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A COMPARATIVE ANALYSIS ON IMPLEMENTATION OF COUNCIL DIRECTIVE 2001/86/EC IN FINLAND AND ESTONIA

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Abbreviations

EU – European Union
SE – Societas Europaea
EC – European Commission
EWC – European Work Council
LLC – Limited Liability Company

ABSTRACT

The Societas Europaea or European company is a form of limited liability company meant for large corporations that operate in more than single European Union Member State. The Societas Europaea differs also from a regular stock company by the minimum set of regulation put forward by the European Union. However the European Union still gave each Member State some leeway to implement the legislation concerning mandatory employee involvement in the company's decision making body. Thus there are some differences in different Member States regarding the legislation of Socieatas Europaea. While there are usually multiple reasons for company to choose a place for its domicile, it is interesting to see how much the implementation of employee involvement can explain the popularity of Societas Europaea in different Member States.

In this thesis the differences in implementation of employee involvement in Estonia and Finland are compared to see how much they differ between each other and whether these differences have in substantial way affected the popularity of Societas Europaea form in each country. In addition a collection of articles and books were used as literary review concerning the existing information about Societas Europaea and its implementation. Also interviews with employee and employer interest group representatives from Finland were conducted to have their perspective on Societas Europaea. In the research no definitive answers were found whether the implementation of legislation could explain the difference in popularity of Societas Europaea in Finland and Estonia.

Keywords: Societas Europaea, European Company, Employee Involvement, Finland, Estonia

INTRODUCTION

In this thesis, I will explore and research Societas Europaea legislation and especially its implementation in Estonia and Finland. My emphasis is at the Estonia and Finland, and how they implemented the Societas Europaea statutes in their own national legislation. I will use comparative analysis to find and determine similarities and differences on the implementation of legislation in these countries. I shall also use materials gained from interviewing lawyers from both employer and employee interest group from Finland. I will also try to see patterns and reasons why some of the Member States have succeeded better than others to attract businesses to create Societas Europaea companies.

My particular interest will be on the Employee involvement, especially employee participation and how the picked Member States have tackled the possible issues raised on the rather progressive idea of employees involved on the management of company in either supervisory body or at the management board and whether or not it has affected the popularity of European Company form in the respected countries.

My research question is how Estonia and Finland have implemented the COUNCIL REGULATION (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE). L 294/1, 8.10.2001 and the Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees. OJ L 294. 10.11.2001, in their national legislation and if the implementation could explain the difference in popularity of Societas Europaea.

1. GENERAL CONCEPTS

"Management's general duty" - Company's management are required to carefully further the company's interest.

"Duty of Care" - The duty to act with care. The membership of the board is considered as agency relationship. The Standard of duty of care is objective.

"Loyalty Obligation" - Obligation to act accordingly to company's interest.

The following categories are Societas Europaea categories used by the European Company Database, in which the categories are identified on the basis of effective operations.

> "
> 'Normal' SE: an SE with operations and with at least five employees (five is the lowest threshold for employee participation in the EU countries).
>
> 'Empty' SE: an SE with operations but without employees.
>
> 'Shelf' SE (also known as 'shell' SE): an SE that has neither operations nor employees. 'Shelf' SEs are not set up for specific business purposes.
>
> 'UFO' SE: A UFO SE is likely to be operating, but no information is available on the number of employees. By nature, these are companies about which little is known (usually only name, date and place of registration). The 'UFO' category includes 'micro SEs' (SEs with fewer than five employees.);"[1]

2. HISTORY OF SOCIETAS EUROPAEA

One of the main objectives of European Union and its predecessors has been the rapprochement of European nations. This idea of cooperation and mutual interest was initially written down in the foundation of European Union's predecessor The European Coal and Steel Community that was founded in 1951 by the Treaty of Paris.[2]

[1] Rehfeldt, Udo. European Foundation for the Improvement of Living and Working Conditions, Employee involvement in companies under the European Company Statute, Luxembourg: Publications Office of the European Union, 2011 – VIII, page 25

[2] http://www.cvce.eu/obj/the_european_communities-en-3940ef1d-7c10-4d0f-97fc-0cf1e86a32d4.html

The initial idea of forming a "European Company" was presented by Pieter Sanders and Thibiérge in 1951 at The European Coal and Steel Community.[3]

There were four regulation proposals for a European Company in the years 1967,4 1972/1974,5 and 1988/1991, until the final one in 2001.[4]

However, the first actual proposal for a regulation on a European company dates from the 1970 proposal, that was based on the 1967 proposal made by group company law experts around Europe.[5] The proposal was based on the (west) German legislation as it was only European Economic Community Member State that at the time of proposal had implemented employee representation.[6] The proposal introduced the idea of a supervisory board with worker participation, however the proposal never came into fruition due to disagreements, after decades of discussion the European Commission issued a new proposal for European Company law in 1989 that was again amended in 1991 and finally lead to the final Regulation of 2001.[7]

Societas Europaea was set in The Council Directive 2001/86/EC in 2001 and was set to be implemented into Member State legislation by 2004.[8]

3. GENERAL INFO ON SOCIETAS EUROPAEA

In start of 2018 there are 3014 Societas Europaea companies, most of these are located in Czech Republic (2103 companies) and in Germany (510 companies).[9]

The main statutory source of the Societas Europaea is the COUNCIL REGULATION (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE). The secondary source is Council Directive 2001/86/EC of 8 October 2001.

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[3] Arlt, A., Bervoets, C., Grechenig, K., Kalss, S. The Societas Europaea in Relation to the Public Corporation of Five Member States (France, Italy, Netherlands, Spain, Austria), European Business Organization Law Review (EBOR) 2002, 734, pp 733-764
[4] Ibid, p.735
[5] Gerven, Dirk., Storm, Paul. The European Company Volume 1, Cambridge University Press 2006, page 26
[6] Gold, M., Schwimbersky, S., 'The European Company Statute: implications for industrial relations in the European Union', European Journal of Industrial Relations, Vol. 14, No. 1, 2008, 49,pp. 46–64.
[7] Gerven, Dirk., Storm Paul. The European Company Volume 1, Cambridge University Press 2006, page 26
[8] COUNCIL REGULATION (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE). L 294/1, 8.10.2001
[9] http://ecdb.worker-participation.eu/show_overview.php?letter=A&orderField=se.se_name&status_id=3&title=Established%20SEs (7.5.2018)

The Council Regulation covers issues such as formation of Societas Europaea, its managerial structure, the annual accounts, it's liquidations and other similar general provisions. Furthermore, the Societas Europaea Directive regulate the employee involvement in Societas Europaea companies. The both of legal papers entered into force and constituted ground for the Societas Europaea on 8th of October 2004 at whole European Union area and in European Economic Area.[10]

Apart from the Regulation and Directive, the Societas Europaea statutes refers to each Member State's own national limited liability, stock corporation and/or public company legislation.[11]

The Council Directive 2001/86/EC also known as Societas Europaea Directive is rather short with only 70 articles and supplementing directive. [12]

Article 10 of 2001/86/EC Directive dictates that Societas Europaea companies must be treated the same way as Member States own public limited holding companies.[13]

The Societas Europaea company does not differ from any other stock company in Member State. Both company forms are regulated by same legal sources, in which the highest legal source is European Law, the second highest is national corporate law and the last one is the company's own statutes, which are usually introduced in articles of association.[14] As the Societas Europaea company does not differ from regular stock company, the Societas Europaea company can also be found in any European Economic Area Member State, such as Norway or Iceland.[15]

While there is of course a hierarchy of laws in related to the Societas Europaea, the main regulation concerning companies that adopted Societas Europaea company form is still

[10] Gerven, Dirk., Storm Paul. The European Company Volume 1, Cambridge University Press 2006, page 27
[11] Arlt, A., Bervoets, C., Grechenig, K., Kalss, S. The Societas Europaea in Relation to the Public Corporation of Five Member States (France, Italy, Netherlands, Spain, Austria), European Business Organization Law Review (EBOR) 2002, 735, pp 733-764
[12] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees. OJ L 294. 10.11.2001
[13] Ibid
[14] Arlt, A., Bervoets, C., Grechenig, K., Kalss, S. The Societas Europaea in Relation to the Public Corporation of Five Member States (France, Italy, Netherlands, Spain, Austria), European Business Organization Law Review (EBOR) 2002, 735, pp 733-764
[15] EEA Agreement, Annex XXII 10.a, p.8

considered to be Member States stock corporation law, in which the Societas Europaea company has its registered office and head office.[16]

The Societas Europaea differs from a regular legal entity by that instead of being governed solely by national legislation, it is governed by a minimum regulation at European Union level which apply throughout the European Economic Area.[17] However as result from compromises, the Societas Europaea Regulations has given leeway to Member States to supplement some of the Societas Europaea statutes with national rules - which lead to Societas Europaea Statutes differing slightly in different Member States.[18]

The Societas Europaea can be dismantled into four different distinct elements. Firstly, it is a supranational legal form with roots to national legal forms. Secondly the incorporation of a Societas Europaea requires a mandatory cross-border element from at least two different Member States. Thirdly, the Societas Europaea is designed to serve large enterprises with the minimum capital of 120,000 Euro and which have been noted in the exchange. Fourthly and finally the corporate structure must offer a choice between one-tier and two-tier board.[19]

The Societas Europaea Statute gives four different ways to establish a SE-company. First by a merger between different national companies from separate member states. Secondly by a joint venture between national companies or other entities from separate member states.
Third way is by creating an Societas Europaea company subsidiary for a national company.
The fourth and final way by conversing a national company into Societas Europaea company.[20]

One of the major regulatory steps introduced in Societas Europaea for the European Union's company legislation apart from the cross-border transactions, is the two-tier organisation structure.[21] This autonomy of corporate structure in Societas Europaea-company is regulated by the Council's Regulation Article 38, in which it is stated that Societas Europaea company can be

[16] Arlt, A., Bervoets, C., Grechenig, K., Kalss, S. The Societas Europaea in Relation to the Public Corporation of Five Member States (France, Italy, Netherlands, Spain, Austria), European Business Organization Law Review (EBOR) 2002, 735, pp 733-764
[17] Gerven, Dirk., Storm Paul. The European Company Volume 1, Cambridge University Press 2006, page 27
[18] Ibid
[19] Arlt, A., Bervoets, C., Grechenig, K., Kalss, S. The Societas Europaea in Relation to the Public Corporation of Five Member States (France, Italy, Netherlands, Spain, Austria), European Business Organization Law Review (EBOR) 2002, 737, pp 733-764
[20] Ibid
[21] Ibid

governed either by a two-tier board system with a supervisory board and separate board of directors or by just single one-tier management board. It does not matter which structure model Societas Europaea company chooses to implement.[22] However the Member States have to implemented possibility to both types of management structures in their legislation.[23]

4. THE GOALS OF SOCIETAS EUROPAEA

The company model of Societas Europaea was planned and designated to further foster, improve and support completion of Internal Market and European Union's economy.[24]

When European Commission and their legal experts sat down and drafted the proposal for unified European Company Law and Societas Europaea, one of their main goals was to avoid regulation competition within European Union so that European Single Market would be spared from Delaware Effect.[25] However as the recent history has shown with corporations stacking their headquarters in few specific Member States, such as Ireland, Netherlands and Luxembourg where the tax legislation is more preferable for corporations.

However, while the European Union Commission's aim was to prevent regulation competition between Member States there was also opposite viewpoint. In which the Societas Europaea Regulation would be a catalyst for a competition between Member States to more rapidly adjust their national legislation according to the Societas Europaea Directive and thus harmonize the company law within European Union.[26] This competitions consequence was in line with the Societas Europaea aim which was heavily planned and designed to further complete and support European Union's internal market.[27]

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[22] COUNCIL REGULATION (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE). L 294/1, 8.10.2001

[23] Arlt, A., Bervoets, C., Grechenig, K., Kalss, S. The Societas Europaea in Relation to the Public Corporation of Five Member States (France, Italy, Netherlands, Spain, Austria), European Business Organization Law Review (EBOR) 2002, 738, pp 733-764

[24] Ibid, p 737.

[25] Grundmann, Stefan. Regulatory Competition in European Company Law – Some different genius?, in: Ferrarini/Hopt/Wymeersch, Capital Markets in the Age of the Euro. Cross-border Transactions, Listed Companies and Regulation, The Hague: Kluwer Law International 2002, 565, pp 562-595

[26] Arlt, A., Bervoets, C., Grechenig, K., Kalss, S. The Societas Europaea in Relation to the Public Corporation of Five Member States (France, Italy, Netherlands, Spain, Austria), European Business Organization Law Review (EBOR) 2002, 737, pp 733-764

[27] Ibid

4.1. Problems of Societas Europaea

Societas Europaea has several problems in it with a lot of compromises, solving these disagreements was time consuming and cumbersome.[28] It could be said that the problems of Societas Europaea started from the beginning as Van Gerven put it: "In total, it took 30 years for Community lawmakers to develop a complete set of rules, which appears to regulate the SE only in part and refers to national law (of the Member State where the SE's registered office is located) on many key issues".[29]

"One has to distinguish among four different types of rules, namely: (a) legal rules of the Regulation, (b) the rules to which the Regulation refers,15 (c) rules which the national legislator may or must enact only concerning the SE,16 and, finally, (d) rules of the by-laws."
Therefore, these norms have to exist in the national legal framework

When recognizing the four different types of rules found in Societas Europaea, one can find first the legal rules of the Regulation, secondly the rules which the Regulation in hand refers to in national legal framework, thirdly the rules which the national legislator may or must enact only concerning the Societas Europaea and fourthly the rules of the by-laws.[30]

Due to aforementioned rather broad regulation concerning Societas Europaea, it has led to rather opposite direction from the desired goal of harmonized European public company legislation, in which the European and national law and jurisprudence will be mixed - in some speculation to "fifteen different types of Societas Europaea but one single company form".[31]

This in author's opinion could lead to "Delaware effect", in which different States, or in European Union's case, different Member States compete for businesses with business regulations that are more preferable for the corporations than the other parties, such as customers or even State.[32] Some experts have found a potential weakness in the Societas Europaea

[28] Bouloukos, Marios. The European Company (SE) as a Vehicle for Corporate Mobility within the EU: A Breakthrough in European Corporate Law? (2007) 18 European Business Law Review, Issue 3, 535, pp. 535–557
[29] Gerven, Dirk., Storm, Paul. The European Company Volume 1, Cambridge University Press 2006, page 26
[30] Arlt, A., Bervoets, C., Grechenig, K., Kalss, S. The Societas Europaea in Relation to the Public Corporation of Five Member States (France, Italy, Netherlands, Spain, Austria), European Business Organization Law Review (EBOR) 2002, 736, pp 733-764
[31] Ibid
[32] McCahery, Joseph A., Vermeulen, Erik P. M., Does the European Company Prevent the 'Delaware-Effect'?. TILEC Discussion Paper No. 2005-010, page 7-8

legislation, especially in the employee participation that can lead into "Regime Shopping".[33] This Regime Shopping occurs in the employee participation as Societas Europaea Companies set up their headquarters in countries where employee involvement rights are not as demanding as in other Member States and this can lead to erosion in employee rights as Delaware Effect happens when Member States compete for companies.[34] Avoiding Delaware effect and its development in Europe is one of the major goals of European Company Law.[35]

While harmonization and unifying company legislation within EU was one of the major goals of Societas Europaea, the compromising nature of EU decision making has however lead to some compromises in which the preferred single harmonized structure and company regulation could not be agreed upon. In these cases, the Societas Europaea Regulation and Directive had to have given some leeway from harmonization to the specific wishes of the Member States.

One example of this kind of compromise was the choice between British model of one-tier company organization structure and the German two-tier company organization structure. To please both major schools, the regulation makers decided to include option for both of those structure models in the Societas Europaea Regulations Article 38.[36] This raised some difficulties in Member States because now they had to include both structure systems in their domestic corporate legislation, at least for the Societas Europaea companies.[37]

This required legal framework raises two questions for the implementing Member State to relate how difficult the regulation implementation will be in their respective legislation.

[33] Rehfeldt, Udo. European Foundation for the Improvement of Living and Working Conditions, Employee involvement in companies under the European Company Statute, Luxembourg: Publications Office of the European Union, 2011 – VIII, 94 page 18
[34] Ibid, p 19.
[35] Grundmann, Stefan. Regulatory Competition in European Company Law – Some different genius?, in: Ferrarini/Hopt/Wymeersch, Capital Markets in the Age of the Euro. Cross-border Transactions, Listed Companies and Regulation, The Hague: Kluwer Law International 2002, 565, pp 562-595
[36] COUNCIL REGULATION (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE). L 294/1, 8.10.2001
[37] Arlt, A., Bervoets, C., Grechenig, K., Kalss, S. The Societas Europaea in Relation to the Public Corporation of Five Member States (France, Italy, Netherlands, Spain, Austria), European Business Organization Law Review (EBOR) 2002, 738, pp 733-764

The first question is whether in the Member State there is an existing corporate structure that is compatible with the corporate structure models required by the Societas Europaea legislation.[38] The second question is, how willing is the Member State to adjust their domestic legislation to greater extent of harmonization, or whether the Member State wants to implement the Societas Europaea legislation for the minimum amount required by the regulation with the possibility for Societas Europaea companies to choose between one- and two-tier system or to integrate the Societas Europaea regulations within the Member States range of legal forms and simultaneously developing the domestic corporate law correspondingly.[39]

While the Commission's goal was to harmonize the corporation legislation within Union, as can be seen by the aforementioned points, it could not be done with forcing the Member States to adopt the new legal forms introduced, but rather to hope the proposed and required changes are attractive enough for the Member States to adopt them to the fullest extent and not just by doing the absolute least required. One can now over decade later to review how receptive the Member States have adapted the Societas Europaea regulations to their domestic corporate legislation, in which country the Societas Europaea regulation was well received and why, and why in other countries it have failed to achieve the goals harnessed in it.

5. EMPLOYEE INVOLVEMENT IN SOCIETAS EUROPAEA

The employee involvement in Societas Europaea company is governed by both each Member State's transposition laws and most importantly by provisions in Directive 2001/86/EC which is supplementing Council Regulation 2157/2001/EC. The Directive gives employee's two pillars of power in Societas Europaea company, first of which is the employee's information and consultation rights.[40] The second pillar is right of direct involvement in managerial decisions, that can further be separated into either right to influence the selection of the members of the Company's supervisory organ, in case the company has two-tier system, or selection of administrative organ, in case of one-tier system.[41]

[38] Arlt, A., Bervoets, C., Grechenig, K., Kalss, S. The Societas Europaea in Relation to the Public Corporation of Five Member States (France, Italy, Netherlands, Spain, Austria), European Business Organization Law Review (EBOR) 2002, 738, pp 733-764
[39] Ibid
[40] Eidenmueller, H., Hornuf, L. Reps, M., Contracting Employee Involvement: An Analysis of Bargaining Over Employee Involvement Rules for a Societas Europaea (January 4, 2012). ECGI - Law Working Paper No. 185/2012, 4, pp 1-36
[41] Ibid

The history of employee involvement in European company boards has been a difficult one and proven to be obstacle in front of agreement[42], the arguments about compulsory worker participation in board lead to 30 year deadlock in negotiations for proposed Societas Europaea model.[43] Still over a decade after the Employee Involvement Directive was introduced there are still opposition for it in some of the Member States worker unions for both the extra responsibility and in authors opinion for the sheer unfamiliarity of the concept.[44] In fact at the very beginning of history of Societas Europaea at 1966 when Professor Piet Sanders first prepared the draft of Statute for the Societas Europaea, there were only a single Member State (Germany) where company law provided the requirement of employee representation on the supervisory board.[45] Due to proposed Societas Europaea cross-border elements, the major differences in Member States legislation brings problems for the creation of Societas Europaea companies, such as cross-border merger or transfer of seat across state border.[46]

Paul Storm writes an example case of a German and a Italian public companies that wishes to merge, as is the nature of merge, both of either one of these companies would need to disappear and another one (or whole new company) to transform into Societas Europaea. In such a case there would be a clash of legislation that would leave other Member State disgruntled and create a problem, for example as German legislation requires employee participation, but the Societas Europaea is registered in Italy by Italian company legislation, that would create problems for Societas Europaea when they operate in Germany as it would deprive the required employee participation and that would be unacceptable for the German government.[47] As the European Commission has always taken the viewpoint in which employees should be able to influence the course of actions that the company in which they work follows.[48]

Earlier remark of this viewpoint can be found in the EWC Directive[49] that served as a base for Societas Europaea Directive's requirement for information and consultation exchange between

[42] Gerven, Dirk., Storm, Paul. The European Company Volume 1, Cambridge University Press 2006, page 16
[43] Ibid, p 17.
[44] van het Kaar, Robbert. The European Company (SE) Statute: up against increasing competition?, Transfer: European Review of Labour and Research Vol 17 Issue 2 2011, 195, pp 193-201
[45] Gerven, Dirk., Storm Paul. The European Company Volume 1, Cambridge University Press 2006, page 16
[46] Ibid
[47] Ibid, p 17.
[48] Ibid, p 17.
[49] Council Directive 94/45/EC of 22 September 1994 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.

employees and management board. In the EWC Directive there is an obligation established on large companies to establish a special negotiating body consisting of representatives of companies employees for the required informing and consulting company's employees.[50] The Societas Europaea Directive adopted the idea of certain standard rules laid down in an annex for employee information and consultation compromise ready to annex thereto, if no agreement could be reached between parties, from EWC Directive to ease up the adoption of the new legislation. [51]

There are several statutes in Societas Europaea Directive which provide the requirement for employee involvement for Societas Europaea companies, due to the fact that the Directive is made to clarify and regulate the worker participation in Societas Europaea companies. Some examples of these are the Article 1(2) which states that: "arrangements for the involvement of employees shall be established in every Societas Europaea", and for example the Article 3(2) in which it is stated that: "...a special negotiating body representative of the employees of the participating companies and concerned subsidiaries or establishments shall be created". These statutes clearly dictate how essential part the employee participation is on the management of Societas Europaea company, without the involvement there cannot simply be a Societas Europaea company.

The Societas Europaea Directive deals with three different forms of employee involvement 1. information, 2. consultation and 3. participation, in which each one's accurate meaning is defined at Article 2.[52]

The Societas Europaea Directive definitions for employee involvement go as follows:

> "Article 2 (...) (i) "information" means the informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE on questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees' representatives to undertake an in-

[50] Gerven, Dirk., Storm, Paul. The European Company Volume 1, Cambridge University Press 2006, page 17
[51] Ibid
[52] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees. OJ L 294. 10.11.2001

depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE;"[53]

"Article 2 (...) (j) "consultation" means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE;"[54]

" Article 2 (...) (k) "participation" means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of:
- the right to elect or appoint some of the members of the company's supervisory or administrative organ, or
- the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ."[55]

The employee participation should be clearly distinguished from other aforementioned types of employee involvement due to it being the most important form of involvement introduced by the Directive.[56]

It is the only type of involvement that actually affects the structure of the company where employees can affect the occupation of company's administrative or supervisory organ via electing, appointing, recommending or opposing some or all the members of such board.[57] While the information and consultation requirements are usually realised through a work council or

[53] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees. OJ L 294. 10.11.2001 Article 2 (i)
[54] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees. OJ L 294. 10.11.2001 Article 2 (j)
[55] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees. OJ L 294. 10.11.2001 Article 2 (k)
[56] Gerven, Dirk., Storm, Paul. The European Company Volume 1, Cambridge University Press 2006, page 17
[57] Ibid

equivalent body and in some cases, with a direct contact between company management and employees or their representatives.[58]

In author's opinion the regulated minimum level of employee involvement at company management in Societas Europaea could be argued that it is the most radical change in european company law, due to the fact that it challenges the traditional principle of company law where company does not have any other obligations than to operate within legal frameworks of corporate legislation and its purpose is to generate wealth for the company owners as the Finnish Limited Liability Company Act 1.1.5 states "The purpose of a company is to generate profits for the shareholders, unless otherwise provided in the Articles of Association."[59].[60]

The Societas Europaea Directive rises an argument in author's opinion that quite progressively the company holds responsibility for the employees and to their opinions right to control in some degree the aim at which the company goes and what it does, composed to the traditional point of view where only company's shareholding owners have the right to dictate what company does.

5.1. Special Negotiating Bodies

Issuing arrangement for employee involvement during a formation of an Societas Europaea company is prerequisite for registration as it is stated in Societas Europaea Directive Article 3(1).[61] So after the participating parties of the Societas Europaea have decided the structure of the future company with its statutes, the negotiations with employee representative must start as soon as possible.[62] The party who negotiates on behalf of the employees is called Special Negotiating Body and the seats in the body are allocated in proportion to the amount of employees employed in each of the Member States of the founding companies and their

[58] Ibid
[59] *Yhtiön toiminnan tarkoituksena on tuottaa voittoa osakkeenomistajille, jollei yhtiöjärjestyksessä määrätä toisin.*
[60] Osakeyhtiölaki 21.7.2006/624
[61] Where the management or administrative organs of the participating companies draw up a plan for the establishment of an SE, they shall as soon as possible after publishing the draft terms of merger or creating a holding company or after agreeing a plan to form a subsidiary or to transform into an SE, take the necessary steps, including providing information about the identity of the participating companies, concerned subsidiaries or establishments, and the number of their employees, to start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE.
[62] Eidenmueller, H., Hornuf, L. Reps, M., Contracting Employee Involvement: An Analysis of Bargaining Over Employee Involvement Rules for a Societas Europaea (January 4, 2012). ECGI - Law Working Paper No. 185/2012, 4, pp 1-36

subsidiaries with at least ten members in a single Special Negotiating Body with a negotiation period of six month and possibility for 6 month negotiation extension.[63]

The Societas Europaea Directive does not give standard rules for the mechanisms for selecting national employee representatives to Special Negotiating Body or for the Societas Europaea supervisory or administrative board, instead the Directive delegates each Member State to implement these mechanisms for their national Societas Europaea transposition law.[64]

Even while the Societas Europaea Directive has granted the parties rather wide array of negotiation freedom for company specific statutes at the Societas Europaea formation, there is still disputes about the scope of permissible area in which company specific agreements can be.[65] However there is an important exception to the general freedom of agreement, where the new statutes of the Societas Europaea company cannot decrease the level of employee involvement compared to the existing agreements in any party's or their subsidiary's case.[66]

5.2. Avoiding Employee participation in Societas Europaea

While the main rule states in Societas Europaea Directive that there cannot be a Societas Europaea company without employee involvement, there are few exceptions to this rule. It is however important to notice that the exceptions focus mainly on participation and not the other types of employee involvement, namely information and consultation of employees.[67]

The first type of exception to the main rule is when both the Special Negotiation Body and companies other relevant managing bodies unanimously decide that there will not be a worker participation at all at the Societas Europaea level.[68]

The second type of possible exception lies with the companies that hold no employees for some reason. As the Article 3(1) of Societas Europaea Directive[69] and Article 12(2) of Societas

[63] Ibid
[64] Fulton, L., Anchoring the European Company in national law – Country overviews, 2008, page 52
[65] Eidenmueller, H., Hornuf, L. Reps, M., Contracting Employee Involvement: An Analysis of Bargaining Over Employee Involvement Rules for a Societas Europaea (January 4, 2012). ECGI - Law Working Paper No. 185/2012, 4, pp 1-36
[66] Ibid, p 5.
[67] Gerven, Dirk., Storm, Paul. The European Company Volume 1, Cambridge University Press 2006, page 18
[68] Cremers, J., Stollt, M,. Vitols, S., A decade of experience with the European Company, ETUI 2013, page 208

Europaea Regulation[70] deal with the creation of 'Special Negotiating Bodies' to involve employees at the Societas Europaea company right after the company publishes draft terms of merger or draft of a creation of Societas Europaea company or do any other action that ends up creating a Societas Europaea company.

Van Gerven argues that this requirement raises an issue to the companies that hold no employees, making it impossible for them to start negotiations with employees according to Societas Europaea Directive Article 3 and thus that the Article cannot be applied.[71] Van Gerven further argues that even when Societas Europaea Regulation Article 12(2) states that Societas Europaea cannot be registered unless at least one of the three referred things has happened, it does not take into account a situation in which the forming Societas Europaea company does not have any employees and thus it would be a 'sensible interpretation' that Regulation should permit registration of Societas Europaea company even if it lacks employees.[72]

While van Gerven argues that aforementioned circumstances create a possibility to form an Societas Europaea company without employee participation, author argues that it could also lead to interpretation in which it is simply impossible to form a Societas Europaea company without employees.

In case of companies who want to form a Societas Europaea and that who do not have employees in themselves but subsidiaries who hold the employees, for example holding companies, still have to form a Special Negotiating Body for employees under Directive Article 2(d) and excluding of such employees could be argued to be abuse of employee rights.[73]

As stated before, if even one of the merging Societas Europaea companies have employees the Special Negotiating Body must be created and the negotiations for employee participation must be opened, unless the Special Negotiating Body decides to not open them by a qualified majority.[74] In such cases Regulation Article 12(2) gives right to register Societas Europaea company without any provisions of the Societas Europaea Directive Annexes applying to the

[69] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees. OJ L 294. 10.11.2001
[70] COUNCIL REGULATION (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE). L 294/1, 8.10.2001
[71] Gerven, Dirk., Storm, Paul. The European Company Volume 1, Cambridge University Press 2006, page 18
[72] Ibid
[73] Ibid, p 19.
[74] Ibid, p 19.

Societas Europaea, thus leaving only each Member State's national rules on employee information and consultation applying to the Societas Europaea company based on their home country.[75]

As stated on the chapter on Special Negotiating Bodies, the negotiations can last from six months, to a maximum of year until one of the following scenarios according to Van Gerven will result:

1. Agreement on some form of employee involvement is reached.[76]

In this scenario, all or some of the rules set down in the Annex to the Societas Europaea Directive[77] with the only limitation being the decrease of the established employee involvement already present on one of the parties or their subsidiaries.[78]

2. No agreement is reached.
    a. due to the Special Negotiation Body decided to terminate the negotiations with qualified majority.[79]

This results to the same outcome as the Special Negotiation Body would have not never opened the negotiations.

    b. due to negotiations over exceeding the maximum period of one year before agreement could be reached.[80]

Due to Societas Europaea legislation's relative youth, the outcome of this scenario is not completely clear due to Regulation and Directive appearing to contradict each other.[81] This can be seen when Societas Europaea Directive Article 7(1) states that standard rules will apply if no agreement was concluded within the negotiation period and all parties of the future Societas

[75] Ibid, p 19.
[76] Gerven, Dirk., Storm, Paul. The European Company Volume 1, Cambridge University Press 2006, page 20
[77] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees. OJ L 294. 10.11.2001 Articles 4(3) and 7(1)(a)
[78] Eidenmueller, H., Hornuf, L. Reps, M., Contracting Employee Involvement: An Analysis of Bargaining Over Employee Involvement Rules for a Societas Europaea (January 4, 2012). ECGI - Law Working Paper No. 185/2012, 5, pp 1-36
[79] Gerven, Dirk., Storm, Paul. The European Company Volume 1, Cambridge University Press 2006, page 20
[80] Ibid
[81] Ibid

Europaea company agrees the standard rules in relation to the Societas Europaea legislation, then it can continue its registration to a Societas Europaea company, while the Societas Europaea Regulation Article 12(2) instead states that if the negotiation period has expired, the companies can proceed into registratiting Societas Europaea.[82] Van Gerven argues that the Societas Europaea Directive suggests that if there is no unanimous acceptance by the parties on the standard of rules, the Societas Europaea company cannot be registered and that this interpretation should have primacy over the Societas Europaea Regulation wording or, the lack of, where there is no notification on whether the lack of unanimous agreement should halt the registration progress or not.

While in the European Union law there is not primacy over Directives and Regulations, there is the *lex specialis derogat legi generali* -rule in which the Directive should take primacy over Regulation and thus without unanimous acceptance there cannot be Societas Europaea Company.[83]

This view further enhances the comprehension of importance in which European Commission view the employee involvement and especially the participation on Societas Europaea company.

Next logical question to look at is what happens if the standard rules are considered to be applicable? When looking at the Societas Europaea Directive Article 7(2) that deals with issue, one can find that the standard rules will only apply if one or more of the following conditions is fulfilled:[84]

a. If the Societas Europaea company is formed by a conversion and the relevant national rules on employee participation applied to the company that converted into Societas Europaea
b. If the Societas Europaea company is formed by a merger where there is some form of employee participation in at least one participating company, whose employees cover at least 25% of total number of employees in the participating companies or if the percentage is lower than the 25%, standard rules will apply if Special Negotiating Body so decides.

[82] Ibid
[83] Gerven, Dirk., Storm, Paul. The European Company Volume 1, Cambridge University Press 2006, page 20
[84] Ibid, p 20-21.

c. If the Societas Europaea company is formed via holding Societas Europaea or subsidiary Societas Europaea, the same rule applies as in mergers, except the applicable employee percentage is 50%.

However, there is an exception of standard rules, in case a Societas Europaea company is formed via merger as stated by Article 7(3). In that case Article 12(3) states that if the Member States chose to exercise the option, Societas Europaea company can only be registered either if, there is a previous agreement including employee participation or if none of the companies participating were governed by rules concerning participation.[85]

While it would seem that there is a possibility to completely or partly avoid employee participation rights via subsidiaries of a newly forming Societas Europaea Company, there are Directive and Regulation articles which were formed to prevent it from happening.[86] Article 11 of European Company Directive states that:

> "Member States shall take appropriate measures in conformity with Community law with a view to preventing the misuse of an SE for the purpose of depriving employees of rights to employee involvement or withholding such rights."

As can be seen from the Article, lawmakers were aware of possibility of parties using subsidiaries for avoiding employee participation. However in practice, only 19 Member States have implemented the Article 11 in their national legislation according the wording from the Directive and 9 Member States[87] have chosen not to explicitly implement the Article's wording in their national legislation – most notably Czech Republic that has the greatest amount of Societas Europaea companies in all the Member States.[88]

The Article 11, combined with the Article 12 of the Directive's notion on requiring Member States to ensure that all parties of Societas Europaea follow the obligations whether or not the Societas Europaea have a registered office inside its territory, has at least in theory created a safeguard against misuse of employee rights in regard to involvement.

[85] COUNCIL REGULATION (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE). L 294/1, 8.10.2001
[86] Gerven, Dirk., Storm, Paul. The European Company Volume 1, Cambridge University Press 2006, page 22
[87] Belgium, Bulgaria, Czech Republic, Hungary, Latvia, Portugal, Romania, Slovakia and Slovenia
[88] Cremers, J., Stollt, M,. Vitols, S., A decade of experience with the European Company, ETUI 2013, page 83

However it seems the worry about Societas Europaea Regulation and Directive and their effectiveness on actually involving employees on decision making is concrete. According to study released in 2011, only one quarter of all the Societas Europaea companies in European Union employ over 5 employees and carry out actual economic activities and are thus considered to be "normal" Societas Europaea Companies.[89] As of 31.12.2016 there are total of 2 757 Societas Europaea companies, 454 of these are considered to be normal Societas Europaea companies, 383 of these companies are Micro Societas Europaea in which they have less than five employees and rest of the 1920 companies are considered to be UFO Societas Europaea companies, meaning there are no sufficient information available for their categorization based on employees.[90] In 2018 the amount of Societas Europaea companies has increased into 3014 companies.[91]

As the study of 2011 states, only around quarter of Societas Europaea Companies (145 companies) are doing actual economic activities and most of the Societas Europaea Companies are not actually doing business in traditional sense, employing people, furthermore approximately 13,5% (78) companies are considered to be purely shelf companies, made up for sale.[92] European Foundation for the Improvement of Living and Working Conditions study additionally states that "… generally and SE is used by the company to streamline and create leaner company structures in an international environment" and that "For management … employee involvement is a necessary precondition for the creation of the SE. It helps to create a European company identity" and that "for the employees, the agreement on employee involvement meant that codetermination rights in the supervisory board were secured or even improved, and important rights were obtained for the SE works council."[93], with finally adding that employee involvement in Societas Europaea companies cannot be seen as arbitrary, but rather integral and important part of corporate governance in the European Union.[94]

[89] Rehfeldt, Udo. European Foundation for the Improvement of Living and Working Conditions, Employee involvement in companies under the European Company Statute, Luxembourg: Publications Office of the European Union, 2011 – VIII, 94 page 1, 25
[90] Carslon, A. SE Companies in 2017. Workers' Participation Europe Network, ETUI 2017, page 21
[91] http://ecdb.worker-participation.eu/show_overview.php?letter=A&orderField=se.se_name&status_id=3&title=Established%20SEs (7.5.2018)
[92] Rehfeldt, Udo. European Foundation for the Improvement of Living and Working Conditions, Employee involvement in companies under the European Company Statute, Luxembourg: Publications Office of the European Union, 2011 – VIII, 94 page 1, 25
[93] Ibid, p 1.
[94] Ibid, p 2.

The aforementioned statement is in author's opinion in slight contrast with the studied information found in the same study and in more recent study from 2016, where the vast majority of Societas Europaea companies have no real economic activities or have fewer than five employees or none altogether. The author fails to see employee involvement as successful and non "arbitrary" integral part of Societas Europaea when in reality only a minority of Societas Europaea companies in fact cultivates these integral aims bestowed upon Societas Europaea model.

Dirk Gerwen and Paul Storm also tackled this issue, in their book, that there are some potential loopholes in Societas Europaea legislation, holes that enable creation of Societas Europaea company without any employee involvement via subsidiaries.[95] As Gerwen and Storm predicted, the potential problems in employee participation has become more visible as a number of German domiciled Societas Europaea have reportedly been reducing worker participation in governance through strategic use of Societas Europaea Regulation.[96]

5.3. Problems of Employee Involvement vs Company Board loyalty and General Duty concepts

When Commission was preparing the Societas Europaea Directive and Regulation they had to make unified legislation in which they could not adjust it to every Member State's individual legislation and thus it leads to potential clashes of legal concepts.

One such clash can be found on the Finnish Company legislation and its general legal concepts regarding to Company Board.

There is no article in Societas Europaea Directive which directly states that the employee representative must hold his loyalty to the employees he is representing, it is assumed by the title that employee representative represents the benefit of the company's employees. However the Societas Europaea Directive Article 9 states that employee representative "shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations".[97] The Finnish

[95] Gerven, Dirk., Storm, Paul. The European Company Volume 1, Cambridge University Press 2006, page 22-23
[96] Casey, C., Fiedler, A., Fath, B. The European Company (SE): Power and participation in the multinational corporation, European Journal of Industrial Relations Vol 22, Issue 1, 77, 73-90
[97] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees. OJ L 294. 10.11.2001

Limited Liability Company Act states that the Company's board members must have a loyalty obligation to work for the benefit of the company and that the company management have a general duty to act for the benefit of the company.[98] The loyalty obligation and general duty of the clause in Limited Liability Company Act is further explained and stated in the Justifications of the Act.[99] If the Board Members fails to act accordingly to their duties and requirements for the company which are stated in the Limited Liability Company Act, they can be prosecuted in court and forced to pay damages and fines.[100]

In Estonian legislation, the duty of care for company board members is defined as duty to perform their obligations with due diligence normally expected from a member of managing body.[101] The general duties of managing board members are found in Civil Code.[102]
Duty of loyalty in Estonian law is implemented on the general duties of the members of managing body as notion to be loyal to the legal person, however Estonian case law has reiterated that the duty of loyalty also entails duty to avoid conflict of interests and this avoidance can be received either from authorization of superior body or by simply via law.[103]
While the board members are not expected to be aware all of the legal provisions relating to the managing a company, a member is still expected to be aware of those provisions in sufficient extent.[104] This can create a problems when an employee representative is not from a background related to managing, economy or law. The potential problem is extended with the potential conflict of interests between employee and employer representatives in managing board. The lack of sufficient detail in establishing a clear map preventing conflict of interests is a noticed problem.[105]
This can create a similar potential interest conflict as is in Finnish legislation.

In Finnish legislation, there is a clear obligation for the Board Members to act in the interest of the shareholders and thus company, however when an employee's representative is elected to the board, his obligation is for the employees he is representing and not for the company and

[98] Osakeyhtiölaki 624/2006 §1:8
[99] He 109/2005 vp., p.40
[100] Osakeyhtiölaki 624/2006 §22:1
[101] Äriseadustik. RT I 1995, 26, 355 §306:2
[102] Tsiviilseadustiku üldosa seadus. RT 2002, 35, 216 §35
[103] Madisson, Karin. Duties and liabilities of company directors under German and Estonian law: a comparative analysis, RGSL Research Papers No.7 2012, page 29
[104] Ibid, page 78
[105] Ibid

shareholders as it is case for the other members of the board. The Finnish fiduciary obligations of duty of care and loyalty obligations relation and difference to each other is rather vague.[106]

In case the board is found guilty on bad decision making and face legal repercussions due to their obligations, can the employee representative be found guilty as well?

As Council Directive of Societas Europaea states in Article 9 on the relation of Societas Europaea Board and employee representatives, they "shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations".[107] This however does not explicitly state the legal status of employee representative in regard to the possible liability for damages or other legal repercussions conducted from general duty of care and loyalty obligation. In authors opinion this could lead to potential problems in Finland if the Societas Europaea form gains more popularity in future and the issue is worth a research.

6. RESEARCH METHODS

The author send a list of eight questions about Societas Europaea and its implementation in Finland to representative of employer side (Confederation of Finnish Industries)[108] and to representative of employee side (Industrial Union)[109]. The interview with the Confederation of Finnish Industries was made solely via email and the interview with the Industrial union was conducted in face to face interview that lasted approximately for an hour and a list of eight questions was send before the interview so that the interviewee could familiarize himself with the questions beforehand. The Annex 1 consist the interview material from representative of Confederation of Finnish Industries, while Annex 2 consist the essential interview material from representative of Industrial Union.

7. IMPLEMENTATION OF SOCIETAS EUROPAEA IN ESTONIA

The Societas Europaea Regulation is implemented into Estonian legislation by "*Euroopa Liidu Nõukogu määruse (EÜ) nr 2157/2001 Euroopa äriühingu (SE) põhikirja kohta rakendamise*

[106] Saarenmaa, Antto. *Osakkeenomistajan lojaliteettivelvollisuus*, University of Helsinki 2013, page 44
[107] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees. OJ L 294. 10.11.2001 Article 9
[108] *Elinkeinoelämän Keskusliitto*
[109] *Teollisuusliitto*

seadus", hereafter SECIA and the Directive via Community-scale Involvement of Employees Act[110].

There are eight Societas Europaea companies in Estonia as from 31.12.2016 and seven of these are considered to be "normal" Societas Europaea with over five employees.[111] The increase of popularity of Societas Europaea companies in Estonia has been rather quick as in 2010 study there were only four Societas Europaea companies, in which one of them was considered to be "UFO" Societas Europaea with very limited information and three were considered to be normal Societas Europaea companies.[112]

While Estonia is considered to be the most advanced and wealthy of the three Baltic States of Lithuania, Latvia and Estonia. It seems this has not affected in great deal to the division of Societas Europaea companies in Baltic region, as there is six companies in Latvia and one company in Lithuania, while there are eight Societas Europaea companies in Estonia.[113] It seems that the Societas Europaea corporations in Baltic area have not centralized their corporate structure in a single country, but rather evenly distributed Societas Europaea companies between all the Baltic area Member States.

While creating a Societas Europaea company is for most parts standardized throughout the European Economic Area, there is an exception on the uniformity in creating a Special Negotiation Body, as each Member State was delegated an obligation to instate a mechanism in their national Societas Europaea legislation for electing representatives in the Special Negotiation Body and in the administrative or supervisory body of Societas Europaea.[114] Subsequently these mechanism differ from Member State to Member State and in case of Estonia, the representatives of both Special Negotiating Body and company board are elected same way by election in a general meeting of all employees or in case of several companies, by delegates elected at general meetings.[115]

[110] RT I 2007, 22,112
[111] Carslon, A. SE Companies in 2017. Workers' Participation Europe Network, ETUI 2017, page 4
[112] Rehfeldt, Udo. European Foundation for the Improvement of Living and Working Conditions, Employee involvement in companies under the European Company Statute, Luxembourg: Publications Office of the European Union, 2011 – VIII, 94 page 26
[113] Carslon, A. SE Companies in 2017. Workers' Participation Europe Network, ETUI 2017, page 4
[114] Fulton, L., Anchoring the European Company in national law – Country overviews, 2008, page 52
[115] Ibid, page 52, 55

In Estonian legislation for public limited liability companies there is no provisions for forming a one-tier management system but only a two-tier management system, thus Estonian legislators have been required to implement additional provisions for Societas Europaea Companies to be able to have one-tier system.[116] In the study from 2010, only one of the companies had a one-tier corporate governance system, while the rest three companies had the more common two-tier corporate governance system.[117]

Estonia has also implemented the Societas Europaea employee Directive's Article 11 wording that protects employee participation from misuse of depriving right for employee involvement[118] with 19 other Member States including Finland.[119] The aforementioned Article is found in § 81 of Community-Scale Involvement of Employees. However the Article does not state that the employer has the burden of proof to show that there was no misuse. Some other Member States encumbrance the employer with burden of proof, for example Finland.[120] Apart from this exception both Estonia and Finland have chosen to implement the employee representative legislation with same standard rules.[121]

The implementation of Societas Europaea legislation has not always been an easy task. The implementation of the Societas Europaea statutes can sometimes clash with the unique domestic regulations concerning different types of company legislation. This can create questions what to do, especially since the Societas Europaea statutes are rather general and can sometimes lack clear guidelines. Since Societas Europaea is not solely applicable to company law in national legislation, but can also spread to different areas of legislation in a national law, for example to national registration procedures and to other accompanying areas of laws.[122]

A good example of the clash between domestic legislation and the uniform European Company legislation can be found in Estonia when the first Estonian Societas Europaea company was

[116] Julien-Saint-Amand, Luc., Becker, Arnd. Study on the operation and the impacts of the Statute for a European Company (SE), page 135 - 2008/S 144-192482
[117] Rehfeldt, Udo. European Foundation for the Improvement of Living and Working Conditions, Employee involvement in companies under the European Company Statute, Luxembourg: Publications Office of the European Union, 2011 – VIII, 94 page 26
[118] see page 18
[119] Cremers, J., Stollt, M,. Vitols, S., A decade of experience with the European Company, ETUI 2013, page 83
[120] Ibid, p 83-84.
[121] Ibid, p 83-85.
[122] Vutt, A., Vutt, M. Problems of Introduction of Societas Europaea in Estonian Law, Juridica International XII/2007, 132, pp 125-133

formed by the SE Sampo Life Insurance Baltic in 2007.[123] After the founding it was discovered that the Estonian Insurance Act Subsection 6(1) dictates that businesses that undertake insurance business have to use Estonian word for insurance "*kindlustus*" in their name.[124] This of course is not practical in Societas Europaea company that has operations in several different countries and as has been established, one of Societas Europaea main attractions and goals is the cross-border element.[125] The fact was acknowledged by the Estonian registrar and they made a decision that Societas Europaea companies could use English word for insurance to better proceed within the meaning of Societas Europaea legislation.[126]

While Societas Europaea company form has not been as popular in Estonia when compared to central Europe, especially to Czech Republic[127] it has still been a rather successful when compared to Finland, that only has currently a single European Company versus the eight Estonian companies. The difference in popularity is made even more substantial when comparing countries economic sizes. Finland's economy's GDP of €224 billion[128] is approximately ten times the size of Estonia's GDP of €23 billion[129], still Estonia has eight times more Societas Europaea companies than Finland even when the European Company is intendent for only large public liability companies that operate in more than one European Union's Single Market Member States.

In authors interview with a Finnish Industrial Union Lawyer Mr. Helenius, Mr. Helenius gave his impression on why Societas Europaea has gained more popularity in Estonia compared to Finland.[130] According to Mr. Helenius, Estonia has had a chance to re-create their company legislation from a rather blank state, due the history of Soviet occupation of Estonia. As there was a spirit for modernization and chance to create a legislation from the scratch, Estonian companies have been more adoptable for Societas Europaea form. A good example on the argument can be found when comparing the previous legislation regarding employee involvement in Estonia and Finland. In case of Estonia, there were no previous legislation on

[123] Vutt, A., Vutt, M. Problems of Introduction of Societas Europaea in Estonian Law, Juridica International XII/2007, 132, pp 125-133
[124] Kindlustustegevuse seadus. RT I 2004, 90, 616 §6.1
[125] See chapter 4
[126] Vutt, A., Vutt, M. Problems of Introduction of Societas Europaea in Estonian Law, Juridica International XII/2007, 132, pp 125-133
[127] See chapter 5.2
[128] https://www.stat.fi/til/vtp/2017/vtp_2017_2018-03-16_tie_001_en.html (6.5.2018)
[129] https://www.stat.ee/news-release-2018-021 (6.5.2018)
[130] Appendix 2

employee involvement and it was first implemented in the Societas Europaea Directive, while in Finland there had been previous employee involvement legislation for approximately 30 years.[131]

8. IMPLEMENTATION OF SOCIETAS EUROPAEA IN FINLAND

Societas Europaea Regulation is implemented into Finnish legislation by *Eurooppayhtiölaki* [132] and the Societas Europaea Directive via *Laki henkilöstön edustuksesta yritysten hallinnossa*[133] and via *Laki henkilöstöedustuksesta eurooppayhtiössä (SE) ja eurooppaosuuskunnassa (SCE)*.[134] In Finnish public limited liability company legislation there is no legal preferences whether the companies must have one-tier or two-tier management system.[135]

As the mechanism for election of representatives for Special Negotiating Body and the representatives of Societas Europaea's supervisory or administrative board (depending on does the company use one-tier or two-tier management system and if the standard rules apply) is delegated to Member States, they differ from Member State to Member State.[136] In case of Finland, both Special Negotiating Body representatives and company board representatives are chosen by means of agreement or elections by the employees.[137]

Finland has implemented the Societas Europaea employee Directive's Article 11 with the wording that protects employee participation from misuse of depriving right for employee involvement[138] the same way as Estonia did, however unlike Estonia, Finland reinforced the employee protection by encumbering employer with burden of proof to showcase the lack of misuse if such change happens within a year of registration of Societas Europaea.[139] The aforementioned Article can be found in the 36 § of *Laki henkilöstöedustuksesta eurooppayhtiössä (SE) ja eurooppaosuuskunnassa (SCE)*.

[131] Stollt, Michael., Wolters, Elwin. Worker involvement in the European Company (SE), ETUI 2011, page 71-72
[132] *Eurooppayhtiölaki* 2004/742
[133] *Laki henkilöstön edustuksesta yritysten hallinnossa* 1990/725
[134] *Laki henkilöstöedustuksesta eurooppayhtiössä (SE) ja eurooppaosuuskunnassa (SCE)* 2004/758
[135] Julien-Saint-Amand, Luc., Becker, Arnd. Study on the operation and the impacts of the Statute for a European Company (SE), page 136 - 2008/S 144-192482
[136] Fulton, L., Anchoring the European Company in national law – Country overviews, 2008, page 52
[137] Ibid, p 52, 55.
[138] see page 18
[139] Cremers, J., Stollt, M,. Vitols, S., A decade of experience with the European Company, ETUI 2013, page 83-84

In Finland Societas Europaea companies have not gained much popularity amongst the entrepreneurs and companies. In a study about Societas Europaea companies made in 2010 there were not even a single Societas Europaea in Finland.[140] According to most recent information from 31.12.2016, there is just a single Societas Europaea company in Finland, Bayer Nordic.[141]

However, when new Societas Europaea legislation was implemented in European Union at early 2000's there were some interest for the new company form. In very quickly after the initial implementation of Council Regulation 2157/2001 on European Company in Finland at 2004, the first Finnish Societas Europaea company was formed by Elcoteq Oyj in 2005.[142] Elcoteq later chose to change its place of domicile to Luxembourg in 2008 and finally in 2011 declared bankruptcy.

Finland is usually categorized geographically in Nordic or sometimes Scandinavian region.
This geographic group is usually consisted of Norway, Sweden, Denmark, Iceland and Finland. When comparing how many Societas Europaea companies is found in each of the Nordic countries, the corporate domiciliation distributes in the following way: one Societas Europaea company in Finland, five Societas Europaea companies in Sweden, zero Societas Europaea companies in Iceland, three Societas Europaea companies in Norway and one Societas Europaea company in Denmark.[143]

When observing the distribution of Societas Europaea companies in Nordic area, it seems that the Societas Europaea company form is not exceedingly popular within the region. Sweden has the largest amount of Societas Europaea companies in whole region with just five companies while Norway comes second with three companies. In authors opinion it seems rather odd that economically and geographically much smaller Baltic region includes total of 15 Societas Europaea companies, while Nordic region only has total of 10 Societas Europaea companies.

[140] Rehfeldt, Udo. European Foundation for the Improvement of Living and Working Conditions, Employee involvement in companies under the European Company Statute, Luxembourg: Publications Office of the European Union, 2011 – VIII, 94 page 26
[141] Carslon, A. SE Companies in 2017. Workers' Participation Europe Network, ETUI 2017, page 4
[142] Bruun, N., Neumann, L., Elcoteq SNB negotiations – Experiences and procedures, ETUI-REHS 03.05.2007, page 1,15
[143] European Company (SE) Database, http://ecdb.worker-participation.eu (11.2.2018)

The only Finnish Societas Europaea company is considered to be a "normal Societas Europaea", as it employs more than five employees and does actual economic activities.[144] The Bayer Nordic also has employee participation on the board level.[145]

As there is only one Societas Europaea company in Finland, it is interesting to take a closer look on it to find out the reason why Bayer Nordic is the only company that chose to register itself in Finland.

The history of Bayer in Finland started in 1945 when a company called Stewesta Oy was founded in Finland to represent the German chemical industry, the company was later partly acquired by Bayer in 1958 and finally fully acquired and transformed into Bayer Finland in 1967.[146] Bayer has a long history in Finland, but history rarely have great impact on corporate decision making. As for other reasons, Bayer also has a major global pharmaceutical manufacturing facility in the city of Turku in Finland.[147]

There seems to be few major reasons for the unpopularity of the Societas Europaea company in Finland.

One of these is the traditional and strong trade union movement in Finnish work market. In Finland, there has traditionally been strong involvement of chief shop stewards at decision making of companies or critical parts of companies, such as factories or mines. The special status and relationship of trade union with their chief shop stewards and employer's joint decision making is secured by law in Finland, namely via *Laki Henkilöstön Edustuksesta Yritysten Hallinnossa*[148] loosely translated to the law of employee representation in the corporate governance.

Furthermore, according to the authors interview with Arto Helenius, a lawyer of Finnish Industrial Union[149], the Finnish Trade Unions have not been very keen to partake on and encourage employers to push to adopt Societas Europaea type of high level employee participation in board level. As Mr. Helenius pointed out, the union chief shop stewards or other

[144] Carslon, A. SE Companies in 2017. Workers' Participation Europe Network, ETUI 2017, page 4
[145] Ibid, p 17.
[146] http://www.bayer.fi/fi/yritys/Bayer%20Suomessa (3.1.2017)
[147] http://www.bayer.fi/fi/yritys/Bayer%20Nordic (3.1.2017)
[148] *Laki henkilöstön edustuksesta yritysten hallinnossa* 1990/725
[149] *Teollisuusliitto*

trade union representatives are not particularly interested to take part on managing board decision making as it is not within their expertise nor within their interest, as the companies managing board usually deals with topics such as corporate strategies, financing and concern group structures. Instead of this rather high and abstract level decision making, the trade unions and their representatives are more interested in "grass root level" decision making, meaning decisions that immediately and directly affect the employees.

In Finland, this grass root level decision making is traditionally achieved via chief shop steward who, in addition to his normal duties, usually sits in the board of his factory or other small level corporation structure.

When one looks at the arguments Mr. Helenius gave on the reason why Societas Europaea company form is not a popular form of company in Finland, one could extend it as a major reason why Societas Europaea form is not relatively popular in anywhere in the Nordic region. As all the Nordic countries have similar kind of strong labor unions which have traditionally been cooperating on between sister unions in Nordic area, thus as there has been a strong tradition whole out the region it could be one reason for the relative unpopularity of Societas Europaea throughout the Nordic.

On the other hand the interview with Mr. Äimälä of Confederation of Finnish Industries reinforces the conclusion with similar remarks on the unnecessity of Societas Europaea style of employee involvement on administrative board level in Finland.[150] According to the interview, the employers un-enthusiastic attitude derives from the notion that they feel that Societas Europaea does not add enough value compared to a regular limited liability company to make creating one as viable option.

This notion is understandable as Finland has an legislation for employee involvement in regular limited liability company since 1979 when law for employee involvement in company board was passed.[151] The legislation was first opposed by both employer interest groups and employee interest groups as there was a strong tradition of "highly centralized and corporatist industrial relations system with a strong state in alliance with powerful trade union federation and

[150] Appendix 1
[151] Stollt, M., 'Frequently asked questions on the European Company', in Kluge N. and Stollt, M. (eds), The European Company – prospects for worker board-level participation in the enlarged EU, Brussels, SDA/ETUI, 2006, 70, pp. 68–85

employer association to administer the political economy" in Finland.[152] However the legislation was managed to pass in force. The law did include a formalization of employee rights for information, negotiation and co-determination at board level for private companies that employed more than 30 employees, with right to elect directly their representatives who did not have a direct influence on the decision making, as the laws intention was to encourage a co-operation between employer and employee while improving a work environment by collective agreements.[153]

In 1990 the current law for employee representation was passed for, companies who employ more than 150 people, where employers were allowed to elect representatives, who had voting rights with few restrictions, directly to at least one board of the company such as supervisory board, board of directors or management group.[154] The major difference compared to a Societas Europaea's employee involvement, is that the participation rights in the Finnish model are more restricted as they are not entitled to participate in decision making with votes on the election, dismissal or contract terms of the management, the employees terms of employment or industrial action.[155] Thus more than half of the firms which employ between 150-200 employees have no representation in their company structures[156], as according to the interview with Mr. Helenius most employees rather choose to have representative on local level, rather than in administrative board.[157]

9. CASE ELCOTEQ

Elcoteq was the largest electronic manufacturing service in Europe with both its own original designed manufacturing in communication electronics and contract manufacturing on communication electronics.[158]

The company was originally founded in 1984 as a unit of a Lohja corporation in Finland, at 1990 it was separated into independent company and named as Elcotecq Oy Ab. In 2005 Elcoteq

[152] Ibid
[153] Stollt, M., 'Frequently asked questions on the European Company', in Kluge N. and Stollt, M. (eds), The European Company – prospects for worker board-level participation in the enlarged EU, Brussels, SDA/ETUI, 2006, 70, pp. 68–85
[154] Ibid
[155] Ibid, p 71.
[156] Ibid, p 71.
[157] Appendix 2
[158] Bruun, N., Neumann, L., Elcoteq SNB negotiations – Experiences and procedures, ETUI-REHS 2007, page 1-2

conversioned into Societas Europaea, in 2008 transferred its place of operations and headquarters into Luxembourg and in 2011 the company filed for a bankruptcy in both Luxembourg and in Finland for its subsidiaries.[159]

Elcoteq employed approximately 20 000 people in 15 different countries.[160]

This text only handles Elcoteq's operations in Finland and Estonia and the Societas Europaea conversion with interest on the action of Special Negotiation Body and the reasons behind conversion into Societas Europaea.

On 8th of October 2004, Finnish electronics manufacturing services company Elcoteq Network Corporation Oyj (LLC), released an conversion plan on the Elcoteq's conversion into a Societas Europaea.[161]

The board of directors gave five main reasons for the company's desire to converse into Societas Europaea.[162] First stated reason was "to increase Elcoteq's global competiveness and part of the company's internationalization strategy". The board further rationalized the aforementioned reason by stating the desire to brand the company into more global actor by enforcing an European identity, that the board saw to be a beneficial outcome that would follow the Societas Europaea company form. The board further opened the concept and how they saw it in their second statement.[163]

The second reasoning given by the board was a "European identity". The board's rationalization for the identity found in Societas Europaea was to identify as an unified European company and thus get acceptance throughout the European market as an internal "national" company with the new European identity, instead of external foreign company.[164]

The third argument of the board was an easier "cross-border mergers". According the board conversion to a Societas Europaea generates savings by abling a merge of subsidiaries throughout all the countries within European Economic Area and making implementation of

[159] Melender, T. "*Elcoteq hakeutuu konkurssiin*". Arvopaperi, 6.10.2011
[160] Bruun, N., Neumann, L., Elcoteq SNB negotiations – Experiences and procedures, ETUI-REHS 2007, page 2
[161] Ibid, p 1.
[162] Ibid, p 9.
[163] Ibid, p 9.
[164] Ibid, p 10.

cross-border mergers, acquisitions, divestments and registration of a company in a new country much faster and thus making the company more flexible. This flexibility further generates savings by reducing administrative costs.[165]

Fourth argument was to have a uniform company structure within the European Economic Area. The statement had basically identical reasoning as the previous third argument with administrative savings benefitted from having only a single corporate structure throughout the whole European Economic Area and that decision making is more faster and efficient.[166]
Fifth and last stated argument for the benefit of conversing into a Societas Europaea company was the possibility of changing domicile within the European Economic Area without dissolving the company. The board further expanded their reasoning by stating that the possibility of changing domicile creates flexibility for the future of the company if the company's operational focus shift and thus creating a need to review the company's domicile.[167]

This last argument seems in authors opinion to be if not the sole reason, a major reason for the boards enthusiasm for Societas Europaea conversion as very soon after the initial conversion of 2005 the board announced plans to change the domicile from Finland into Luxembourg in 2008. As change of domicile is rarely a quick decision, it could be argued that the board had already plans in some degree for a possible change in domicile at 2004 as the board stated in the reasons given for Societas Europaea conversion, that easiness and the following flexibility regarding domicile change in European company form is an important reason for the conversion.

As Mr. Helenius pointed out in the interview, Elcoteq seemed to be more interested in the short term profit gained from the Societas Europaea's flexible domicile change into a more lower tax burden state, rather than inquiring other aspects found in the company form that could also increase the company's profit by more long term solutions as for example further strengthening employees commitment to the company via deeper inclusion.[168]

When analyzing the boards reasoning for the Societas Europaea conversion of the company, there seems to be a strong indicator that in the corporate field there were a response, for at least in some degree, to a further integration of European Single Market as it is easier to follow more

[165] Ibid, p 10.
[166] Ibid, p 10.
[167] Ibid, p 1.
[168] Appendix 2

uniform regulations and in Elcoteq's case, there was at least publicly an interest to a unified "European Identity". Indication of this can be found when comparing the Elcoteq's argument for European Identity with another European Companies such as Allianz SE or former Arcelor which also announced their aim for the European Identity given by the Societas Europaea form.[169]

However as for the aim to reduce "Delaware effect" and tax competition within the Single Market, it seems that at least in case of Elcoteq the goal seems less successful as the Elcoteq transferred its headquarters in very quick fashion into Luxembourg from Finland in search of more beneficial tax and corporate legislation, thus enforcing the legislation competition within the Single Market.

The example simply proves how difficult it is in reality to extinguish Delaware effect as companies always seeks to maximize their profit and an easy way to complete this goal is to reduce tax burden and other corporate legislation burdens, such as pension funds or other employee social payments.

However as study has found out, the legislative harmonization of European Union's Single Market and thus furthermore Societas Europaea legislation has decreased the Delaware Effect and that in some regard Member States have signed a "non-competition agreement regarding company lawmaking" when joining to the Single Market.[170] While harmonizing the corporate and employee legislation is a major step in the right direction regarding the aims of the Single Market, one can argue that there is a need for at least in some kind of harmonization in the tax laws and rates, if there is a genuine will to completely eradicate Delaware Effect and thus complete one of the aims of Societas Europaea form. This argument is further enhanced and valified by the study made by McCahery and Vermeulen in Tilburg University.[171]

The analysis on difference between Elcoteq's Finnish and Estonian employee Special Negotiation Body representatives gives an interesting look on the premises of both Finnish and Estonian labor legislation.

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[169] Lenoir, N. The *Societas Europaea* (SE) in Europe A promising start and an option with good prospects, Utrecht Law Review 4/2008, 15, pp 13–21
[170] McCahery, Joseph A., Vermeulen, Erik P. M., Does the European Company Prevent the 'Delaware-Effect'?. TILEC Discussion Paper No. 2005-010, page 22
[171] Ibid, p 23.

In the case study it was found out that Estonian representatives were not part of any trade union as Estonia does not have strong union culture. This hindered their role on the Special Negotiation Body as they had to learn to partake union type activities.[172] Due to the Estonian system which does not include organized trade union workers, the employees had to organize themselves in order to have representatives through peer election.[173]

In addition Estonian representatives could not be educated by the employer on the Special Negotiation Body procedure until the results from Estonian employees election were known.[174]
However on the Finnish employee side the procedure for electing Special Negotiation Body was simpler due the strong culture of trade unions. After the information of the conversion of company was put forward, the Finnish trade unions immediately started to train the employees on the Special Negotiation Body and its procedures, so that when employees convened and elected the representative, the training was already going on.[175]
With the already existing trade union infrastructure, the Fnnish employees were much more prepared for the Special Negotiation Body procedures.

[172] Bruun, N., Neumann, L., Elcoteq SNB negotiations – Experiences and procedures, ETUI-REHS 2007, page 59
[173] Ibid, p 27.
[174] Ibid, p 29.
[175] Ibid, p 26.

CONCLUSION

In my comparative analysis on similarities and differences of Societas Europaea legislation implementation in Estonia and Finland, no general distinctive patterns were found on the success and implemention.

The research analysis did not reveal a definite answer for the difference between the popularity of Societas Europaea in Estonia and Finland, but it gave few interesting clues that could explain the difference.

When compared there was a relatively minor, but still a substantial difference between the popularity of Societas Europaean companies in Estonia and in Finland for the favour of Estonia. This difference however cannot be explained by the difference of Societas Europaea legislation implementation as for the most part it is nearly identical and the deviation in implementation is menial and mostly consist on election of employee representative. The only difference between implementation of the legislation that could explain by some degree, is the burden of proof encumbered to the employer for showcasing the lack of misuse on employee representation if such a change happens within a year from forming a Societas Europaea company. In Estonia there is no such encumbrance for burden of proof on employer. This could in theory intimidate an employer from forming a Societas Europaea in Finland.

Universally there is a problem in the Societas Europaea and one of its major aims for employee involvement as vast majority of the Societas Europaea in fact do not fall in the aimed normal category in which there is both actual economic operations and employees, but instead most of the companies lack either or both categorizations and fall into shelf or empty category. However in the case of Finland and Estonia, the aforementioned problem does not give answers as there is only a single Societas Europaea in Estonia that is not considered to be a normal endeavour and in Finland there is only a single Societas Europaea company and it is considered to be a normal one.

In the research interviews from Finnish legal counsellors, for both employee and employer side, a link can be conducted between the unpopularity and general uninterested attitude towards the Societas Europaea company form with the traditional and strict Finnish management culture that

does not encourage joint management between both employee and employer side as is intended with employee representation requirement of Societas Europaea. The uninterested consensus is further explained by the long tradition of employee chief shop stewards strong position on company's local level, close to the other employees and employers thus fail to see the benefit of employee involvement found in Societas Europaea form and see the further involvement as extra encumbrance to which the other benefits found in the company form with more streamlined management and flexible subsidiary creation do not compensate.

On other hand a theory was presented in the interview that due to Estonia's reinstated independence in the 1990's gave the society a chance to create a new traditions without the history's encumbrance and thus made the Estonian employers more open to new ideas and ways to operate and thus the Estonian economy is more approachable for Societas Europaea form.

Another possibly relating fact was that in Estonia there were no previous legislation that included any kind of employee involvement at company management before the Societas Europaea legislation was implemented. While in Finland there had been a rather long tradition since 1979 when the employee involvement with company management was first introduced into Finnish company law.

While it would seem that a tradition on previous worker involvement would have lead into more enthusiastic attitude towards the new European Company, it seems the opposite happened as there has been no enthusiasm from Finnish employers, apart from Elcoteq, to form a Societas Europaea. According to interview with Finnish industry employer interest group, the benefits of European Company are so vague and non-existent comparing to a regular limited liability company that there is no point to convert into European Company from standard limited liability company. What is more troublesome is that from the interview it came clear that similar problems of non-excitement were found on other Nordic Industry Confederations as conversation about Societas Europaea have not been on agenda for years between Nordic sister interest group neither on labour law or on company law perspective.

It could be said that in Finland, while the employee interest group finds the Societas Europaea and its employee representation intriguing and desirable, the employer interest group finds and feels the Societas Europaea form indifferent and do not feel any need to drive on the creation of such company. As the Societas Europaea cannot be created without the employers will, the

company form is in a marginal state currently in Finland, while in Estonia the company form is in slightly better state, especially when comparing to the relative sizes of each countries market.

The author recommends a more extensive research on the subject and another research for the reason behind the popularity of ghost, shelf and empty Socieatas Europaea companies and a research to clarify the exact legal status of employee representatives in case of managing boards.

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APPENDICES

Appendix 1, interview of Markus Äimälä

Hei,

Lyhyesti voisi todeta, että eurooppayhtiöistä ei ole käyty oikeastaan mitään keskustelua Suomessa vuosikausiin eikä siitä ole tullut meille lainkaan kysymyksiä tai kommentteja jäsenyrityksiltämme. Tällä hetkellä Suomessa on tiettävästi ainoastaan yksi eurooppayhtiö eikä sekään ole "suomalaislähtöinen".

Näin ollen vastaan kysymyksiisi seuraavasti:

1. Mitkä asiat näet Eurooppayhtiölainsäädännössä positiivisina yrityksen etujen suhteen?

Periaatteessa helpottaa useassa EU-jäsenvaltiossa toimivien yritysten toimintaa hallinnollisesti joiltain osin.

2. Mitkä asiat näet syyksi siihen että Eurooppayhtiö ei ole yritysmuotona saanut suurta suosiota Suomessa?

Siitä ei ole koettu olevan riittävästi lisäarvoa eikä tälle yhtiömuodolle ole koettu ylipäänsä olevan tarvetta.

3. Näetkö että Eurooppayhtiölainsäädännön vaatimus työntekijöiden edustuksesta yrityksen hallinnossa on parantanut työntekijöiden asemaa ja/tai muuttanut työnantajien suhtautumista yhtiömuotoon?

Sillä ei todennäköisesti ole ollut merkitystä suuntaan tai toiseen.

4. Mitkä asiat näet Eurooppayhtiölainsäädännössä eniten huolta aiheuttavana työnantajien edun suhteen?

Keskeisesti se, että siitä ei ylipäänsä katsota olevan sellaista etua, että eurooppayhtiön perustaminen olisi tarkoituksenmukaista.

5. Onko asioita joita haluaisit muuttaa nykyisessä Eurooppayhtiölainsäädännössä suhteessa työntekijöiden edustamiseen yrityksen hallinnossa?

Koska eurooppayhtiöitä ei Suomessa ole (yhtä lukuunottamatta), myöskään kokemuksia eurooppayhtiöitä koskevan lainsäädännön mukaisen työntekijöiden edustuksen hyödyistä tai haitoista ei ole. Kaiken kaikkiaan työntekijöiden edustus ei tällä hetkellä ole merkittävä asia eurooppayhtiöiden perustamista koskevassa harkinnassa.

6. Onko liitto keskustellut europpalaisten sisar liittojen kanssa Eurooppayhtiölainsäädännöstä ja sen implementoinnista erityisesti työntekijöiden edustamisesta yrityksen toiminnassa? Jos ei, onko pohjoismaisella tasolla?

Eurooppayhtiöt eivät ole olleet mitenkään esillä työoikeudellisessa tai yhtiöoikeudellisessa keskustelussa EU-tasolla tai pohjoismaisella tasolla työnantajaliittojen keskuudessa vuosikausiin.

7. Näetkö EU tason sääntelyn työntekijöiden oikeuteen osallistua yrityksen toimintaan tarpeellisena?

Ei ole tarpeellista. Pitäisi jättää työnantajan ja työntekijöiden välillä sovittavaksi yrityskohtaisesti.

8. Onko EK innostunut ajatuksesta työntekijöiden edustuksesta yrityksen hallinnossa laajentamisessa koskemaan kaikkia osakeyhtiömuotoja?

Ei.

Terveisin

Markus Äimälä

Appendix 2, Interview of Arto Helenius

1. Mitkä asiat näet Eurooppayhtiölainsäädännössä eniten positiivisina työntekijöiden etujen suhteen?
2. Mitkä asiat näet syyksi siihen että Eurooppayhtiö yritysmuoto ei ole saanut suurta suosiota Suomessa?
3. Näetkö että Eurooppayhtiölainsäädännön vaatimus työntekijöiden edustuksesta yrityksen hallinnossa on parantanut työntekijöiden asemaa?
4. Mitkä asiat näet Eurooppayhtiölainsäädännössä eniten huolta aiheuttavana työntekijöiden edun suhteen?
5. Onko asioita joita haluaisit muuttaa nykyisessä Eurooppayhtiölainsäädännössä suhteessa työntekijöiden edustamiseen yrityksen hallinnossa?
6. Onko liitto keskustellut europpalaisten sisar liittojen/järjestöjen kanssa tai keskusjärjestötasolla Eurooppayhtiölainsäädännöstä ja sen implementoinnista erityisesti työntekijöiden edustamisesta yrityksen toiminnassa? Jos ei, onko pohjoismaisella tasolla?
7. Näetkö EU tason sääntelyn työntekijöiden oikeuteen osallistua yrityksen toimintaan tarpeellisena?
8. Suhtaudutteko positiivisesti ajatukseen työntekijöiden edustuksesta yrityksen hallinnossa laajentamisessa koskemaan kaikkia osakeyhtiömuotoja?

Arto Helenius: Ajatellen sitä, että Tammisaaressa ei hirveästi syntynyt korvaavaa toimintaa, niin siellä oli eurooppalaiseen malliin, niin kuin pitää olla isossa yrityksessä. Siellä oli henkilöstön edustajat paikallisessa yrityksessä hallituksessa kaikilla henkilöstöryhmillä; akateemisilla, toimihenkilöillä ja työntekijöillä. Ja nämä kaikki kolme kaveria vielä 1,5 vuoden jälkeen oli työttöminä. Ei niillä mennyt hyvin. Toimihenkilöiden luottamusmiehen muija käveli ulos ja ilmoitti, että hän ei enää enempää elämäänsä pilaa sun kanssa ja nää oli aivan kusessa. Kun sä elelet päivärahoilla, niin kaikki putoo ja matot on vedetty jalkojen alta. Siitä tuli hyvä shokki-stoori. Me lähdettiin sitä sitten miettimään tarkemmin miten tää menee. Onneksi siinä yhtiössä oli vakuutukset kondiksessa, niin kuin pitääkin olla. Elikkä yhtiön hallitus oli vakuuttanut itsensä toiminnan varalle, mutta siinä on mun mielestä se heikkous, että vakuutusyhtiöt ovat aika tarkkoja siitä, että jos ihan oikeasti tehdään rikoksia, niin ei sitä korvata. Pohdittiin kuitenkin sellaista ihan aitoa toimintaa ja se sitten selvisi se juttu, tää ensimmäinen prosessi, siihen että he pystyivät perustelemaan sen liiketoiminnan normaaleilla palikoilla, niin että se ei ollut konkurssirikos, vaan että näin oli tapana toimia. Mä en niitä yksityiskohtia tiedä, eivätkä ne ole relevanttejakaan. Mutta kuitenkin vastuutus koski kaikkiin, myös näihin henkilöstön edustajiin, jotka eivät olleet saaneet siitä lantin korvausta. Ne oli niin kuin omalla palkallaan, omalla työajallaan. Ne sai käyttää omaa työaikaansa siihen, mutta ne ei saaneet mitään hallitukselle kuuluvia korvauksia. Ja tässä on se asetus siitä, että yleensä pörssiyhtiössä istuvat ovat pääoman edustajia. Niillä on ikään kuin pätäkkä takana ja ne edustaa omaisuusmassaa ja kun ne on ikään kuin sille omaisuusmassalle töissä ja agentteina, niin se massahan suojaa niitä tässä toiminnassa,

ellei ne tee sitten jotain ihan kavalluksia tms. omiansa kohtaan. Mutta näillä henkilöstön edustajilla ei ole mitään puskuria mihinkään suuntaan.

Tuli vielä toinen case: mä en muista mikä sen aihe oli, mutta siinä vaatimukset oli paljon pidemmät, mutta senkin ne kykeni selvittämään prosessissa, niin että nää kaverit pääsivät kuiville. Mutta jos olisi esimerkiksi tehty joku törkeä ympäristörikos tai joku semmoinen, jossa oikeasti voitaisiin osoittaa että kyllähän tavallinenkin mies, vaikka se pitää haalareita tai pikeepaitaa, niin tajuaahan se sen, ettei paskaa saa kaataa tuohon naapurin ojaan, jolloin ne ei voi selitellä millään. Tässä ATK-hommassa se, joka terästehtaalla hoitaa prosessissa jotain pientä osaa, niin vilpittömästi kun lähdetään siitä oisko sillä ollut edellytyksiä ottaa kantaa tämmöseen ATK-hankintaan, jossa prosesseja ohjaillaan konsernin välillä. Ja mä luulen, että siinä olisi ollut asianajajalla suht helppoa selittää, että tää jätkä ei ole voinut tietää sen suhteellista vastuuta. Mutta lähtökohtaisesti, mä kävin sitä läpi, mulla on kavereita, jotka ovat olleet mukana eurooppalaisessa asianajotoiminnassa ja ne sanoi suoraan, että eurooppalainen osakeyhtiölaki on niin, että kun kerran vaadittiin, niin kaikilla hallituksen jäsenillä on yhtenäinen vastuu. Siellä ei ole mitään vähennettyä vastuuta, eikä siihen voida rakentaa suoraan sellaisia, niin kuin jonkun statuksen puolesta. Ainut, mikä voidaan tehdä on se, että voidaan lähteä tekemään vastuunjakojärjestely, jossa jaetaan vastuulliset tontit ja sitä kautta delegoidaan, että tietty kaveri tai tietyt kaverit ottaa kopin vaikkapa talousasioista, kilpailuasioista, liiketoiminnasta etc. Ja tämmöisen rullan kautta on mahdollista piilottaa se henkilöstön edustaja, jonka tehtävä oikeastaan on kuulla siellä, tuoda henkilöstön tuntoja, edustaa yhtä resurssia ja ylläpitää yhteistoimintaa. Se on helpompi hahmottaa, jos… Tunnetko sä saksalaista yhtiömaailmaa?

Miikka Määttä: Jonkin verran mä tunnen.

Arto Helenius: Saksassa osallistumisjärjestelmät on lainsäädännöllä viety ihan toiselle tasolle. Ruotsissa on viety ne vielä pidemmälle. Saksassa on yritysneuvostoja. Saksassa mittakaava kasvaa ja siellä on pienemmissäkin yrityksissä yritysneuvostot, joka tarkoittaa sitä, että yritysneuvosto saa valita puolet hallituksen jäsenistä. Yritysneuvosto nimeää vielä henkilöstöjohtajankin. Mutta pääoma nimeää puheenjohtajan hallitukseen ja sitten sen toisen puolen porukkaa. Tämä osoittaa rakenteen. Hallituksen edustajilla ja niillä muilla on huomattavasti erilainen rooli tällä yhteistoiminnan pyörittämisellä jos verrataan saksalaista yhtiötä täällä meillä. Meillä on voinut vielä hyvinkin patruuna ilmoittaa, että tää on mun ja tää menee näin. Saksassa tämä ei ole mahdollista – siellä on pakko pystyä keskustelemaan. Ja kuitenkin Saksa on Euroopan keskeinen veturi. Eurooppalaiseen yrityslainsäädäntöön, kun sitä on rakennettu, niin Saksan panos näkyy siinä vahvasti. Se heijastuu ja tuo meille elementtejä, jotka saattaa täällä tuntua jopa vähän kummalliselta, että minkä takia tuo on noin. Ja on hyvä tulkita ikään kuin näiden isojen valtioiden, jotka vaikuttaa direktiiveihin sun muihin kaikkien eniten, käytäntöä vasten. Jos sä teet jotain vertailua, niin vedä tuo Saksan kortti. Sillä saa varmasti siihen hyvän tvistin.

Miikka Määttä: Mulla on just kysymys, kun sulla on toi Eurooppa-yhtiö ja perustat yhtiötä, niin sulla pitää olla special negotiation body, mikä edustaa työntekijöitä. Kuinka samanlainen se on tähän saksalaiseen yritys tää…

Arto Helenius: Ne on erilaisia. Meidän yhteistoimintamalli ja meidän eurooppalainen yrityskomitea perustuu ainoastaan eurooppalaiseen säätelyyn. Suomessahan ei ole kansallisesti säädetty siitä muuta kuin laki yhteistoiminnassa konserneissa kansainvälisissä yrityksissä. (7:40) Meillä ei oikeastaan hirveesti oo järjestelmässä näitä yhteistoimintaohjeita, mutta yhteis-eurooppalaisen lainsäädännön kautta kuitenkin tietyt jutut ikään kuin putoo sieltä ja meillä on

vähän tyhjiötä. Meillä olisi tavallaan tilaa ja mä näkisin, ja mä sen viime syksynä yhteen lehtijuttuun laitoinkin, näkemyksen siitä, että me ollaan nyt kehitytty tässä vuosien saatossa niin pitkälle, että me voitaisiin vapautuneesti YT-laki kumota ja perustaa sen tapainen myötämääräämisjärjestelmä kuin on Ruotsissa ja Saksassa. Laissa edistettäisiin oikeata yhteistoimintaa, eikä niin kuin meidän nykyinen järjestelmä, jossa sanotaan kuka pitää pöytäkirjaa, kuka kutsuu ja niin poispäin. Sitten tulee (salaisuussäädökset?). Tavallaan meillä ei ole sitä elementtiä, jossa kehitetään itse tekemistä. Sehän on tehty näissä niin, että siellä on itse asiassa annettu lailla tavallaan händikäppiä kiinni henkilöstölle, koska pääomahan on vahvoilla jos ollaan ihan sellaisenaan. (09:09) Sitä kautta on tavoiteltu a) kansalaiset pystyy työskentelemään ja että siitä saadaan kuitenkin ehkä tasapainoisempi paketti. Ainahan pääoma pystyy valtaansa käyttämään ja niin poispäin. Ikään kuin sitä on tasattu. Saksasta on näyttöä, että se ei suinkaan tuhoa niitä yrityksiä, vaan se todennäköisesti on pientä innovatiivisuutta lisäävä se neuvostomahdollisuus.

Miikka Määttä: Mä kysyinkin EK:lta, että jos tuodaan enemmän mukaan yrityksen työntekijöitä päätäntää, niin EK oli sitä mieltä Suomessa on tarpeeksi yhteistoimintaa ja se on toiminut todella hyvin ja sellaiseen ei ole mitään tarvetta.

Arto Helenius: Tottakai, mutta se EK tässä kohdassa edustaa pääomaa, joka joutuisi antamaan ikään kuin händikäppiä. Tässä on kuitenkin tavallaan, jos tuosta joku lopputulos tulee ja penkaiset sitä Eurooppa-yhtiöiden kautta tulevaa yritysjärjestelmää, niin siellä on pieni tilaus ja ikään kuin paikka, jossa meillä ihan suoraa systeemiä ole. Mun väittämä on se, että jos me tehtäis viisaasti se laki, niin säädettäis järkevä ratkaisu, niin meillä on paljon yritysmaailmaa, jossa se yhteistoiminta ei toimi. Teknologiateollisuudessa on paljon yrityksiä, joissa se oikeasti toimii, jossa tehdään paljon yhteistyötä. Se on tutkimuksessa tunnustettu, että siellä suurin osa yrityksistä kykenee tekemään järjestelyitä. Siellä on pitkät traditiot siitä, että lähes kaikissa firmoissa on jonkunlainen tulokseen tai tuotantoon perustuva palkkausjärjestelmän lisäys eli siellä on jo henkilöstö, tuotanto ja näiden yhteinen hyvä osattu rakentaa yhteen. Riippuen siitä mikä se prosessi on, markkinatilanne ja systeemi, niin on sitten näitä erilaisia suhdanteita kyetty järjestämään työaikapankkikuvioilla ja jollakin sovitulla vuokratyöjärjestelyillä ja tasaussysteemeillä ja keskimääräisyyksillä. On teollisuuden aloja, joissa se on vielä avoin?. Tietysti eri toiminnat on erilaisia, mutta on paljon hierarkkisempia alueita. Sitten varmuudella voin sanoa, että meidän julkissektori ja isot järjestelmät on kauhean jäykkiä. Siellä on vielä vallalla vanha armeijan kulttuurin jäänne, jossa oikeilla kanuunoilla kaulassa annetaan komennot riippumatta siitä, onko substanssia sanoa millekään mitään. Tästä sä voit vetää helpon yhteenliittymän siihen, että nyt tällä kierroksella on teknologiateollisuuteen sovittu, että kaikkien yritysten kaikkien henkilöstön läpi ajetaan tietynlainen tuottavuus- ja lean-projekti. Eli työmarkkinaosapuolet lähtevät yhdessä edistämään lean- ja tuottavuusajattelua kuin viime kädessä siellä on se maali pääomalla ja henkilöstöllä on se, että siitä koetetaan saada sellainen tuottavuus ulos, että se palkitsis joka suuntaan.

Miikka Määttä: Siellä on ymmärretty ottaa mukaan työntekijä ja pääoma, joka on jokaisen pään sisällä.

Arto Helenius: Nimenomaan sieltä tulee innovatiivisiä… Jos sä vaan vedät, niin sieltä tulee jotain. Jos sä oikeasti kehität tavoitteellisesti, niin tulos on todennäköisesti parempaa. Tästä Leanistä ja muusta sä voit palata takaisin siihen yhtiölakiin. Tää on aika mielenkiintoinen sulla tää projekti, jossa sä saat tämän himmelin kuvattua rautalankamallina silleen, että… Ruotsissahan on myötämääräämislainsäädäntö simppelimpi. Kun meillä säädettiin YT-laki, niin Ruotsissa tuli myötämääräämislaki, joka lähtee siitä, että tietyssä tilanteessa, jos on epäselvää se

mikä tulkinta jää voimaan, niin laissa käännetty tavallaan se todistustaakka niin päin, että se työntekijän kanta on oikeassa. Jos mennään oikeuteen, niin sitten katsotaan miten se oikeastaan meni. Se tavallaan vähän madaltaa kynnystä sille, että jos toinen on käynyt keskikoulun ja pitää haalareita päivisin ja toisella on korkeakoulututkinto ja ne käy keskustelua, niin se helposti on, ei välttämättä uskalla eikä luota sillä tavalla niin kuin yltiöpäisesti hyppäämään uusiin juttuihin. Jos on tavallaan riskin poistoa, että kaikki pysyy sillä tasolla, että on helppoa. Varsinaisesti se Ruotsin juttu lähtee siitä, että sielläkään ei pakotetaan ketään tekemään mitään, mutta siellä on viety lakiin se, että on varsin kattava neuvotteluvelvoite, jos on työehtoasia tai sopimuksen lähellä oleva asia tai kuuluun sen ulottumispiiriin, niin työnantajan pitää tästä asiasta neuvotella henkilökunnan kanssa. Mikä on lopputulos, niin se on tietenkin neuvottelun tulos, mutta jos me saadaan ylipäänsä ne ihmiset istumaan vastakkain kertomaan, että mistä kenkä puristaa, niin on paljon todennäköisempää että ne löytää lopputuloksen kuin se, että ne huutelee aidan yli toisilleen.

Miikka Määttä: Näätkö sä, että siinä on vanha suomalainen johtamisen mentaliteetti, minkä vuoksi Suomessa ei ole innostuttu yrityksissä eurooppayhtiöitä samalla tavalla kuin esim. Baltiassa, jossa ne on suhteellisen suosittuja ja tietenkin Keski-Euroopassa vielä enemmän.

Arto Helenius: Baltia hyppäs tavallaan liikkuvaan junaa, ne lähti tyhjästä. Ne saattoi suoraan omaksua uutta tietoa. Balttialla on se, että ne on toimineet tietyn laisena kaapparina tasaveroineen ja muine avustuksineen ja ylimenosääntöineen, että sinne on saatu firmoja, jotka on lähteneet hakemaan pikavoittoja. Meillä on ollut pikkusen vanhanaikaista ollut se ajattelu paikka paikoin ja patruunahenki. Ruotsi oli valmiimpi ja taloudellisesti pidemmällä siinä vaiheessa, kun liityttiin Euroopan Unioniin.

Mä sanoisin, että me ollaan nyt vähintään kun ollaan sillä tasolla kuin Ruotsi oli tullessaan. Sanoisin myös, että me ollaan niin paljon keskusteltu paikallisen henkilöstön ja yhteistyön saroilla, että tavallaan se vanha laki työnsä tehnyt ja palvellut. Oikeastaan mitä siitä on käytännössä on se, että isoissa joukkovähentämisissä niin sieltä lasketaan niitä tiettyjä päiviä. Jos aatellaan, että mikä on se iso kokonaishyöty tästä, niin ne on aika lailla yksilötasoisia eli saa viikon lisää tai kaksi viikkoa vielä lisää palkkaa. Mutta ei sellaista yhteistoimintalisää, mistä lain puolesta löydy. Ne yritykset, jotka on ymmärtäneet yhteistoiminnan, niin tekisi sen ilman sitä lakia. Eli jos me halutaan jotain kehittää, niin sille laille pitäisi ottaa uutta sisältöä ja uusia kohteita niin kuin tavallaan ulottaa sitä niihin paikkoihin, missä ei vielä osata keskustella. Kopioida tiettyjä elementtejä ehkä tai tehdä synteesejä niistä maista, joissa homma toimii. Kopioiminen ei ole koskaan järkevää, mutta opiksi ottaminen siitä, mitä joku on tehnyt, on hyödyllistä.

Miikka Määttä: Oletko sä itse sitä mieltä, että meidän pitäisi ottaa Suomeen jotain Euroopan yhteislainsäädännöstä, vaikka se ottaa henkilöstö huomioon yrityksen hallinnossa, niin sä oot sitä mieltä että kannattaisi harkita tuomista muihin yhtiö…

Arto Helenius: Mun mielestä velvoite tulee sieltä välillisesti, mutta sitä ei ole kovin aktiivisesti nostettu framille. Samoilla pohjaspekseillä on eri maissa saatu mentyä pidemmälle kehitysjutuissa. Jos me kansallisesti halutaan, niin me voitais, ilman että se on mistään EU:sta kiinni, kehittää tätä enemmän. Kuitenkin varmaan on kuultu se pitkäaikainen hegemonia siitä, että pitää lisätä paikallista… Mä sanoisin, että sitä voidaan lisätä ja siihen meillä on palikat olemassa ja mun mielestä tässä on selvästi kehityskohdekin, miten se voidaan lähteä tekemään, mutta pitää lähteä tekemään niin, että se on kestävää. Jos se on vaan sitä, että saadaan jompikumpi puoli entistä enemmän kontalleen, mitä tän hetken hallitus on täällä tekemässä, niin

mä en nää, että se lisää tuottavuutta pätkääkään. Se lisää itseasiassa enemmän pahaa mieltä ja hatutusta. Se että ollaan tuomassa saksalainen mini-job tänne nuorille alle kolmikymppisille tai annetaan lupa heittää 30-vuotta talossa ollut, jos on pienessä firmassa töissä ollut, niin vois aina suojata. Mä en näe ollenkaan, että nämä kehitykset olisivat ollenkaan parantamassa tuottavuutta. Nää on olleet vähän niin kuin tekotäydellisä juttuja. Se on kuitenkin määrätietoista, pitkäjänteistä tekemistä…

Miikka Määttä: Paikalliseen sopimukseen pitäisi liittää pikemminkin sitä, että yhdessä sovitaan, niin ollaan yhdessä myös päättämässä.

Arto Helenius: Itse asiassa kaiken a ja o on se, että yhteistoimintaa tehdään myöskin hyvinä aikoina. Sitä tehdään jatkuvasti ja säännöllisesti ja luodaan sisäinen keskustelu, jossa kaivetaan kortti esille vaan silloin, kun ollaan kaulaa myöden liemessä. Ei se siitä synny. Silloin on ainoastaan, että tulisi joku talvisodan henki, mutta jos halutaan oikeasti toimintaa kehittää, niin se on pitkäjänteistä työtä, jossa ihan oikeasti keskustellaan, kuunnellaan ja otetaan huomioon. Molemmat puolet oppii pitkin matkaa ja varmaan joka puoli silloin tällöin kiukuttelee ja joutuu pyytämään anteeksi, että meni vähän överiksi. Pidemmällä jänteellä niin se kuitenkin lisää luottamusta ja lisää turvallisuuden tunnetta ja semmoista mikä ihmiselle on tärkeätä, että se kokee tekevänsä oikeita asioita. Otetaan ihmispanos ja innovatiivisuus käyttöön.

Vastuutuskysymystä lähtee eli hallitus vastuutetaan. Sieltä lähdetään katsomaan ne lohkot ja rakenteet, millä tavalla tuotanto määrätietoisesti voidaan pyörittää läpi. Ikään kuin se pitäisi näkyä sieltä hallinnosta käsin jo, kuinka se strukturoidaan.

Miikka Määttä: Mulla on lopputyössäni spesifi kiinnostuksen aihe miten velvoite ottaa työntekijät mukaa on implementoitu lainsäädäntöön mukaan. Mä vertailen siinä Suomea ja Viroa ja Ruotsia ja…

Arto Helenius: Suomessa on kovin monessa yhtiössä luovuttu siitä logiikasta, joka alun perin piti olla, että meillä henkilöstön edustaja istuu ylimmässä päättävässä elimessä.

Meillä on teknologiateollisuudessa monessa paikassa päädytty siihen, että ne istuu sen oman tehtaansa oman tuotantoyksikkönsä paikalliseen systeemin johtokunnissa, koska siellä niillä on oikeasti ja ne pystyy niitä asioita käsittelemään, niin lisäarvoa tulee ja ne kuulee sieltä itsellensä mielenkiintoista asiaa. Se ei ihan vastaa sitä, että istutaan ihan siellä ylimmässä päättämässä, mutta mä luulen että jos Saksassa lähdetään siitä, että suurimmissa firmoissa on satoja tuhansia työntekijöitä, niin niillä on yritysneuvostonsa sekä siellä pääkonttorissa että isoissa, yli 30 000 työntekijää työllistävissä, tehdaslaitoksissa. Siellä riittää rekyyliä ottaa joka paikkaan niin silti puhutaan ihan marginaalisesta kustannuksesta ajan…

Sitten joku Ruotsi, kiitos sen että ne kykenee yhteistoimintaan, niin otetaan esim. Göteborgin Volvo, joka on iso tuotantolaitos. Jos ne avaa uuden linjan, niin se tarkoittaa 3000 – 4000 ukkoa sisään kerralla. Mulla on se käsitys, että siellä on pienet henkilökohtaiset työkalupakit kaikilla, niin että voit järjestellä vähän asiointivapaita tai tällaista. Mulla on se käsitys, että sen hubin puheenjohtaja, ns. koko plantin pääluottamusmiehen, niin sen plakkarissa on yli kuukausi per jätkä, tavallaan resurssia minkä se voi sopia. Ihan oikeasti sillä on 10 % tuotantopanos tavallaan niin kuin mandaatti antaa löysiä tai olla antamatta. Silloin pystytään vaikuttamaan. Yritys tietää, että jos tulee suvantoja, toimitusvaikeuksia, ei saada jotain, kysyntä putoo hetkellisesti tai satama on lakossa tai what ever. Niillä on edellytyksiä käydä keskusteluja tavallaan koko porukkaa kohden. Siinä on niin pitkä praktiikka, että ne pystytään käymään varsin luotamuksellisesti. Ei

tarvitse hirveesti miettiä, että voi sanoa että tää on kilpailutekijä sille yhtiölle. Se, että niiden kannattaa oikeesti uhrata aikaa ja resurssia sen elementin kunnossapidolle, että ne käy oikeesti niitä keskusteluja eli jaksetaan kuunnella ja miettiä ja kysyä ja kehittää jne. Eihän se ole missään riidatonta ja aina tulee eturistiriitoja ja milloin mitäkin.

Miikka Määttä: Suomessa on yksi Eurooppa-yhtiö Bayer, niin näätkö sä niin että saksalaiset on tottuneet siihen, että isot yritykset tekee…

Arto Helenius: Ne, jotka perusti eurooppayhtiön, niin ne perustettiin halvemman yritysverotuksen maihin silloin perustusvaiheessa.

Eloteq lähti Suomesta veks, koska se teki siitä vaan hetkellisesti halvempaa. Koneellahan oli pääkonttori vähän aikaa Brysselissä. Se oli ennen näitä Eurooppa-yhtiöitä ja ne on varmaan käyttäneet senkin kortin. Ne sisäisesti totesi, että outsourcing tässä kohdassa ei ollut kuitenkaan yhtiön etujen mukainen. Tietyt kehitystoiminnat ja muut tällaiset jutut oli liian kaukana tuotannosta. Ne kehitti sen tuotantomallin toiseen malliin. Niillä on hyvin pyörivä 24 h verkkoapu-verkosto ympäri maailmaa, missä… Se on tavallaan loogista, mutta ne on satsanneet siihen ja pystyy hoitamaan sen Suomesta käsin yhtä hyvin muutamalla paikkakunnalla täällä Espoossa ja Hyvinkäällä niillä on ne keskeiset pisteet. Se ei ole itseisarvo montakaan kertaa. Tai jopa näin, että on paljon ulkoistuksia, joissa on palattu koska vaikka siitä voi saada jonkun verhoilun ja on paikkoja, joissa se on tahmeeta se tekeminen jostain muusta syystä, niin ei se kuitenkaan kannattavaa, koska kuitenkin joustava ja nopealiikkeinen organisaatio on hyödyllinen. Ainahan eletään markkinatilanteessa kaikissa tilanteissa – eihän niistä pääse mihinkään. Nyt on jännä katsoa, miten käy Lontoon Citylle, koska sehän on ollut niille bisneksille taivas. Se on ollut paras mahdollinen ympäristö toimia, koska ne kaikki kilpailijat, kauppaajat ja systeemit ovat olleet siinä vieressä. Nyt tää EU-kuvio saattaa muuttaa jotain tai voi olla, ettei muuta. Tämä mistä puhutaan, on ylätason kamaa. Missäänhän tämä ei mene pieniin firmoihin. Mielenkiintoinen kysymys olisi miettiä sitä, että jos joku järjestelmä tai avoimuus tuottaa tietyn kokoluokan yrityksissä hyvää jälkeä, niin miten sen hyvät elementit ois jollain tavalla kopioitavissa tai siirrettävissä pienempiin yrityksiin.

Miikka Määttä: Se miksi tämä tehtiin isoihin yrityksiin, oli se ettei tätä tarvita pienissä yrityksissä, joilla on paljon paikallisempaa se tekeminen.

Arto Helenius: No joo, totta. Mulla on sellainen käsitys ollut pitkään, että meidän pienyrittäjien koulutustaso on usein heikko ja niiden kyky ylläpitää sitä on huonompi kuin palkansaajapuolella yleensä. Ammattijohtajia yrityksissä koulutetaan ja niitä voidaan vaihtaa tai etsiä uutta kaveria. Mutta silloin, kun se on se isä, poika ja peräkärry tai siitä vähän isompi, niin se on niin 24/7 kiinni siinä työssä ettei se käy kurssilla tai muuta. Sen osaaminen saattaa perustua siihen, kun se oli viimeksi palkkatyössä vuonna -78 ja sitten rupee tulemaan helposti uusissa tilanteissa vaikeuksia. Kun ei tiedä, niin on oppinut pelkäämään ja olemaan tosi varovainen, joka johtaa siihen, että panee heti luukut kiinni. Ja kun ei tiedä ja on luukut kiinni, niin kehitä siinä jotain. Kansallisesti niidenkin osaamiseen olisi järkevää panostaa.

Miikka Määttä: Ei voi myöskään pakottaa. Kuinka paljon historian aikan jäsenkunnasta on siirtynyt pienyrittäjäksi.

Arto Helenius: Viime laman aikana Suomen Yrittäjiin on tullut 80 000 yksinyrittäjää, jotka ei aiokaan palkata ketään. Ne oli töissä aikaisemmin jollain ja sanottiin, että saat potkut, mutta me voidaan ostaa sulta, jos tuut toiminimellä näitä hommia vielä. Eli siirretiin yritystoiminnan

riskejä jonkun piruparan niskaan. Ja nää ei ole edes niitä huonoimmassa asemassa olevia kavereita, koska tiedettiin että niiden palveluja ostetaan. Ne on kuitenkin korvattavissa olevia jonkun mittaisella ajalla.

Miikka Määttä: kertoo esimerkin omasta työpaikastaan Investiumilla

Arto Helenius: Jos me meinataan parantaa tuottavuutta, niin pitäisikö oikeasti tulla käsi ojossa ja tarjota niin kuin lomituspalvelut maatalousyrittäjälle, että ikään kuin ilman hirveätä tappiota sais jotenkin jeesattuna sen mahdollisuuden kouluttautua. Keskeinen toimintokunta on kuiten ne yltiöpäät, jotka pyörittää yrityksiä, niin olisihan se yhteinen etu, että pidettäis ne kasassa. Nehän osaa kyllä sen oman bisneksensä, mutta sitten voi olla muita alueita, jotka ei niin skulaa. Ootko sä saanut ollenkaan sitä, mitä halusit.

Miikka Määttä: Mä heitin vähän niitä ajatuksia, joita mä myöhemmin käyn läpi ja translitteroin ne oleelliset kohdat. Mulla on ne muutamat kysymykset, mitkä olisi mielenkiintoisia. Mä olin EK:n kanssa siinä niin, että mä pystyisin vähän vertaamaan niitä näkökulmia. Mitä asioita sä näet eurooppalaisessa lainsäädännössä eniten positiivisena työntekijöiden etujen suhteen…

Arto Helenius: Me ei ehkä ihan tuossa kulmassa olla sitä varsinaisesti pureksittu. Me on oikeastaan törmännyt eurooppalaiseen ajatteluun ja yrityslainsäädäntöön, kun on pyöritetty osallistumisjärjestelmiä erilaisia. Kuinka dynaaminen se on yritystoiminnassa ja ylikansallisten yritysten pyörittämisessä, niin mulla ei ole edellytyksiä ottaa siihen kantaa. On hyvä tunnistaa, että se on rakennettu siten, että siellä on ikään kuin valmis käyttöliittymä tällaiselle osallistumisjärjestelmälle, joka on mennyt pidemmälle. Se on ehkä hyvä puoli. Siellä on ainakin yksi paikka, missä ei tarvitse lähteä ensin puhkaisemaan direktiiviä ja sitten vasta tekemään jotain, vaan päinvastoin vaan voidaan ottaa mallia hyvistä ideoista muualta. Logiikka, joka nojasi ensin suomalaiseen lainsäädäntöön, yhtiölainsäädäntöön, niin ymmärsin silloin, että se linkittyi suoraan eurooppalaiseen. Vastuukysymykset oli yhteisesti koordinoituja jälleenosallistumisjärjestelmissä. Täytyy tehdä oikein koska muuten voi syntyä kohtuuttomia vahinkoja tavalliselle ihmiselle, joka tulee kuitenkin vaan edustamaan kavereita.

Miikka Määttä: Mitä asioita näet syyksi, että eurooppayhtiö yritysmuotona…

Arto Helenius: Yksi syy siihen on se, että tässä on mennyt 8 vuotta lamassa ja on keskitytty enemmän selviytymiseen kuin kehittämiseen. Tämä asian valossa olen itse ruvennut pohtimaan kehittymistä, koska voi helposti sanoa että enimmissä firmoissa ei olla kymmeneen vuoteen tehty mitään. Kaikki mikä on tehty tuottavuuden eteen, on tehty kymmenen vuotta sitten. Sen jälkeen oli vaikeat ajat; koitettiin vain pärjätä huomiseen.

Miikka Määttä: Näetkö että työntekijöiden edustus yhtiön hallinnossa on parantanut työntekijän asemaa?

Arto Helenius: Niissä maissa, jossa se on saatu toimimaan kunnolla, kyllä. Meillä ebc tökkii jonkin verran. Sitä vielä ikään kuin opetellaan meillä.

Miikka Määttä: Mitkä asiat näet eniten huolta aiheuttavina…?

Arto Helenius: Enemmän kai ne etujen leikkaukset ovat kiinni liiketoiminnan päätöksistä kuin xxx? lainsäädännöstä. Lainsäädännön ällihän on ollut osittain siinä, että pääkonttorit vähintään pysyy seurannassa. Että on mahdollisuus pyörittää jotain juttuja täällä. Joku kansallinen valtio on

hävinnyt, kun joku siellä maan pääkulttuurin siirtyy jonnekin. Eurooppa-asioita katsotaan maanosan vinkkelissä, niin aina voi löytää pieniä murheita, mutta isossa kuvassa framework? joka on katsottu tarkasti.

Miikka Määttä: Onko jotain asioita, joita haluaisit muuttaa…

Arto Helenius: Olen enemmän sitä mieltä, että haluaisin enemmän kehittää kansallista sovelluksia niissä raameissa, joka on mun käsittääkseni mahdollista. Ne on kiinni Arkadianmäeltä ja siitä miten Arkadianmäkeä lobataan. Näkisin jopa vilpittömästi niin että se olisi työmarkkinavinkkelissä kaikkien etu kehittää yhteistoimintaa. Mä tiedän, että tämänhetkisen poliittisen tilanteen valossa, osa pelkää avata yhtään mitään, koska meillä on vastapuoli, joka pelaa yksisilmäisesti ja pyrkii rikkomaan enemmän kuin seuraava ehtii mitenkään korjata. Se osa siitä ei ole kansallista kehittämistä, vaan politikointia sanan pahimmassa merkityksessä.

Miikka Määttä: Oletteko keskustelleet eurooppalaisten sisäjärjestöjen…

Arto Helenius: Eurooppalainen konteksti on ihan jatkuvaa. Me tehdään jatkuvasti vaikuttamis- ja lobbaustyötä. Mä oon nyt itse asiassa siirryn sellaiselle puolelle duunissa, että me kerätään ja valmistellaan pohjia ja syötetään sitten sitä meidän viestiä komissiolle ja mepeille ja käydään tietysti neuvottelua myöskin työnantajapuolen keskusjärjestöjen kanssa ja luodaan sitä pohjaa. Direktiivit voi tehdä sopimalla. Partit sopii jonkun asian, niin EU kuittaa ja lyö leiman päälle, niin siitä tulee sitovaa kaikkialla. Osallistumisjärjestelmät ja systeemit ovat aika lailla tekemisen keskiössä. Meillä on välimeren puoli, jossa oikeasti tilanne on se että ne ei saa samalla bussilla matkustaa. Suomalaistakin voisi vähän parantaa, mutta Pohjois-Euroopassa ylipäätään tuottavuus, tuotanto ja tällaiset asiat ovat pidemmällä. Jos lainsäädäntöä kehitetään, niin painopisteet usein ja nekin pisteet löytyy Italiasta, Espanjasta tai Portugalista tai Puolasta. Jolloin vaikka saadaan merkittävä muutos tehtyä, niin se ei välttämättä näy meillä, mutta se näkyy siellä. Mutta se harmonisoi koko Eurooppaa ja jos se on järkevä liike, niin se palvelee mutkan kautta taas edelleen. Pitää olla ikään kuin eurooppapatrioottinen. Välillisiä vaikutuksia tulee. Jos Portugali saa asiansa kuntoon, niin syntyvyys nousee tai jos Kreikka saa asiansa kuntoon, niin voi maksaa velkoja takaisin. Jonkunlaisella kierteellä kuitenkin. Taloudessa on usein kvartaaliajattelu päällä ja pitäisi pystyä näkemään eteenpäin vielä syntymättömille.

Miikka Määttä: Näetkö…

Arto Helenius: Näen. Se muotoutuu kuitenkin kaikkialla käytännön mukaiseksi. Henkilöstö on yksi tuotantopanos. Se on sekä henkinen panos että tuotantopanos. Ne on niitä kansalaisia, jotka on ja elää ja missä systeemissä ollaan, mihin se yritys integroituu siihen ympäristöönsä ja toisaalta jos se on se on semmoinen lintukoto, niin todennäköisemmin sitä ei sitten siirretä sitä tuotantoa Kiinaan siitä. Ulottuvuuksia on tietysti paljon. Sosiaalinen ulottuvuus ja taloudellinen ulottuvuus ja kaikkia siinä välissä.

Miikka Määttä: Onko liitot innostuneet innostuneet…

Arto Helenius: Luulen, että kyllä. Sitten kun tullaan oikein pieniin paikkoihin, niin se hallinto ei ole enää se avain. Hallintopaikka on näköala siihen kaikkeen ja pienissä konepajoissa, kun ne kaverit aamulla tulee, niin ne kattoo sitä pihaa ja tietää miten menee. Minkä verran on tilattu tavaraa ja minkä verran on lähtenyt tavaraa. Onko siellä kuinka monet rekan jäljet vai onko ne eiliset tavarat vielä pihalla vielä seisomassa. Tietyssä mittakaavassa hallitseminen ei ole vaikeaa,

mutta sitten kun ollaan suurissa yksiköissä, eri toimipisteissä ja eri paikoissa, niin se on paljon vaikeampi hahmottaa. Siitä syystä se hallintopaikan kautta ikään kuin näköalan pystyy saamaan.