upon the aforesaid matters to be incorporated as part of the working rules even though they haven't been agreed upon. The bindingness of these unilateral rules is determined in accordance with general labour law principles instead of the provisions of this chapter.

CHAPTER 6.
CHANGES IN BUSINESS OPERATIONS AFFECTING THE PERSONNEL AND ARRANGEMENT OF WORK

The chapter lays down provisions on the co-operation procedure, which the employer has to implement when he contemplates such changes in the business operations or work arrangements which may have other effects on the personnel than those resulting in the termination of an employee's contract of employment or lay-off or reduction of an employment contract into a part-time contract. The employer cannot otherwise within his right of management and supervision decide upon the matters in question. The co-operation procedure does not restrict the employer's decision-making power, but co-operation negotiations have to be implemented before the employer can decide on the matter.

Scope of application (section 32)

The provision lays down the situations in which the co-operation procedure has to be followed if the said situations affect the personnel. When the employer is contemplating measures he has to commence the co-operation procedure prior to the decision-making:

- if the closure of the undertaking or any part thereof, its transfer to another place or expansion or reduction of its operations may affect the personnel
- if the acquisitions of machinery and equipment affect the personnel
- if the contemplated changes in the production of services or product range may affect the personnel
- if other similar changes in the business operations such as decisions concerning the development of the undertaking's operations affect the personnel
- if the arrangement of work contemplated by the employer would affect the personnel. The arrangement of work refers to the content of work and its organisation besides the actual arrangement of work tasks or

- if the use of external labour would affect the personnel. External labour refers both to the use of temporary agency work force and subcontractors.

Matters to be discussed (section 33)

When the employer contemplates measures referred to in section 32 above, he has to estimate whether the measures cause material changes in the position of the employees. The intended measures do not need to be material for the employer's operations, but their estimated effect on the employees has to be material. Then the changes and the effects of the intended changes need to be considered with regard to

- the duties of the employee
- working methods
- arrangement of work and work premises
- transfers from one duty to another
- arrangement of the regular working hours, commencement and ending of the regular working hours as well as the times for meal and other breaks

The changes contemplated by the employer are to be within the scope of his power of management. This means that changes to the terms of a contract of employment of an individual employee are not normally discussed in the co-operation procedure. Instead, if the contemplated measures concern the general practices at the work place and arrangements of work they have to be discussed prior to discussing the terms of a contract of employment of an individual employee.

The materiality of the effect on the personnel is estimated by a review of all aspects in which, for example, the duration and extent of the change have to be taken into account. If the measure causes, for instance, considerable and permanent changes to the content of the work duties, they belong to matters to be negotiated upon. If the working time arrangements change permanently, they have to be negotiated within the co-operation procedure. The materiality of the changes regarding the arrangement concerning the work premises is estimated, like the other effects, from the employee's perspective which means that besides the changes regarding the location of the work place or site, the office arrangements, such as individual offices being converted into an open-space office has to be taken into account.

In estimating the duty to negotiate and the materiality of the effects of the measure attention needs to be paid to whether the change relates to a personnel group or a single employee. If the entire personnel group or a large part thereof is affected by the changes the requirement of materiality is as a rule fulfilled.

The effects on the personnel may also be provided on in the collective agreement binding on the employer. In this scenario the provisions of the said collective agreement have to be abided by first and foremost.

Co-operation negotiations (section 34)

The co-operation negotiations have to be conducted prior to the employer deciding the matter. The grounds, effects and alternatives to the intended changes insofar as they affect the position of the personnel have to be discussed in the negotiations.

The time for the negotiations depends on the nature of the measure contemplated by the employer. Some of the measures inevitably affect the personnel such as the closure of the undertaking or any part thereof or its transfer to another place. That’s when the co-operation negotiations have to be conducted prior to deciding upon the measure. Some of the measures such as acquisitions of machinery and equipment are such that it is impossible to estimate their effect on the personnel at the time of deciding on the acquisition. In these situations the negotiations have to be conducted once the potential effect on the personnel can be estimated but prior to deciding on the aforesaid matters.

In order to realise interaction between the employer and the personnel in the negotiations, they have to be conducted in the spirit of co-operation to reach consensus.

If the intended change only affects the position of one or a few employees, the co-operation negotiations are conducted separately with each employee unless otherwise agreed. This is practical because part of the discussed matters may be fairly standard changes which need to be implemented quickly in order not to disturb the operations of the undertaking. In the said negotiations as a rule the employer's appropriate representative is the employees’ supervisor in charge of the line organisation.

Because the change in question is material and it affects the employee’s position, each employee has a right to request that the matter concerning him is also discussed between his representative and the employer.

If the intended change affects employees of one or several personnel groups in general, the co-operation negotiations shall be conducted between the representatives of the personnel groups concerned and the employer. The co-operation negotiations can also be conducted in another manner as agreed.

Employer’s initiative (section 35)

The employer shall initiate the co-operation negotiations as soon as possible taking into account the time-frame for implementation of the intended plan. The minimum time limit between the initiative and the negotiations has not been stipulated as the extent of the matters discussed may vary greatly. The extent of the effect on personnel also influences the determination of the time of initiating the negotiations.
The employer shall at the same time inform of the commencement time and place for the co-operation negotiations.

Information provided for employees or representatives of the personnel groups (section 36)

Prior to commencement of the co-operation negotiations, the employer is to provide the employees or the representatives of the personnel groups concerned with information necessary for the discussion of the matter. The information is primarily to be attached to the employer’s initiative.

However, if the matter to be discussed is extensive, the information can also be given separately prior to commencement of the co-operation negotiations. The negotiations cannot be commenced until the employees or representatives of the personnel groups concerned have had enough time to familiarise themselves with the information obtained. Sufficient time has to be reserved for the representatives of the personnel groups to discuss the matter of the initiative together. This has to be taken into account already when presenting the initiative so that the parties to the negotiations have sufficient time to familiarise themselves with the matter prior to commencement of the negotiations.

Right of initiative of a representative of a personnel group (section 37)

A representative of a personnel group is entitled to request the commencement of the co-operation negotiations. The employer shall initiate the commencement of the co-operation negotiations as soon as possible on the requested matter abiding by the provisions on the employer’s initiative and information provided for the representatives of the personnel groups.
If the employer is of the opinion that there is no reason to commence the negotiations on the basis of an initiative by a representative of a personnel group the employer shall supply the representative of the personnel group a written report without delay of the grounds on which he does not consider the co-operation negotiations necessary.

Fulfilment of the duty to negotiate (section 38) and registering the outcome of the negotiations (section 39)

The employer is considered to have fulfilled his duty to negotiate if the employer has followed the above provisions and the matters have been discussed in the spirit of co-operation to obtain consensus.

Provisions on the registration of the outcome of the co-operation negotiations are laid down in section 54.

Communication (section 40)

After termination of the co-operation negotiations it is important for the personnel to know what the employer has decided on the matter. The employer has a duty to inform the representatives of the personnel groups concerned or all the employees concerned by the decision of the content of the decision made in the matter. Communication can also happen by following the principles and practices on the undertaking's internal

communication. The employer has to inform of the decision regardless of whether it is based on the consensus reached in the said matter or on the employer's discretion within his power.

CHAPTER 7.
CO-OPERATION PROCEDURE IN CONNECTION WITH A BUSINESS TRANSFER

Communication to the representatives of the personnel groups (section 41)

Business transferor and transferee have to explain to the representatives of the personnel groups affected by the transfer:
1) time or intended time of transfer;
2) reasons for transfer;
3) legal, economic and social consequences to the employees due to the transfer; and
4) intended measures regarding the employees.

The transferor shall provide the representatives of the personnel groups with available information in good time before completion of the transfer.
The transferee shall provide the representatives of the personnel groups with information in good time and no later than *in a week* from the completion of the transfer.

The business transferor and transferee cannot plead the fact that the transfer decision was made by the controlling undertaking in the name of the undertaking and that they did not receive the necessary information from the controlling undertaking.

If the business transfer has an effect on the personnel, which has to be discussed in the co-operation negotiations, these issues shall be discussed in a manner provided elsewhere in the Co-operation Act.

Duty of transferee to participate in dialogue (section 42)

After having explained the above information to the representatives of the personnel groups the employer has to provide them an opportunity to ask further questions and to answer the questions asked. This aims to reduce the confusion and fear often related to a business transfer.

After the representatives of the personnel groups have received answers to their questions the employer has to on request of the representatives of the personnel groups and on the basis of information provided by him provide a report to the undertaking's entire personnel concerned.

Merger and division (section 43)

The provisions on business transfers shall also apply to mergers and divisions of undertakings.

CHAPTER 8.
CO-OPERATION NEGOTIATIONS IN REDUCING THE USE OF PERSONNEL

The chapter also includes the provisions on protection in the event of restructuring which entered into force on 1 July 2005.

Scope of application (section 44)

The provisions of this chapter shall apply when the employer considers measures which may lead to termination of a contract of employment, lay-off or reducing a contract of employment into a part-time contract of one or several employees on financial or productive grounds. Thus in commencing the co-operation procedure the employer has not decided upon the matters potentially having an effect to the reduction of the number of personnel, instead he is only contemplating measures which may affect the number of personnel. The co-operation obligations shall be applied regardless of whether the decision leading to termination of a contract of employment is made by the employer or the controlling undertaking.

These provisions shall also apply if the employer intends to otherwise terminate a contract, lay-off or reduce a contract of employment to a part-time contract of one or several employees on the aforesaid grounds. The possible scenarios are that the employer has financial difficulties or the undertaking’s volume of orders has decreased so that reduction of the number of personnel has to be considered instead of any other measures.

The provisions of this chapter shall not apply if the undertaking has been declared bankrupt or is in liquidation or if the employer is deceased. If the employer is deceased the only possible scenario is where the employer was a physical person and his operation as an employer discontinued in accordance with the Employment Contracts Act and it was not continued by the deceased’ estate or transferred through a business transfer to a new employer.

Employer’s proposal for commencement of the co-operation negotiations (section 45)

The employer shall commence the co-operation procedure if the employer is considering to terminate a contract of employment, lay-off or reduce a contract of employment into a part-time contract of one or several employees. The employer shall issue a proposal for negotiations in order to commence the co-operation negotiations and employment

measures. The proposal has to be issued at the latest *five days prior to commencement of the negotiations in writing*.
The proposal for negotiations shall include at least the commencement time and place of the negotiations and an outline of the suggested agenda to be discussed in the negotiations.

Parties to the co-operation negotiations (section 46)

In negotiations with the employer the employees are usually represented by representatives of a personnel group or groups. Negotiations can also be conducted in a joint meeting.
If termination of a contract of employment, lay-off or reduction of a contract of employment into a part-time contract applies to a single employee or specific employees the matter may be discussed between the employee or employees and the employer. Each employee has a right to request that the matter concerning him is also discussed between his representative and the employer.

Information provided by the employer (section 47)

If the employer contemplates terminating a contract of employment, lay-off for over 90 days or reducing a contract of employment into a part-time contract of *at least ten* employees he is to provide the representatives of the employees concerned with information, in writing, available to him as follows:

- the grounds for the intended measures;
- initial estimate of the amount of terminations, lay-offs and reduction of contracts of employment into part-time contracts;
- report of the principles used to determine which employees' contracts of employment shall be terminated, which shall be laid-off or their contract of employment reduced to a part-time contract; and
- time estimate for implementation of the said terminations, lay-offs and introduction of the said part-time contracts.

Information has to be attached to the proposal for negotiations. Information obtained by the employer after the proposal has been made can be given in the meeting commencing the co-operation negotiations. Thus the negotiations can be commenced, even though all relevant information is yet not available when making the proposal for negotiations. The objective is that the negotiations would be commenced as early as possible.

If the employer is considering to terminate a contract of employment, lay-off or reduce a contract of employment into a part-time contract of *less than ten* employees he may provide the aforesaid information to the employees concerned or their representatives. Because a difference has been made in the section between lay-off of at least ten employees for a period over 90 days and lay-off of less than ten employees for a period over 90 days, this information shall also apply to such lay-offs which are estimated to last at least 90 days but which affect less than ten employees.

In these smaller-scale terminations of contracts of employments the information can be provided verbally. In these cases the employer shall provide the information in writing on

request of the employee or the representative of the personnel group concerned. The employee or the representative of the personnel group may independently request and obtain the information in writing.

Informing the employment office (section 48)

When the employer proposes measures which may lead to termination of a contract, lay-off or reduction of a contract of employment into a part-time contract of an employee to be discussed in the co-operation negotiations, the proposal for negotiations or its material contents shall be delivered, in writing, to the employment office no later than at the commencement of the co-operation negotiations.

Plans and principles for action (section 49)

The objective is to improve the co-operation between the employer, the personnel and the employment office by reinforcing the procedures followed in clarifying and negotiating the grounds of, effects and alternatives to the deliberate *terminations of the contracts of employment* on financial or productive grounds. Simultaneously the employees to be dismissed are supported in their search for employment also with other employers as flexibly and quickly as possible.

The employer shall at the commencement of the co-operation negotiations provide the representatives of the personnel groups with a report on a plan of action to promote employment if his intention is to *terminate the contracts of employment of at least ten employees* due to financial or productive reasons. In preparing the plan of action the employer shall together with the employment authorities examine the public employment services supporting employment. The proposal for a plan of action is given to the representatives of the personnel groups as early in the co-operation negotiations as possible. It does not yet have to be a finished plan of action because the public employment services offered by the employment authorities can be examined in detail only during the negotiations.

The action plan shall include

- the intended timetable for the co-operation negotiations
- the procedures to be followed in the negotiations
- the planned principles of action to be applied during the notice period in using the services referred to in the Act on the Public Employment Service in order to advance training and applying for work

The negotiation procedure has to advance consistently in stages. Thus the representatives of the personnel groups can better prepare for each negotiation as they are aware of the agenda of the meeting. At the same time the employment opportunities offered by the employment authorities and utilisation of other necessary measures can be improved.

The action plan cannot override other provisions applicable to terminations of employment contracts, such as grounds for terminations of contracts and obligations to offer work and training. The possible collective agreements in each field also have to be taken into account.

If the employer contemplates terminations of contracts of *less than ten employees* for financial or productive reasons the procedure is more simple. In this case the employer has to present in the co-operation procedure the principles according to which during the notice period the employer supports the employees' independently applying for other work or education and their employment with the services referred to in the Act on the Public Employment Service. The provision shall be applied when the employer contemplates terminating the contract of employment of just one employee.

Chapter 7, section 12 of the Employment Contracts Act provides on an employee's right to employment leave during the notice period. The duration of the leave is determined in accordance with the duration of the employment relationship and length of the notice period and it is 5-20 working days.

Content of the duty to negotiate (section 50)

Matters concerning the reduction of the number of employees have to be discussed in the spirit of co-operation to obtain consensus. The content of the duty to negotiate is the same regardless of how many employees' contracts of employment the employer contemplates to terminate, lay-off or reduce to a part-time contract.

Contents of the negotiations include

- the grounds and effects of the measures
- principles or plans of action
- ways to limit the number of people affected by reductions and alleviation of the consequences of the reductions to the employees.

Matters to be discussed in the negotiations include in particular opportunities for training and relocation and work and working time arrangements, which several collective agreements nowadays enable. Training possibilities have to be examined together with the employment authorities and more widely than the opportunities offered by the individual undertaking. Other matters can be for instance the number of persons voluntarily wanting to work to part-time, take a study leave and similar arrangements and pension options. If reduction of the use of the work force cannot be abandoned, the opportunities to minimise the social harm and financial loss caused by terminations of contracts, lay-offs and reductions of contracts into part-time ones have to be discussed in the negotiations. These include for example the work arrangements and training requirements of those remaining at work due to which the necessary changes have to be made also to the plan regarding personnel and the training objectives, and other matters relating to the benefits offered by the undertaking.

Fulfilment of the duty to negotiate (section 51)

If the employer is considering to terminate a contract of employment, lay-off or reduce a contract of employment into a part-time contract of less than ten employees or lay-off for a period of a maximum of 90 days of at least ten employees the employer shall be considered to having fulfilled his duty to negotiate once *14 days have elapsed* since the commencement of the negotiations. The time reserved for the negotiations means calendar days and the time is calculated from the first day of the negotiations including that

day. The duration of the negotiations and fulfilment of the duty to negotiate can also be otherwise agreed.

If the employer is considering termination of contracts of employment, lay-off for a period over 90 days, or reduction of contracts of employment into part-time contracts of at least ten employees the employer shall be considered having fulfilled his duty to negotiate as above, except that the duration of the negotiations is *six weeks*. The duration of the negotiations and fulfilment of the duty to negotiate can also be otherwise agreed. However, the negotiation period is only *14 days in an undertaking normally employing 20-29 employees*.

A shorter or longer duration of negotiations is determined on the basis of the temporal connection of each discussed matter. The negotiations cannot be divided to concern a smaller number of employees or a shorter lay-off period than the actual case is due to the temporal and factual connection.

If the undertaking is under the restructuring process the negotiation period is 14 days from the commencement of the negotiations.

Registering the outcome of the co-operation negotiations (section 52)

Registering the outcome of the negotiations has been provided in section 54 of the Act.

Employer's report (section 53)

After having fulfilled his duty to negotiate, the employer is entitled to decide upon terminations of contracts, lay-offs and reductions of contracts of employment into part-time contracts. In order for the employees concerned who participated in the negotiations to find out about the content of the decision contemplated by the employer as early as possible the employer shall within a reasonable time provide the employees and the representatives of the personnel groups who participated in the co-operation negotiations with a report on the decisions considered on the basis of the said negotiations. The purpose of the report is to decrease the confusion with regard to the progress of the matter felt by the personnel and to specify the time within which the decisions based on the co-operation procedure shall be finalised.

When issuing the report the employer is contemplating a decision after the alternatives discussed in the co-operation procedure. When several persons' contracts of employment are being terminated often the names of the employees are not know at this stage.

The report shall provide at least

- the number of employees whose contracts will be terminated, who will be laid off, or whose contracts of employment will be reduced to part-time contracts in each personnel group
- duration of the lay-offs
- an estimate of the time during which the planned reductions are intended to be carried out.

On request of the representative of the personnel group the employer has to present the report jointly to the employees of the personnel group concerned.

CHAPTER 9.
MISCELLANEOUS PROVISIONS

Registering the outcome of the co-operation negotiations (section 54)

After discussion of various matters referred to in co-operation procedures the employer shall ensure that the outcome of the negotiations is registered. Common practices for signing and confirming the minutes can be agreed upon within the undertaking.
The employer shall, on request, ensure that the minutes are prepared on the negotiations, unless otherwise agreed. The minutes shall include the dates of and participants to the co-operation negotiations, the outcome of the negotiations or the dissenting opinions of the parties evidencing the opinions of both parties to the discussed matter.

All the negotiating parties in attendance at the negotiations inspect and confirm the minutes with their signature.

Right to use experts (section 55)

The representatives of the personnel groups are entitled to consult and request information from the experts working in the operational unit preparing the discussed matter and as far as possible from other experts within the undertaking when necessary for the discussion of the matters in the co-operation procedure. The right to use experts relates to the representatives of the personnel groups preparing for the co-operation procedure and the actual co-operation procedures.
Matters in which the use of experts may be necessary are for instance the information collected on a prospective employee in recruitment and during the employment relationship, discussion of plans, principles and practices based on other legislation and matters referred to in chapters 6 and 8 of the Act. The use of experts may also be necessary in order to facilitate understanding of the information in cases where the representatives of the personnel groups have received information on the financial position of the undertaking, salary information or a report on the principles of use of external labour.

The experts shall be released from their work duties to offer expert advice and compensated for the resulting loss of income on the same grounds as the representatives of the personnel groups.

Release from work and compensation (section 56)

A representative of a personnel group is entitled to be released from his work for such time as required to carry out his co-operation duties in the co-operation procedure taking place *during working time*. This means release from normal work tasks and sufficient time required by the representative for each individual matter. The release includes

- participation in the co-operation negotiations
- time required by the representative of the personnel group to prepare for the negotiations with the employer. The time in question includes both preparation to

the negotiations among the representatives of the personnel groups and the representative of the personnel group familiarising himself to the initiative or proposal for negotiations issued and the material relating to the negotiations supplied by the employer

- participation in co-operation training, which is to be connected to implementation of the Co-operation Act and the time of which the employer and the representative of the personnel group have to agree upon separately.

The employer shall compensate any consequent loss of earnings due to release from work. This means the salary the person would obtain during the said time if he was at work. Compensation of loss of earnings is clear in the case of employees receiving a monthly salary. In the case of employees working for contract rate and hourly wages it usually means compensation according to average hourly pay. Compensation can also be calculated as agreed on the calculation of compensation for loss of earnings for a shop steward or occupational safety delegate.

Any other release from work than as specified above and the related compensation for loss of earnings shall be separately agreed upon between the representative of the personnel group and the employer.

In so far as a representative of a personnel group takes part in the co-operation procedure referred to in the Act outside his working hours or discharges any other co-operation duty on which he has agreed with his employer, the employer shall pay him compensation for the hours used for carrying out the task in the amount corresponding to his salary for regular working hours. The compensation is calculated in accordance with the aforesaid principles for calculation of a salary. The time used to carry out duties outside working hours is not considered as working time.

Confidentiality (section 57)

Confidential information can be discussed in the co-operation procedure and thus provisions on confidentiality are necessary to protect the employer or privacy of the employee.

An employee and a representative of a personnel group have to keep confidential information obtained in connection with the co-operation procedure relating to the employer’s financial position, business and trade secrets, security of the undertaking and the corresponding security system. The obligation of confidentiality also applies to an expert. Information obtained does not have to be kept confidential unless dissemination of such information would probably be prejudicial to the employer or any of his business partners or contracting parties.

Business and trade secrets may also include, for example, financial and technical information or information of procedures, software, production amounts, formulas, client registers or work methods. Information on the undertaking’s contracts, marketing or pricing policy and technical secrets are also included in the business and trade secrets. Security of the undertaking and the corresponding security system within the scope of confidentiality may be connected to data security and the undertaking's actual, physical security.

A precondition for confidentiality is that the employer has indicated to the employee and the representative of the personnel group in connection of the co-operation negotiations what information he considers confidential pursuant to the aforesaid criteria.

An employee or a representative of a personnel group bound by confidentiality may discuss information with other employees or their representatives if it is necessary due to the position of the said employees. The person bound by the obligation of confidentiality has to consider the importance of the matters discussed in co-operation negotiations and also on the basis of the nature of the confidential information whether more extensive discussion of the matter is appropriate and with whom is it necessary. In estimating the appropriateness of the discussion it needs to be taken into account how sensitive the subject is and whether divulging the information may increase danger for the undertaking in the form of misuse of the information for instance as inside information.

At the time the employee or a representative of a personnel group discusses information within the scope of confidentiality with other employees or their representatives he has to inform the persons in question of the obligation of confidentiality. Thus also these employees and their representatives are under obligation to keep confidential any information discussed with them.

Information has to be kept confidential when it relates to a private person’s state of health, financial situation or concerns him personally in any other way unless the person, who the confidentiality provisions have been prepared to protect, has agreed for the said information to be revealed. The employer does not have to separately inform thereof.

The obligation of confidentiality shall continue during the entire duration of the contract of employment. Therefore the obligation of confidentiality of a representative of a personnel group continues beyond termination of his role as a representative.

Relation of the co-operation negotiations to the provisions on negotiations in the collective agreement (section 58)

Matters in the scope of the co-operation negotiations may be matters which have also been agreed upon in a collective agreement. Thus it is possible that the same matter has to be discussed in the co-operation procedure pursuant to the Co-operation Act and in accordance with the order of negotiation of a collective agreement.
If a matter referred to in the Co-operation Act also requires discussion in accordance with the order of negotiation of a collective agreement (excluding the generally binding collective agreements) binding on the employer on the basis of the Collective Agreements Act, the co-operation negotiations shall not be commenced or they have to be interrupted, if the employer or the shop steward representing the employees bound by the collective agreement requests for the matter to be discussed in the order of negotiation pursuant to the collective agreement.

Derogations from the employer’s duty to inform (section 59)

The employer is not obligated to provide the employees or the representatives of the personnel group with such information the dissemination of which would without prejudice

cause significant damage or harm to the undertaking or its operations. The provision becomes applicable in circumstances where a listed company's information considered confidential under other legislation may become seriously endangered.

Derogations from the co-operation procedure (section 60)

The employer can deviate from the co-operation procedure if there are particularly weighty unforeseen reasons harming the productive or service operations or the finances of the undertaking which hinder the co-operation negotiations. The possibility of derogation only exists if the co-operation negotiations may by objective assessment cause significant harm or damage to the operations of the undertaking.

The derogation procedure applies to matters referred to in sections 32 and 33 (scope of application of chapter 6 and discussed matters) and in 44(1) (scope of application of chapter 8 in situations where reduction of the number of work force is based on other factors than liquidation or death of the employer).

The employer's obligation to implement the co-operation procedure in matters within the scope of the provision does not disappear altogether because the employer has to when possible without delay commence the co-operation negotiations on the matters in question, where the grounds for the unorthodox procedure shall also be clarified.

Right to conclude agreements (section 61)

Nationwide associations of employers and employees have a right to conclude agreements.
An agreement has the same legal effect as a collective agreement. An employer bound by an agreement is entitled to apply the agreement also to employees who do not belong to the employee organisations concerned.

Agreements can be concluded in derogation from the provisions of

- chapter 3 on information provided to representatives of personnel groups
- chapter 4 on undertaking's general plans, principles and goals
- chapter 5 on agreements and decisions of personnel
- chapter 6 on changes in business operations affecting the personnel and arrangement of work
- chapter 8 on co-operation negotiations in reducing the use of personnel.

However, agreements cannot be concluded in derogation from the provisions of chapter 8, section 47 on information provided by the employer and section 48 on informing the employment office insofar as the provisions apply to termination of the contracts of employment of at least ten employees.

Indemnification (section 62) and adjustment of the indemnification amount (section 63)

Indemnification paid to the employee occurs in situations where the employer has terminated the employee's contract of employment or reduced it to a part-time contract or laid off the employee and deliberately or negligently failed to observe his co-operation obligation.

The employer is liable to pay indemnification for failure to observe his obligations under the co-operation procedure regardless of whether the termination of a contract, lay-off or reduction of a contract to a part-time contract has been legal or illegal. Establishment of the indemnification liability does not require a causal connection between the failure to observe the duty to negotiate and the decision made. The indemnification sanction is compensation caused by the failure to observe the co-operation procedure which is imposed because the procedure has particularly violated a person's rights. Indemnification is non-taxable income.

Indemnification is imposed by a court of general jurisdiction. The *maximum indemnification amount is 30 000 euros*. There is no minimum indemnification amount and if the employer's negligence, taking into consideration all relevant factors, can be considered insignificant, it is possible to refrain from imposing liability for indemnification. Indemnification does not hinder imposing other compensation liabilities on the employer, for example, compensation for arbitrary dismissal in accordance with the Employment Contracts Act. On the other hand, indemnification can be imposed even though the termination of the employee's contract of employment is justified.

The amount of indemnification depends on the degree of neglect in respect of the co-operation obligation, the general circumstances of the employer, the nature of the measure applied in respect of the employee and duration of his employment relationship. In determining the indemnification amount other relevant factors include the type and extent of the co-operation procedure. The more severe the procedural violation in question, the higher the amount of imposed indemnification.

In considering the indemnification amount the level of expertise reasonably expected from the employer is also taken into account which is why the size of the undertaking may affect the indemnification amount. Indemnification imposed on a smaller undertaking may be less than indemnification imposed on a larger undertaking in similar circumstances. If the indemnification amount would jeopardise the continuation of the undertaking's business operations this needs to be taken into account in estimating the indemnification amount. The objective is to use the whole scale in determining the indemnification amount taking into account the aforesaid factors affecting the amount thereof.

If an undertaking in control (for example a subsidiary of a group of companies) has as an employer terminated the contracts of employment of at least ten employees, the fact that the employer has not received adequate information required in the co-operation procedure from the controlling undertaking within the group of undertakings shall not be considered a factor to reduce the amount of indemnification.

The right of an employee to indemnification shall expire if no action is brought during the employment relationship within two years from the end of the calendar year during which

the right to the said indemnification arose. This situation usually materialises in connection with lay-offs and reduction of contracts of employment into part-time contracts. In the case of termination of a contract of employment, the right to indemnification shall expire if no action is brought within two years from termination of the employment relationship.

In order for the maximum indemnification amount to retain its value, it shall be adjusted in proportion to economic inflation every three years.

Coercive measures (section 64)

In order to avoid jeopardising the receipt of certain information provided in the Act by the representative of the personnel group, the representative may present in a court of general jurisdiction a claim to obligate the employer to provide him under penalty with the following information within a time-limit set by the court:

- information on the financial position of the undertaking (section 10)
- salary information (section 11)
- information on the undertaking's employment relationships (section 12)
- report of the principles applied within the undertaking on the use of external labour (section 13).

If the employer fails in his duty to prepare the personnel plan and training objectives, the Ministry of Labour as the authority supervising compliance with the Act may request an order from a court of law for the employer to fulfil his obligations. Because the plan and the training objectives require somewhat more interpretation of the Act than examination of failure to provide information, only the Ministry of Labour can file the request with a court of law. The Ministry shall also ensure prior to the court proceedings that the personnel plan or training objectives cannot be discussed in the co-operation procedure. The Ministry of Labour would commence to examine the matter after having received a request thereupon from a representative or representatives of a personnel group.

Availability (section 65) and supervision (section 66)

The employer shall keep the Co-operation Act freely available and accessible to the employees at the place of work, where applicable.
Supervision of compliance with the Act shall be exercised by the Ministry of Labour and by the national labour market organisations. The Ministry of Labour may issue instructions and advice in the application of the Act but it is not entitled to issue binding rules of interpretation. Interpretation of the Act is ultimately the responsibility of a court of law.

Penalties (section 67)

The employer or his representative, who intentionally or negligently fails to observe or violates any other procedural provisions of the Co-operation Act than those in chapter 8 (provisions entitling to compensation) shall be imposed a fine for *violation of the co-operation obligation*. Violation of the following sections may lead to imposition of a fine: 17, 20, 22, 28(1) and (2), 30, 31, 34, 36, 41, 43, 55, 56(1) and 65. The essential elements of

violation of the co-operation obligation are as a rule the violation of the procedural provisions of the Act.

Punishment for violation of the rights of the co-operation representatives are provided in chapter 47 of the Penal Code.

CHAPTER 10.
TRANSITIONAL PROVISIONS AND ENTRY INTO FORCE

The Act entered into force on 1 July 2007.

The Act shall apply to undertakings employing less than 30 employees as of 1 January 2008. Due to EU regulations the provisions on reducing personnel in chapter 8 of the Act shall apply as of 1 July 2007 to an undertaking which employs 20-29 employees if the undertaking terminates the contracts of employment of at least 10 employees.

All employers within the scope of the Act have been reserved six months from the time of entry into force of the Act to prepare for the first time a plan regarding personnel and training objectives in the extent referred to in the new Act. Thus the plans regarding personnel made during the period of validity of the so-called old Act will have to be brought in line with the new Act at the latest by 1 January 2008 and the new undertakings, which employ 20-29 employees and which will be within the scope of the Act should prepare the plans for personnel and training objectives immediately when they are within the scope of the Act on 1 January 2008.

Co-operation procedure, when the employer is contemplating measures which may lead to termination of contracts of employment

Written proposal for negotiations
To commence co-operation negotiations and employment measures
5 days prior to commencement of the negotiations
Time and place of negotiations

The following information is attached to the proposal:
- grounds for intended measures
- preliminary estimate on the number of terminations of contracts
- report on principles according to which the dismissed employees are determined
- time estimate for implementation of the termination of contracts

If under the threat of termination of contract of employment

At least 10 employees
in writing

1-9 employees
in writing, on request

Negotiations
Proposal for negotiations delivered to the employment office
Employees have a right to consult the experts in the undertaking for assistance
Paid leave to employees
- to prepare for the negotiations
- for the negotiations

Employer to inform of confidential matters

At the beginning of the negotiations proposal of an action plan to support employment

At the beginning of the negotiations operational principles to support employmentof the employees

Duration of negotiations 6 weeks, if at least 30 employees
Duration of negotiations 14 days if 20-29 employees

Duration of negotiations 14 days

At the end of the negotiations inspection of the personnel plan and training objectives
Minutes in which possible dissenting opinions are also registered

After co-operation negotiations
Within reasonable time a report to the representatives of the personnel groups or to employees
- number of employees whose contracts of employment are terminated
- time during which the decision is implemented

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