

BULLETIN OF COMPARATIVE LABOUR RELATIONS – 85

# Workers' Representation in Central and Eastern Europe

Challenges and Opportunities for the Works Councils' System

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## CHAPTER 6

# The Status of Non-union Employees' Representatives in Estonia

*Merle Muda*

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### §6.01 INTRODUCTION

In Estonia, employees' representatives play marginal role in shaping employment and social relations. This is particularly due to the historical development of institutions representing employees.

Through history, the main representatives of employees have been trade unions and employees' trustees. The first known Estonian trade unions were established in 1905.<sup>1</sup> At the same time, the second channel of employees' representation – the workers' elder (*töölisvanem*) – was also created besides trade unions.<sup>2</sup> In the year 1936, the Workers' Chamber (*tööliskoda*) as an alternative to workers' elders and trade unions was set up.<sup>3</sup>

During the Soviet period (1940–1991) only trade unions represented employees. However, the objective of the Soviet trade unions was not to advocate the rights and interests of employees, but to implement the policies of the Communist Party.<sup>4</sup>

Restoration of the system of traditional employees' representatives in Estonia began in the 1990s. Trade unions were separated from state authority and the trade unions network of the Soviet Union – they were restructured into independent

---

1. However, the first traditional trade unions emerged by the end of the 1920s. L. Kiik, *Eesti Vabariigi ametiühingud. Ajalooline ülevaade (1918–1940)/Trade Unions of the Republic of Estonia. A Historical Overview (1918–1940)* (Publication of the Confederation of Estonian Trade Unions, 1995), 7-9, 55 ff.

2. *Töötajate usaldusisiku seadus. Kommenteeritud väljaanne/Employees' Trustee Act. Commented Issue, Commentaries by T. Kaadu, Juura, 2008, 17.*

3. *Supra* n. 1, at 121.

4. For greater detail, see L. Kiik, *Ametiühingud võõra võimu all (1940-1990)/Trade Unions under Foreign Power (1940–1990)* (Publication of the Confederation of Estonian Trade Unions, 2000).

organizations of employees.<sup>5</sup> In addition to trade unions, the institution of employees' trustee was introduced into the system of collective labour relations in 1993.

Thus, there is a two-channel system of employees' representation in Estonia at present: employees participate in the forming of labour relations via trustees and trade unions. Although contemporary employees' representatives have acted for about twenty years in Estonia, their role in the organization of employment and social affairs has not been remarkable. According to statistics, approximately 10% of employees belong to trade unions and employees' trustees have been elected in 11% of companies.<sup>6</sup>

In this paper, the author mainly focuses on the non-union employees' representatives in Estonia.<sup>7</sup> The aim of the paper is to ascertain whether the legal regulation and practical circumstances support the development of the system of employees' trustees. In order to achieve this goal, author examines, firstly, historical background of the non-union employees' representatives and nowadays employees' representation system in Estonia, and, secondly, which is the competence of employees' trustees, incl. in comparison with trade unions.

## §6.02 FROM WORKERS' ELDERS TO EUROPEAN WORKS COUNCILS: HISTORICAL OVERVIEW

### [A] Workers' Elder

The system of workers' elders that started to develop at the beginning of the twentieth century was based on the corresponding regulation of the Russian Empire.<sup>8</sup> Until 1917, the election of a workers' elder was initiated by the management of the enterprise.<sup>9</sup> The workers' elder represented employees in relations with the employer, mediated employees' wishes and opinions; and was entitled to call the meeting of employees.<sup>10</sup>

In 1917, the workers' elders got rid of employers' influence. The existence of the workers' elder in an enterprise was not obligatory. Employees had the right to elect the workers' elder in industrial enterprises employing more than ten employees. In large enterprises it was possible to establish the council of workers' elders. The main

- 
5. The Confederation of Estonian Trade Unions was founded in 1990 to unite transport, industrial and medical workers, seamen, commercial workers, etc. The Estonian Employees' Unions' Confederation that unites cultural, educational and research workers was founded in 1992. About the history of Estonian trade unions see M. Muda, *Estonia*, in *Handbook on Employee Involvement in Europe 7-11* (M. Weiss & M. Sewerynski eds, Kluwer L. Intl. 2004).
  6. E. Kallaste, 'Kollektiivsed töösuhted'/'Collective Employment Relations' in M. Masso (ed), *Eesti tööelu-uuring 2009/Estonian Work Life Survey 2009* (Series of the Ministry of Social Affairs 2011/3), 61 and 66.
  7. This article does not deal with the 'specialized' representation, i.e., the legal status of the working environment representative and members of working environment council.
  8. Estonia was a part of the Russian Empire from 1721 to 1917.
  9. This system of workers' elders was criticized due to the reason that the election of the employees' representative depended on the employer.
  10. V. Peep. *Eesti sotsiaalpoliitilise õigusloome arenguajooned 1. omariiklusajal/Developments of Estonian Legislation on Social Policy During the First Statehood* (Argo, 2005), 32-33.



function of the workers' elder was to monitor working and wage conditions.<sup>11</sup> In practice, the workers' elders had been elected in less than the half of enterprises.<sup>12</sup>

In 1931, the regulation pertaining to the workers' elders was reformed. According to the new act,<sup>13</sup> there was still no obligation to elect the workers' elder in the enterprise. The act enabled to elect the workers' elder in enterprises employing 25–100 employees. In enterprises employing more than 100 employees was possible to establish the council of workers' elders. Although workers' elders had not been entitled to participate in the management, their position in the enterprise became stronger. The workers' elders had the right to receive information about the situation of the enterprise and extensive hirings and firings, demand explanations of issues regarding to the performance of employment contracts, take part in drafting internal procedure rules, salary guides, etc.<sup>14</sup>

Thus, the new regulation laid down good prerequisites for effective cooperation between the workers' elder and the employer. In practice, however, workers' elders did not have significant impact on the forming of labour relations in enterprises. They were not popular due to the fact that trade unions as highly politicized institutions tried to place workers' elders under unions' management. The activity of the workers' elders was terminated in the year 1940 when the Soviet Union occupied Estonia.<sup>15</sup>

Hence, during the period 1918–1940 when Estonia was an independent state, workers' elders as the second channel of employees' representation were operating beside trade unions. Even more, in large enterprises the workers' elders had the right to establish a special organ – the council of workers' elders. In the author's view, the aims and tasks of these organs were quite similar to the functions of works councils.

Although the legal regulation on non-union employees' representatives supported their existence, the election of workers' elders was not wide-spread in practice. The reputation of workers' elders was not good by reason of trade unions' attempts to intervene the in workers' elders' activities. The author of this paper holds that the state enabled the workers' elders to involve in shaping employment relations but due to the inactivity of employees their impact was not considerable.

## [B] Workers' Chamber

As mentioned above, the first traditional trade unions and the system of workers' elders emerged in Estonia by the beginning of the 1930s. In 1934, the Head of State proclaimed the emergency situation in order to strengthen the authority of the state.<sup>16</sup> One of the methods that was implemented to that end was containing the labour

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11. In order to perform this task, a workers' elder was entitled to collect corresponding information and have recourse to the management and supervisory authority. A workers' elder was retained the wages for the time of performance of his or her duties.

12. *Supra* n. 10, at 33–34 and 43–44.

13. Tööstusliikude käitiste töölistkonna asutiste seadus/Employees' Representatives in Industrial Enterprises Act – RT (Riigi Teataja/State Gazette) 1931, 61, 488; 1936, 22, 150.

14. *Supra* n. 2, at 17; *supra* n. 10, at 44.

15. *Supra* n. 2, at 18–19.

16. Also known as the beginning of the Era of Silence in Estonia. *Supra* n. 1, at 113.

movement and subjecting it to the state monitoring.<sup>17</sup> Besides trade unions and workers' elders there was decided to found the Workers' Chamber that had to be the broad-based representative body of employees.<sup>18</sup>

Although trade unions opposed the idea, the Workers' Chamber Act<sup>19</sup> was adopted and entered into force in 1936. The Workers' Chamber consisted of thirty members who were elected by workers' elders and the members of councils of workers' elders.<sup>20</sup> The main function of the Workers' Chamber was to represent economic, social and cultural interests of industrial workers.<sup>21</sup> Thus, the tasks of the Workers' Chamber and trade unions were similar; only a fight for wages fell within the exclusive competence of trade unions. The Workers' Chamber Act did not regulate relations between the Workers' Chamber and trade unions but in subsequent years, the Workers' Chamber took over several trade unions' functions.<sup>22</sup>

The Workers' Chamber was not an independent organization of employees; it was supervised by the Minister of Social Affairs. However, the impact of the Workers' Chamber on the forming of employment relations was not significant due to the short duration of its operation. The activity of the Workers' Chamber was terminated in 1940 by reason of the Soviet Union occupation in Estonia.<sup>23</sup>

Hence, at the end of the 1930s the state powerfully intervened in the activities of employees' representatives through the establishment of the Workers' Chamber. Therefore, in the author's opinion, the Workers' Chamber was not the traditional second channel of employees' representation in Estonia as its members were not able to determine freely the workers' positions pertaining to employment relations.

### [C] Employees' Trustee

After the restoration of Estonia's independence in 1991 employees have participated in the shaping of labour relations via trade unions and employees' trustees. Thus, from

17. For example, the right to establish trade unions and to strike were restricted.

18. The first attempt to found The Workers' Chamber was made in 1931. *Supra* n. 1, at 94.

19. Tööliskoja seadus/Workers' Chamber Act – RT 1936, 40, 310.

20. Workers' elders and the members of councils of workers' elders represented the Workers' Chamber in enterprises.

21. Within the competence of the Workers' Chamber were the following:

- to study and aspire to improve the status of industrial workers;
- to inform the state and the local government agencies about the needs of industrial workers;
- to give opinions and submit proposals into the regulation of labour relations, occupational health and safety, unemployment, etc.;
- to give opinions and submit proposals into draft legislation in issues relating to employees;
- to represent workers in different agencies;
- to organize courses, exhibitions, lectures;
- to cooperate with other professional associations;
- to homogenize the work of employees' organizations. *Supra* n. 1, at 120–121.

22. *Supra* n. 1, at 135 ff; *supra* n. 2, at 18.

23. *Supra* n. 1, at 155; *supra* n. 2, at 18–19.

the beginning of the 1990s, there is a two-channel system of employees' representation in Estonia again.

The status of trustees has been regulated by two acts. In 1993, the *Riigikogu* (the Estonian Parliament) adopted the first Employee Trustee Act.<sup>24</sup> According to § 2 (1) of this act, a trustee was an employee of an enterprise who was elected by the members of a union of employees or by a general meeting of employees who did not belong to a union of employees to represent the employees in labour relations with the employer.<sup>25</sup> Hence, under the first act, trustees were competent to represent whether the trade union or non-organized employees depending on their electorate. Pursuant to the act, the second channel of employees' representation was a trustee elected by a general meeting of employees not belonging to the trade union. In practice, however, the trustees were elected for those employers in relation to which a trade union had been formed.<sup>26</sup>

With the aim to transpose Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community<sup>27</sup> into Estonian law,<sup>28</sup> the *Riigikogu* passed the new Employee Trustee Act (hereinafter 'TUIS')<sup>29</sup> in 2006. This act entered into force on 1 February 2007. The purpose of Directive 2002/14/EC is to establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments (Article 1.1). Although the directive does not specify who may be an employees' representative, the TUIS alters the conception of the trustee: according to the new regulation, the trustee cannot represent only the members of the trade union in the enterprise.<sup>30</sup> The new act changes the previous rules concerning the election of the trustee and the rights and obligations of the trustee essentially.<sup>31</sup>

24. Töötajate usaldusisiku seadus/Employees' Representatives Act, passed on 16 Jun. 1993 – RT I 1993, 40, 595; 2002, 111, 663. The act is available in English at <http://www.legaltext.ee/text/en/X2001K2.htm> (1 May 2013). This Act is no longer in force as from 1 Feb. 2007.

25. The first act also established rules about the election and removal of the trustee, rights and duties of the trustee, guarantees to the trustee, etc.

26. G. Tavits, 'Töötajate esindamine ettevõtetes ja käitistes – Eesti valikud'/'Representing Employees in Enterprises and Installations – Estonia's Choices', *Juridica* 10 (2004): 698.

27. OJ L 80, 23 Mar. 2002, 29-34.

28. Estonia became the member of the EU on 1 May 2004.

29. Töötajate usaldusisiku seadus/Employee Trustee Act, passed on 13 Dec. 2006 – RT I 2007, 2, 6; 06.07.2012, 1. The act is available in English at <http://www.legaltext.ee/text/en/XX10005K2.htm> (1 May 2013).

30. Insofar as employees' right of informing and consulting as established in Directive 2002/14/EC was intended to be ensured in Estonia by means of the trustees of employees, the new TUIS drawn up for the transposition of that directive altered the system for electing employee trustees. The double-channel system of employee representation continued to be in force, but, in view of the fact that only few employees belong to trade unions, it was found that informing and consulting employees only through trustees elected by a trade union would not be sufficient for implementation of the directive. M. Muda, *Impact of the EU Law on the Involvement of Employees in Estonia*, *Juridica Intl.: L. Rev. U. Tartu* II 28–29 (2008). Available at <http://www.juridicainternational.eu> (1 May 2013).

31. See paragraphs §6.03[B] and §6.04 for greater detail.

## [D] European Works Councils

In 2005, the *Riigikogu* passed the Community-scale Involvement of Employees Act (hereinafter ‘TÜÜKS’).<sup>32</sup> The TÜÜKS harmonized Estonian law with Directive 94/45/EC on the establishment of a European Works Council (hereinafter ‘EWC’) or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.<sup>33</sup>

Pursuant to Articles 1.1 and 1.2, the purpose of the directive is to improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings. To that end, a EWC or a procedure for informing and consulting employees is established in Community-scale undertakings and Community-scale groups of undertakings.

Taking into account the requirements of the EWC directive, the TÜÜKS first foresees the creation of a trustee body for employees (a special negotiating body; hereinafter ‘SNB’), then the SNB decides by agreement with the central management on the employee involvement mechanism (the EWC or the procedure for informing and consulting employees) to use, and eventually the rules for establishing a lawful EWC are laid down. The TÜÜKS provides for the provisions concerning employees’ representatives when it regulates the composition of the SNB and the lawful EWC (§§ 16 and 24) and describes how to elect members of the SNB and the lawful EWC which represent Estonian employees (§§ 17 and 25).<sup>34</sup>

However, as the TÜÜKS regulates the involvement of employees in Community-scale companies<sup>35</sup> that usually do not operate in Estonia, the scope of application of this act is quite narrow in practice.

32. Töötajate ülehenduselise kaasamise seadus/Community-scale Involvement of Employees Act, passed on 12 Jan. 2005 – RT I 2005, 6, 21; 04.07.2011, 1. The act is available in English at < <http://www.legaltext.ee/text/en/X90012K2.htm> > (1 May 2013).

33. OJ L 254, 30 Sep. 1994, 64–72. The amended TÜÜKS (as of 14 Jul. 2011) transposes the recast version of the directive, i.e. Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 122, 16 May 2009, 28–44) into Estonian law. The TÜÜKS also incorporates the following directives: 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees (OJ L 294, 10 Nov. 2001, 22–32); 2003/72/EC supplementing the Statute for a Cooperative Society with regard to the involvement of employees (OJ L 207, 18 Aug. 2003, 25–36); and 2005/56/EC on cross-border mergers of limited liability companies (OJ L 310, 25 Nov. 2005, 1–9).

34. The TÜÜKS contains rules regarding to employees’ representatives only in the case of the lawful EWC because the composition, the number of the members and the term of office of the contractual EWC are determined by the agreement between the SNB and the central management. See also section §6.03[C].

35. Under § 7 of the TÜÜKS, a Community-scale undertaking is an undertaking which employs in the Member States in total of at least 1,000 employees, out of who there are in at least two Member States at least 150 employees in each Member State. Section 8 of the TÜÜKS establishes that a Community-scale group of undertakings is a group of undertakings with: (1) a total of at least 1,000 employees in the Member States; (2) at least two undertakings, belonging to the group, in different Member States; (3) at least one undertaking, belonging to the group, with at least 150 employees in one Member State and at least one undertaking, belonging to the group, with at least 150 employees in another Member State.

**§6.03 EMPLOYEES' REPRESENTATION SYSTEM NOWADAYS****[A] Trade Unions**

The legal status of trade unions was first regulated by the Estonian SSR Trade Unions Act that separated Estonian trade unions from state authority and the trade unions system of the Soviet Union. This act was passed in 1989. Under the Estonian SSR Trade Unions Act, the process of restructuring trade unions into independent organizations of employees began.<sup>36</sup>

A new Trade Unions Act (hereinafter 'AÜS')<sup>37</sup> was drafted on the initiative of the Confederation of Estonian Trade Unions in the second half of the 1990s, laying down the bases for the foundation, operation and dissolution of trade unions. The Act was passed and entered into force in 2000.

According to AÜS § 2 (1), a trade union is an independent and voluntary association of persons which is founded on their initiative, and the objective of which is to represent and protect the employment, service-related, professional, economic and social rights and interests of employees.

The AÜS promotes the operation of trade unions all-round. The act does not establish the requirement that a trade union must be representative, i.e., employers are obliged to communicate with all trade unions irrespective of unions' amount of members, existing collective agreements, etc. Under the AÜS, the trade unions have the broad competence (§ 17) and many rights (§ 18) that enable them to act effectively.<sup>38</sup> However, the main function of trade unions is 'fighting for wages' (i.e., entering into collective agreements and industrial action).

Taking into account the topic of the current paper, it is important to point out that in order to represent, exercise and protect the rights and interests of employees, a trade union is competent to participate in informing and consulting employees through a shop steward (AÜS § 17 (6)). AÜS § 22 (1) specifies that an employer must inform the shop steward and must consult with him or her under the conditions and pursuant to the procedure prescribed in the TUIS. Thus, both the employees' trustee and the representative of trade union (the shop steward) have the right to be informed and consulted.<sup>39</sup>

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36. T. Vare. Ametiühingud uuenemise teel. Eesti Ametiühingute Keskliit aastatel 1990–1999/Trade Union Developments. The Confederation of Estonian Trade Unions in 1990–1999 (Publication of the Confederation of Estonian Trade Unions, 2000), 6.

37. Ametiühingute seadus/Trade Unions Act, passed on 14 Jun. 2000 – RT I 2000, 57, 372; 2009, 54, 363. The act is available in English at <http://www.legaltext.ee/text/en/X30087K2.htm> (1 May 2013).

38. In the framework of the employment relation, a representative elected by a trade union (a shop steward) has been protected by the AÜS (guarantees for the time of performance of duties) and the Employment Contracts Act (hereinafter TLS; guarantees in the case of the termination of the employment contract). Töölepingu seadus/Employment Contracts Act, passed on 17 Dec. 2008, RT I 2009, 35, 35; 22.12.2012, 15. The Act is available in English at <http://www.legaltext.ee/text/en/XXXX060K2.htm> (1 May 2013).

39. See section §6.04 for greater detail.

Although trade unions have a lot of legal guarantees, the foundation of trade unions is not popular in practice. As mentioned in the introduction, currently about 10% of employees are members of trade unions. In the author's view, one of the reasons for small membership is that people associate trade unions with the Soviet times.<sup>40</sup> Also, in the opinion of a large proportion of employees, belonging to a trade union has no advantages at all. Thus, Estonian employees are not used to protect their interests via employees' organizations.

### [B] Employees' Trustee

As mentioned above,<sup>41</sup> the legal status of employees' trustees has been regulated by the TUIS of 2006. Pursuant to TUIS § 2 (1), a trustee is an employee of an employer who is elected by the general meeting of the employees of the employer as their representative in the performance of the duties arising from the law in relations with the employer.

Under § 5 (1) of the TUIS, the general meeting of employees that elect a trustee may be called by: a trade union operating at the employer, by the majority (i.e., at least 51%<sup>42</sup>) of the members of a trade union who are employed with the employer if the trade union has not been founded at the employer, or by at least 10% of the employees of the employer. As can be seen from this provision, trade unions play an important part in organizing the general meeting of employees that elect the trustee. However, as the general meeting of employees empowers the trustee to represent *all* employees in relations with the employer, the role of trade unions is restricted to calling the meeting – the employees' trustee cannot represent a trade union.<sup>43</sup>

According to TUIS § 7 (1) and (2), the general meeting decides the conditions and the procedure for the election and removal of a trustee that must ensure that all employees have the possibility to participate in the election and removal of a trustee. TUIS § 7 (3) states that all employees and the trade union operating at the employer may present candidates for trustee, therefore, the trustee may be a member of the trade union. Upon agreement with the employer, the general meeting may elect several trustees (TUIS § 7 (4)).<sup>44</sup> Following TUIS § 8 (1), the term of authority of a trustee is three years, unless the general meeting has decided otherwise.

From the author's viewpoint, the TUIS establishes simple and clear rules about the election and authority of the trustee that should promote the operation of trustees.

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40. As the entire social life was run through trade unions, a majority of employees belonged to trade unions during the Soviet period (in 1989, Estonian trade unions had 811,470 members, i.e. about 97–99% of all employees). Substantial changes in the sphere of activity of trade unions at the beginning of the 1990s resulted in a significant decrease in the number of members. As trade unions chiefly performed the Communist Party's tasks during the Soviet period, the wide-scale resignation from trade unions was also related to the wish to be free of the party-governed mode of living. *Supra* n. 5, at 9–10.

41. See section §6.02[C].

42. *Supra* n. 2, 56.

43. See also *ibid.*, 44–45.

44. Trustees may elect from among themselves a chief trustee who organizes the activities of the trustees (TUIS § 7 (5)).

Due to the fact that only few employees belong to trade unions, the Estonian legislator decided to change the conception of trustees in order to guarantee for employees the extensive right to information and consultation as provided by the directives of the European Union (hereinafter 'EU').<sup>45</sup> Thus, since 2006 the employees' trustee is the particular second channel of employees' representation besides trade unions.

However, the election of a trustee is not common in enterprises. As already mentioned in the introduction, employees' trustees have been elected in 11% of companies. The author of this paper holds that reasons why employees' trustees are not popular are similar to those pertaining to trade unions: first, employees do not understand the role of trustees in shaping labour relations, and secondly, they are not in the habit of communicating with the employer via the representative.

### [C] Employees' Representatives Connected with European Works Councils

As mentioned before,<sup>46</sup> Estonia transposed the EU Directive 94/45/EC<sup>47</sup> on the establishment of a EWC or a procedure for informing and consulting employees into national law by the TÜÜKS in 2005.

The TÜÜKS does not explain the concept of 'employees' representatives' as provided for in Article 2.1(d) of the EWC Directive. Proceeding from the above,<sup>48</sup> in Estonia, the general regulation concerning employees' representatives has been established by the TUIS. However, in the context of the TÜÜKS, the rules of the TUIS are not applied; the TÜÜKS itself clarifies how to elect members of the SNB and the lawful EWC who represent Estonian employees.

Pursuant to TÜÜKS § 17 (1), a member or members of the SNB who represent employees of Estonian undertaking or enterprise are elected by the general meeting of employees.<sup>49</sup> TÜÜKS § 17 (2) specifies that if several undertakings or enterprises are located in Estonia, a member or members of the SNB are elected by a joint representation formed of the employees' representatives. The joint representation comprises, from each relevant undertaking or enterprise, three employees' representatives who have been elected by the general meeting of employees. The same procedure is applied to the election of the members of a lawful EWC who represent Estonian employees.<sup>50</sup> The TÜÜKS does not determine how non-Estonian employee representatives of the

45. About trustees' rights and obligations, incl. the right to information and consultation, see section §6.04.

46. See section §6.02[D].

47. The current regulation of the TÜÜKS is in conformity with Directive 2009/38/EC that is the recast version of Directive 94/45/EC.

48. See section §6.03[B].

49. The same subsection adds that the procedure for the election of a member or members of the SNB is approved by the general meeting of employees. The election procedure must ensure that all employees have the possibility to participate in the elections.

50. Thus, the main principle of both the TUIS and the TÜÜKS is that the employees' representative is elected by the general meeting of employees (TUIS § 2 (1) and TÜÜKS § 17).

SNB and the lawful EWC are elected or appointed; the corresponding regulation of other Member States is implemented.<sup>51</sup>

According to statistics, no company affected by the EWC Directive is headquartered in Estonia.<sup>52</sup> Taking into account the economic situation of the state, in the author's view, it is not very credible that the described status will change essentially. Probably, there will not be established a lot of Community-scale undertakings or a Community-scale groups of undertakings whose central management is located in Estonia.

Hence, the main importance of the transposition of the EWC Directive into Estonian law lies in the possibility of electing employees' representatives in enterprises belonging to a Community-scale undertaking or undertakings belonging to the Community-scale group of undertakings that are situated in Estonia.<sup>53</sup> It neither enlarges knowledge nor changes habits of employees pertaining to the involvement of employees considerably and, therefore, do not affect essentially the development of non-union employees' representation in Estonia.

## §6.04 COMPETENCE OF EMPLOYEES' TRUSTEE

### [A] General Remarks

As follows from the preceding analysis, in Estonia, employees' trustees are the particular second channel of employees' representation besides trade unions.<sup>54</sup> The author of this paper is of opinion that, in comparison with other countries where works councils exist,<sup>55</sup> the institution of the employees' trustee is similar to these councils and, in theory, it could be build up as a works council in future. Therefore, it is important to study in detail which is the competence of the employees' trustee.

51. M. Muda, *European Works Council. Estonia*, in *Labour Law and Industrial Relations, International Encyclopaedia of Laws* 12 and 21–22 (R. Blanpain & M. Colucci eds, Kluwer L. Intl. 2011).

52. Facts and Figures. European Works Councils. Available at <http://www.worker-participation.eu/European-Works-Councils/Facts-Figures> (1 May 2013).

53. However, when a Community-scale undertaking or a Community-scale group of undertakings whose central management is located in Estonia is established, it would be quite questionable whether and how the mechanism of information and consultation would operate. Estonian employees and employers are not used to exchanging information. Also, the practice of the European Companies (SE) that have been founded in Estonia shows that the competent organs of participating legal entities and the employees' representatives consider the informing and consulting insignificant. *Supra* n. 51, at 51–52.

54. The (lawful) EWCs are also non-union representative bodies of employees but as they are established in Community-scale companies only, their role in the forming of employment and social relations is not significant.

55. Works councils have been founded, e.g., in Germany, Austria, the Netherlands, Belgium, Denmark, France, etc. However, in different countries, the composition and competence of works councils are dissimilar. K. Jaakson, E. Kallaste, 'Töötaja kaasamine ettevõttes esindajate kaudu/The Involvement of Employees via Representatives in Enterprises', *Riigikogu Toimetised* 13 (2006): 152–154. *Supra* n. 2, at 44–48; *supra* n. 26, at 690–691.



**[B] General Rights and Obligations**

General rights and obligations of the trustee have been provided by the TUIS. According to TUIS § 9 (1), (2), (4) and (5), a trustee has the right to: freely examine the working conditions, incl. the work organization; receive from the employer the information necessary for the performance of his or her duties and consult the employer on the basis of such information; hold negotiations with the employer for entering into a collective agreement and represent employees in the resolution of a collective labour dispute if there is no trade union at the employer or no employees belonging to the trade union are employed with the employer.<sup>56</sup>

Proceeding from the above, the trustee has both the right to information and consultation, as well as the right to bargain collectively and take part in the collective labour dispute. However, in practice, collective agreements are usually concluded by trade unions, not by trustees.<sup>57</sup>

TUIS § 10 (1)-(6) set forth the trustee's obligations. Under this section, a trustee is required to: participate in informing and consulting; communicate information to the employer and to employees; monitor compliance with working conditions and notify the employer and, if necessary, the labour inspector, of violation; at the request of an employee, represent the employee in a labour dispute with the employer before having recourse to a labour dispute resolution body; cooperate in the avoidance of disruption of work if a collective agreement has been entered into by a trustee; cooperate with a shop steward, the working environment representative and working environment council.<sup>58</sup>

In the author's opinion, the TUIS lays down the broad competence for employees' trustees: both the rights and obligations of trustees enable them to take part in the forming of labour relations effectively. The peculiarity of Estonian labour law is that there are no distinctly separated functions between the trustees and trade unions – on principle, both of them are competent to enter into collective agreements and take part in the industrial action.<sup>59</sup>

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56. A trustee is also entitled to notify the interested trade union and federation or confederation of employers and trade unions of violation of working conditions by the employer; have recourse to a labour dispute resolution body for resolution of a dispute arising from the confidentiality of the information obtained or refusal to provide information; training for the performance of his or her duties; involve experts in the performance of his or her duties; upon agreement with the employer, use the premises and other resources of the employer necessary for the performance of the duties of a trustee (TUIS § 9 6)-10)).

57. Under statistics, 33% of companies where a shop steward has been elected and 9% of companies where a trustee has been elected have collective agreements. *Supra* n. 6, at 71. In practice, there are known some cases when an employer has initiated the election of a trustee in order to enter into the collective agreement that is rewarding for the employer.

58. In the framework of the employment relation, a trustee has been protected by the TUIS (guarantees for the time of performance of duties) and the TLS (guarantees in the case of the termination of the employment contract).

59. The TUIS specifies that the trustee has these rights if there is no trade union at the employer or no employees belonging to the trade union are employed with the employer.

## [C] Right to Information and Consultation

### [1] General Rules

As mentioned before,<sup>60</sup> the TUIS harmonizes the national law with Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community. Thus, in Estonia, the right to be informed and consulted has been guaranteed for employees via the trustees. In countries where a two-channel system of employees' representation exists, ordinarily, participating in informing and consulting is the main function of the second channel (i.e., non-union employees' representatives).<sup>61</sup>

Proceeding from the Directive, the TUIS provides for the size of a company where informing and consulting employees is obligatory. Pursuant to TUIS § 17 (1), an employer who employs at least thirty employees<sup>62</sup> is required to apply the informing<sup>63</sup> and consulting.<sup>64</sup>

Next, TUIS § 20 (1) sets forth the contents of informing and consulting. An employer is obliged to inform and consult at least of the following circumstances pertaining to employees: the structure of the employer, the staff, changes therein and planned decisions which significantly affect the structure of the employer and the staff; planned decisions which are likely to bring about substantial changes in the work organization; planned decisions which are likely to bring about substantial changes in the employment contract relationships of employees, including termination of employment relationships.<sup>65</sup>

The author of this paper holds that the contents of informing and consulting are in conformity with the corresponding rules (Article 4.2) of Directive 2002/14/EC. In addition, TUIS § 21 establishes detailed requirements in which manner informing and

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60. See section §6.02[C].

61. *Supra* n. 55, at 152–154.

62. An employer may be a legal or natural person. According to the Directive, the corresponding number is 50 employees (Article 3.1 (a)). As most of Estonian employees work in micro- or small-sized enterprises, the legislator decided to give protection for bigger amount of employees. *Supra* n. 2, at 87.

63. Informing means provision of information to a trustee or, in his or her absence, to the employees on an appropriate level which allows the employees to receive in due course a clear and sufficiently detailed overview of the structure and economic and employment situation of the employer and the possible development thereof and of other circumstances affecting the interests of employees, and also to understand the effects of the situation and other circumstances on the employees (TUIS § 19 (1)).

64. Consulting means exchange of views and the establishment of a dialogue between the trustee or, in his or her absence, the employees and the employer on an appropriate level which allows the trustee or the employees to express opinions and obtain from the employer reasoned responses to the expressed opinions for the purposes of reaching an agreement (TUIS § 19 (2)).

65. Under TUIS § 24, a failure to perform the obligation to inform or consult or provision of false information by the employer is punishable by a fine of up to 200 fine units. The same act, if committed by a legal person, is punishable by a fine of up to EUR 3,200. According to § 47 (1) of the Penal Code, a fine unit is the base amount of a fine and is equal to four euros. Hence, the value of 200 fine units is 800 euros. Karistusseadustik/Penal Code, passed on 6 Jun. 2001 – RT I 2001, 61, 364; 17.04.2013, 2. The act is available in English at <http://www.legaltext.ee/text/en/X30068K11.htm> (1 May 2013).

consulting should take place (written provision of information enabling preparation for consultations, employees' right to present opinions and proposals, and also application to commence consultation with the purpose of reaching an agreement on the planned activity etc.). Thus, in these issues the TUIS supports the employees' trustees' activities and creates good conditions for the effective cooperation between the trustee and the employer.

Nevertheless, it is well-known that informing and consulting employees is not common in practice. Quite usually, neither the trustee nor the employer is interested in such collaboration. The parties are not in the habit of communicating and they lack the knowledge and skills necessary for informing and consulting.

As previously discussed,<sup>66</sup> according to Estonian law, the functions of trade unions and employees' trustees overlap; both of them have the right to information and consultation and collective bargaining. The aim of the corresponding regulation is to promote the role of employees' representatives in shaping employment and social relations. However, the results of a case study show that such approach is not always rational: in order to allow and stimulate informing and consulting all workers, which is not an essential practice beside collective bargaining, the two roles (bargaining, and informing and consulting) should be separated.<sup>67</sup>

## [2] *Information and Consultation in Individual Matters*

In addition to principles laid down in the TUIS, with a view to transpose the rules of the EU Directives 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies<sup>68</sup> and 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses<sup>69</sup> into national law, the TLS also contains provisions on informing and consulting employees.<sup>70</sup>

Hence, under the TLS, the employer is required to inform and consult the employees with regard to significant reorganizations in the enterprise, i.e., in the case of collective redundancies (TLS § 101) and transfers of enterprises (TLS § 113). The

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66. See sections §6.03[A] and §6.04[B].

67. E. Kallaste, K. Jaakson & R. Eamets, *Two Representatives but no Representation – an Analysis of Two Cases from Estonia*, Faculty Econ. & Bus. Admin. Working Paper Series, U. Tartu 48, 26 (2007). Available at <http://www.mtk.ut.ee/research/workingpapers> (1 May 2013).

68. OJ L 225, 12 Aug. 1998, 16–21.

69. OJ L 082, 22 Mar. 2001, 16–20.

70. Directives 97/81/EC concerning the Framework agreement on part-time work concluded by the Union of Industrial and Employers' Confederations of Europe, the European Centre of Enterprises with Public Participation and the European Trade Union Confederation (OJ L 4, 20 Jan. 1998, 9–14), 1999/70/EC concerning the framework agreement on fixed-term work concluded by the European Trade Union Confederation, the Union of Industrial and Employers' Confederations of Europe, and the European Centre of Enterprises with Public Participation (OJ L 175, 10 Jul. 1999, 43–48) and 2008/104/EC on temporary agency work (OJ L 327, 5 Dec. 2008, 9–14) that oblige the employer to inform employees' representatives of use of non-typical forms of work have been incorporated into Estonian law by corresponding general rules on informing of the AÜS and the TUIS.

regulation of the TLS corresponds to the Directives entirely. Similarly to the general rules pertaining to informing and consulting employees, in these matters, both the employees' trustee and the shop steward is competent to take part in the involvement process.<sup>71</sup>

Although Estonian law was harmonized with Directives 98/59/EC and 2001/23/EC already in the year 2004 and collective redundancies and transfers of enterprises are rather wide-spread in practice, no court actions regarding employee involvement have been brought in relation to these questions and it seems that in the event of collective redundancies and transfer of enterprise the system for informing and consulting employees has been activated without problems. Considering, however, the scant experience of employees and employers with intercommunication, one can conclude that such negotiations probably remain formal quite often.<sup>72</sup>

## §6.05 CONCLUDING REMARKS

There are no works councils in Estonia. Nevertheless, there is a two-channel system of employees' representation: employees mainly participate in the shaping of labour relations via trustees and trade unions.

The first non-union employees' representatives (workers' elders) were acting in Estonia during the 1920s and 1930s. These representatives were not enough powerful because trade unions did not wish to share the function of employees' representation.

In 1993, the second channel of employees' representation – employees' trustees – was established again. Although the legal regulation pertaining to the operation of employees' trustees promotes them to the utmost, the election of the trustees is uncommon in practice.

There are probably two reasons for that. Firstly, Estonian employers and employees are not used to make cooperation and, secondly, the main tasks of the trustee overlap with the competence of trade unions, i.e., partition of functions of two channels of employees' representation is not clear.

Taking into account the practical situation in Estonia, the implementation of the system of works councils supposedly would not change employees' role in the forming of labour relations and the operation of these organs would not be efficient.

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71. E. Käärats, S. Suder & T. Treier, *Selgitused töölepingu seaduse juurde/Comments on the Employment Contracts Act* (Ministry of Social Affairs, 2011), 89 and 96.

72. See also *supra* n. 30, at 32.