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Transposition into Polish Law of Art. 16 of the Directive on Cross-Border Mergers

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1. The draft Law on employee participation in companies established as the result of a cross-border merger (*ustawa o uczestnictwie pracowników w spółce powstałej w wyniku transgranicznego połączenia się spółek*) is at present under discussion in Parliament and will be promulgated shortly.
2. The draft relates to participation understood as the right to elect or nominate a certain number of supervisory board members or to recommend or veto the nomination of some or all supervisory board members.
3. The principles of employee participation are negotiated in the agreement between the SNB and the competent company organs. But an SNB is not established if the relevant company organs decide to adopt the standard rules from the time of the new company's registration.
4. Polish representatives on the SNB are nominated in the first place by the representative trade union organisation(s), similar to European Works Councils' laying down rules concerning workers' involvement in SCEs or SEs. The draft permits trade union officials to be members of the SNB, even if they are not employees; however, employees should constitute the majority in the SNB.
5. If the representative trade union organisations do not reach agreement on nominations or there are no representative trade unions in the company, the SNB members are selected in a secret and direct ballot by the whole workforce.
6. Negotiations with the aim of reaching an agreement may last no longer than six months from the calling of the meeting, but the parties may prolong this period to one year by mutual agreement.
7. The standard rules provided for in the draft are applied from registration of the company set up as a result of cross-border merger if:
 - a) the competent company organs so decide;
 - b) the company and the SNB so decide;
 - c) no agreement has been reached in the period mentioned in point 6 and the competent company organs have so decided.

The standard rules are applied in two situations:

- a) one or more forms of participation were in place in one or more of the companies taking part in the merger, and which employed at least 33.3% of the total number of employees in all of the companies concerned;
 - b) one or more forms of participation were in place in one or more companies taking part in the merger, but which employed less than 33.3% of the total number of employees in all of the companies concerned, and if the SNB so decides if negotiations break down.
8. The application of standard rules is not obligatory if, in any of the companies taking part in the merger, there was no right to participation.

9. If more than one form of participation is provided for in the companies taking part in the merger, the SNB shall choose the form that will be applied in the company created by the cross-border merger.
10. If, according to the standard rules, the SNB does not take a decision on the form of participation, or the standard rules are applied by decision of the competent company organs, the choice of form of participation shall be taken by the so-called 'representative body'. The representative body is selected by the employees or their representatives according to national law. Polish members of the representative body are selected according to the procedure provided for the SNB.
11. Representatives of employees in Poland to the supervisory or administration board are selected in a secret and direct ballot by the whole workforce.
12. According to the draft Law, the members of the supervisory board have the same rights and obligations as other members, especially the right to vote.
13. According to Art. 43 of the draft, the company set up as a result of the cross-border merger must guarantee that employees' participation rights shall be preserved in case of three subsequent national mergers within a period of three years from registration of the new company.
14. The draft provides for the special employment protection of employees who are members of the SNB, the representative body, the supervisory board or the administrative board.
15. The confidentiality clause is similar to that applying to EWCs, SEs or SCEs, and it binds SNB and representative body members, as well as experts and translators.