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ACT
of 11 November 2004
on the European Company

Parliament has passed this Act of the Czech Republic:

PART ONE
THE EUROPEAN COMPANY AND PROVISIONS IMPLEMENTING THE REGULATION OF THE COUNCIL OF THE
EUROPEAN UNION ON THE STATUTE FOR A EUROPEAN COMPANY

CHAPTER I
INTRODUCTORY PROVISIONS

Section 1
Subject of Regulation

(1) This Act regulates the legal relations of a European company where such relations are not regulated by the Council Regulation (EC) on the Statute for a European company (SE)¹) (hereinafter referred to as 'Council Regulation') and the Council Directive supplementing the Statute for a European company with regard to the involvement of employees²) (hereinafter referred to as 'Council Directive').

(2) The provisions of a separate legal regulation on the terms and conditions of the activities of organizations with an international element³) shall not apply to a European company.

General Provisions

Section 2

For the purposes of this Act, the following definitions have been adopted:

- a) 'reference to the Council Directive' shall also mean a reference to the provisions of Part Two of this Act,
- b) 'Member State of the European Community' shall also mean the countries of the European Economic Area (hereinafter referred to as 'Member State').

Section 3

(1) A company which does not have its head office on the territory of a Member State may also contribute to the formation of a European company which is to have its registered office on the territory of the Czech Republic⁴) provided that it has been established in accordance with the law of a Member State of the European Union, has a registered office in this same Member State, and has a permanent and effective relationship with the economy of that Member State.

(2) If a notary draws up a notarial deed on a decision of the general meeting approving the statutes of a European company which is to have its registered office outside the territory of the Czech Republic, or an amendment thereto, the notary shall not be obliged to certify the compliance of the statutes or amendments thereto with legal regulations.

Section 4

(1) Where this Act mentions the management organ, this shall mean, depending on the circumstances in question, the administrative organ, the chairperson of the administrative organ, the managing director, or another body of the legal entity which has similar competence, depending on the legal form of the entity. Where this Act mentions the supervisory organ, this shall mean, depending on the circumstances, the administrative organ or another body with similar supervisory powers, depending on the legal form of the legal entity in question.

(2) If the law of the Czech Republic is to be applied to a European company which has or will have a one-tier structure and Sub-Chapter 2 under Chapter VI of this Act does not contain separate rules for a company organized in the form of a one-tier system, depending on the circumstances the provisions of the Commercial Code concerning the board of directors of a public limited liability company shall apply to the chairperson of the administrative organ who is also the managing director, or to a managing director, or to a delegated managing director, and the provisions of the Commercial Code concerning the supervisory board of a public limited liability company or the board of directors of a public limited liability

company shall apply to the administrative organ, depending on the nature and competences of these bodies.

(3) If the law of the Czech Republic is to be applied to a European company which has or will have a one-tier structure in matters where competence in an identical issue is divided between the management organ and supervisory organ in a company with a two-tier structure and Sub-Chapter 2 under Chapter VI of this Act does not contain separate rules for a company organized in the form of a one-tier system, the provisions of the Commercial Code concerning the board of directors of a public limited liability company shall apply to the chairperson of the administrative organ who is the managing director, or to a managing director, or to a delegated managing director, and the provisions of the Commercial Code concerning the supervisory board of a public limited liability company shall apply to the administrative organ.

Winding-Up of a European Company by a Court Ruling

Section 5

A European company incorporated in the commercial register on the territory of the Czech Republic must have its head office at the same place as its registered office. Otherwise the court where the company is incorporated in the commercial register (hereinafter referred to as 'court of registration') shall call on the company to take remedial action irrespective of whether a petition is filed with the court to this end. Should the European company ignore the court's request and fail to take the action imposed by the court in accordance with Article 64(1) of the Council Regulation in a reasonable time limit set by the court for this purpose, the court shall wind up the company under a court ruling, with or without a petition to this end, and shall appoint a liquidator.

Section 6

If the statutes of a European company transgress an agreement on the manner and scope of involvement of employees which has been concluded in accordance with Part Two of this Act, the management organ or administrative organ shall harmonize the statutes with the agreement forthwith; the general meeting is not required to pass a resolution on such a change. Breach of this obligation shall constitute grounds for the court to issue a ruling winding-up the European company and appointing a liquidator, with or without a petition for such a ruling. The provisions of the Commercial Code on the winding-up of a company⁵⁾ shall apply *mutatis mutandis*.

Incorporation in the Commercial Register and Publication Thereof

Section 7

A European company which is to have a registered office on the territory of the Czech Republic shall be incorporated in the commercial register; the registered information and content of filed instruments shall be published in the Commercial Bulletin [*Obchodní věstník*]. The provisions of separate legal regulations⁶⁾ shall apply to incorporation in the Commercial Register, to proceedings related to the commercial register, and to publication in the Commercial Bulletin, unless stipulated otherwise herein below.

Section 8

(1) In addition to the information laid down by the Council Regulation and information registered in accordance with the Commercial Code in respect of all legal entities⁷⁾, the fact that an office held in the management organ by a member of the supervisory organ is temporary shall also be entered in the commercial register.

(2) If a European company with a one-tier structure is incorporated in the commercial register, in addition to information appointed by the Council Regulation and information registered in accordance with the Commercial Code in respect of all legal entities,⁷⁾ the following information is also inscribed in the commercial register:

a) information stipulated under the Commercial Code⁸⁾ concerning

1. members of the administrative organ and the chairperson thereof,
2. the managing director,
3. delegated managing directors,
4. any alternate member of the administrative organ who is to hold the office of chairperson in accordance with Section 27(1),
5. any member of the administrative organ temporarily delegated to hold the office of chairperson in accordance with Section 29(2),

b) information on whether the statutory body is the chairperson of the administrative organ (chairperson – managing director) or a managing director who is not the chairperson of the administrative organ,

c) the manner in which the administrative organ acts in the name of the European company,

d) the delegation of a member of the administrative organ to hold the office of chairperson of the administrative organ and the period for which this delegation shall remain in force.
(3) In addition to the instruments required under the Council Regulation, other instruments filed in the dossier maintained for each European company in the registry of documents include any proposal to transfer the registered office and the corresponding resolution of the general meeting endorsing the proposal to transfer the registered office.

Section 9
Notification to the Office for Official Publications of the European Communities

For the purposes of publication in the Official Journal of the European Communities, the court of registration shall notify the Office for Official Publications of the European Communities of the incorporation or deletion of a European company, or of the registration of a registered office, or of the deletion of a registered office of a European company in the event of the transfer thereof in accordance with Article 8 of the Council Regulation, such being at the expense of the applicant.

CHAPTER II
TRANSFER OF A REGISTERED OFFICE

Section 10

A proposal for the transfer of a registered office must be filed in the registry of documents of the commercial register and published, in accordance with the Commercial Code, in the time limit stipulated by the Council Regulation, i.e. on the day preceding the general meeting which is to make a decision on the transfer.

Section 11

The management organ or administrative organ of a European company shall apply for an entry in the commercial register forthwith after the general meeting passes a resolution on the transfer of the registered office.

Section 12
Protection for Minority Shareholders

Shareholders who vote against the transfer of a registered office are entitled to protection within the meaning of Article 8(5) of the Council Regulation, further to the provisions of the Commercial Code on the buyout of shares by the acquiring company in a merger of public limited liability companies; these provisions shall apply *mutatis mutandis*, whereby the European company shall draw up a public draft agreement within one month of the date of the general meeting which approved the proposal to transfer the registered office; the provisions of a separate legal regulation on state supervision, remedial measures, and penalties⁹) shall also apply.

Section 13
Protection for Creditors

The creditors of a European company which transfers its registered office from the territory of the Czech Republic are entitled to protection within the meaning of Article 8(7) of the Council Regulation, further to the expedient application of provisions of the Commercial Code on the protection of creditors during a merger of public limited liability companies prior to the inscription of the merger in the commercial register, whereby the entitled creditors may seek security within three months of the publication of the proposal to transfer the registered office in accordance with Section 10.

Section 14

(1) The certificate under Article 8(8) of the Council Regulation is a public instrument and is issued by a notary pursuant to documents presented to the notary.
(2) This certificate shall contain
a) the given name and surname of the notary, and the notary's office,
b) the place where, and the day, month, and year on which, the notary drew up the certificate,
c) the company name or business name, registration number, and registered office of the European company to whom the certificate is issued,
d) information as to how the existence of the European company was verified,
e) a declaration of the notary attesting to the completion of the acts and formalities to be accomplished before the transfer of the European company's registered office in accordance with the Council Regulation, this Act, and separate legal regulations; in this declaration, the notary shall specify which

actions and formalities have been completed and accomplished and the documents used as the basis for verification,

f) the impression of the notary's official seal and the notary's signature.

(3) An implementing regulation shall stipulate which documents evidencing the completion of actions and accomplishment of formalities the European company shall be obliged to present to the notary for the issue of the certificate.

CHAPTER III FORMATION OF A EUROPEAN COMPANY BY A MERGER

Section 15

The provisions of the Commercial Code on merger experts and on merger expert reports¹⁰⁾ shall apply mutatis mutandis to the appointment of an expert and the production of an expert opinion in accordance with Article 22 of the Council Regulation.

Section 16

(1) The certificate under Article 25(2) of the Council Regulation is a public instrument and is issued by a notary. Besides the particulars laid down in the Council Regulation, the certificate shall contain

a) the given name and surname of the notary, and the notary's office,

b) the place where, and the day, month, and year on which, the notary drew up the certificate,

c) the company name or business name, registration number, and registered office of the participating company to whom the certificate is issued,

d) information as to how the existence of the participating company was verified,

e) a declaration of the notary attesting to the completion of the acts and formalities to be accomplished before the merger in accordance with the Council Regulation, this Act, and separate legal regulations; in this declaration, the notary shall specify which actions and formalities have been completed and accomplished and the documents used as the basis for verification,

f) the impression of the notary's official seal and the notary's signature.

(2) An implementing regulation shall stipulate which documents evidencing the completion of actions and accomplishment of formalities the participating company shall be obliged to present to the notary for the issue of the certificate.

Section 17

Protection for Minority Shareholders and Creditors

(1) Under the terms and conditions laid down in Article 25(3) of the Council Regulation, the provisions on compensation under the Commercial Code¹¹⁾ shall apply mutatis mutandis to a participating company which has its registered office on the territory of the Czech Republic; an action to determine the corresponding share-exchange ratio or the amount of payment may be submitted within three months of the date of the general meeting which approved the merger project, otherwise this right shall expire.

(2) Failure to meet the terms and conditions laid down in Article 25(3) of the Council Regulation shall constitute grounds for the submission of a petition seeking the annulment of the resolution of the general meeting which approved the merger project or seeking acknowledgement of the fact that the share-exchange ratio and payments are inadequate or that information related to the share-exchange ratio in the merger report, the merger scrutiny report, or in the expert report does not comply with legal regulations. If the terms and conditions laid down in Article 25(3) of the Council Regulation are fulfilled after the general meeting which approved the merger project, proceedings concerning a petition which has been submitted in good time which is seeking the annulment of the resolution of the general meeting on the grounds specified in the preceding sentence may continue only if there is a change in the subject thereof to the proceedings under paragraph (1).

(3) Protection for the minority shareholders of a participating company with its registered office on the territory of the Czech Republic who opposed the merger project shall be governed mutatis mutandis by the provisions of the Commercial Code concerning the buyout of shares by the acquiring company¹²⁾, whereby the notarial deed recording the decision of the general meeting which approved the merger project shall contain the names of the shareholders who voted against the approval of the merger project. The provisions of a separate legal regulation on state supervision, remedial measures, and penalties⁹⁾ shall apply mutatis mutandis if the European company has its registered office on the territory of the Czech Republic.

(4) If the registered office of a European company formed by a merger is to be located outside the territory of the Czech Republic, Section 13 shall apply mutatis mutandis to the protection of creditors.

Section 18

(1) If the registered office of a European company formed by a merger is to be located on the territory of the Czech Republic, the court of registration shall examine the fulfilment of all requirements under Article 26 of the Council Regulation in the scope of proceedings to incorporate the European company.

(2) In the case specified in Article 30(2) of the Council Regulation, a court may wind-up a European company with or without a petition. At the same time, the court shall appoint a liquidator.

CHAPTER IV FORMATION OF A HOLDING EUROPEAN COMPANY

Section 19

The provisions of the Commercial Code on merger experts and on merger expert reports¹⁰⁾ shall apply *mutatis mutandis* to the appointment of an expert and the production of an expert opinion in accordance with Article 32(4) of the Council Regulation.

Section 20

The management organ of each company promoting the formation of a holding European company and having its registered office on the territory of the Czech Republic shall submit an application for the inscription, in the commercial register, of the fulfilment of the terms and conditions for the formation of a holding European company in accordance with Article 33(3) of the Council Regulation forthwith after the shareholders have assigned the minimum proportion of shares in each company in accordance with the draft terms of formation pursuant to Article 33(2) of the Council Regulation and if all the other conditions are fulfilled.

Section 21

(1) The decision of the general meeting under Article 32(6) of the Council Regulation at the company promoting the formation of a holding European company and having its registered office on the territory of the Czech Republic must be passed by the same majority as that required for the approval of a draft merger agreement under the Commercial Code, and a notarial deed must be drawn up on this decision in the same manner as that applied to a decision of the general meeting on a merger.

(2) For the protection of minority members who opposed the formation of a holding European company at the company promoting the formation of the holding European company and having its registered office on the territory of the Czech Republic, the provisions of the Commercial Code on the protection of minority shareholders during the merger of a public limited liability company and a limited liability company shall apply *mutatis mutandis*, whereby the acquiring company shall be the holding European company and the notarial deed on the decision of the general meeting as set forth in Article 32(6) of the Council Regulation shall contain the names of the members who voted against the decision. The provisions of a separate legal regulation on state supervision of the performance of the obligation to buy back shares, remedial measures, and penalties⁹⁾ shall apply *mutatis mutandis* if the European company has its registered office on the territory of the Czech Republic.

CHAPTER V CONVERSION OF A PUBLIC LIMITED LIABILITY COMPANY INTO A EUROPEAN COMPANY

Section 22

The provisions of the Commercial Code on merger experts¹⁰⁾ shall apply *mutatis mutandis* to the appointment of an expert under Article 37 of the Council Regulation.

CHAPTER VI STRUCTURE OF A EUROPEAN COMPANY

Sub-Chapter 1 Two-Tier System

Section 23

The statutes of a European company may stipulate that the members of the management organ of a two-tier European company, by way of derogation from Article 39(2) of the Council Regulation, are appointed and removed by the general meeting. Provisions on the election of members of the organs of a European company by employees are not hereby affected.

Section 24

In accordance with Article 39(3) of the Council Regulation, a member of the supervisory organ may be nominated by the supervisory organ to act as a member of the management organ until the next meeting of the organ which has the competency to elect or appoint a new member of the management organ. This body shall elect or appoint a new member of the management organ at its next meeting, otherwise the authorization of the member of the supervisory organ to hold the office of a member of the management organ shall expire on this day and, in accordance with the conditions laid down in the Commercial Code, a court shall appoint a new member to fill the vacancy.¹³⁾

Section 25

Each member of the supervisory organ may require the management organ to provide information in accordance with Article 41(3) of the Council Regulation provided that this information is necessary for the member's activities in the supervisory organ and that this is in the important interests of the company. In cases of dispute, a court shall decide on the right of a member of the supervisory organ to information at the proposal of this member or at the proposal of the management organ.

Sub-Chapter 2 One-Tier System

Section 26

(1) The administrative organ of a European company must have at least three members. The statutes designate the maximum number of administrative organ members, which shall not be more than eighteen. Only a natural person who fulfils the conditions laid down by the Commercial Code to be a member of the board of directors of a public limited liability company may be a member of the administrative organ.

(2) The statutory body of a European company is the chairperson of the administrative organ, who is also the managing director, or a managing director of the European company. The same scope of representative authorization is held by delegated managing directors and the administrative organ.

Section 27

(1) If the chairperson of the administrative organ dies or resigns and the administrative organ is unable to replace the chairperson with one of its members, the administrative organ may appoint an alternate member of the administrative organ to hold the office of chairperson, provided that the conditions of paragraphs (3) and (5) are met.

(2) If, as a result of death, resignation, or other circumstances, one or more members are missing from the administrative organ, the administrative organ may proceed to cooption between two general meetings.

(3) If the number of members of the administrative organ falls to a level below the legal minimum, the remaining members of the administrative organ shall convene a general meeting forthwith with a view to appointing new members.

(4) If the number of members of the administrative organ falls below the minimum laid down by the statutes by not below the minimum laid down by law, the administrative organ shall co-opt members within three months of the moment that this situation occurred.

(5) If the administrative organ does not co-opt a member of the administrative organ or does not convene a general meeting, any party with a legal interest may petition a court to appoint a mandatary charged with convening a general meeting for the purpose of nominations or the approval of nominations in accordance with paragraph (2). Members of the administrative organ shall be held liable to the European company jointly and severally for damage which they cause due to a breach of the obligations specified in the preceding paragraphs.

(6) The provisions of paragraphs (2) to (5) shall not apply to members of the administrative organ who are elected or appointed by the employees of a European company or their representatives in accordance with Part Two of this Act. In this case, the administrative organ shall take the necessary steps so that employees of the European company or their representatives can be elected or appointed as new members of the administrative organ as quickly as possible. If employees of the European company or their representatives have the right, in accordance with Chapter Two of this Act, to recommend the person who is to be elected or appointed a member of the administrative organ, or the right to express their opposition to the election or appointment of such a person as a member of the administrative organ, the administrative organ will conduct cooption in such a manner that this right is not affected.

Section 28

(1) A member of the administrative organ may be removed at any time by the general meeting, unless this is a member of the administrative organ who is the representative of the employees of the European company installed in the administrative organ in accordance with Part Two of this Act

(2) One natural person cannot simultaneously be a member of more than five administrative organs or management organs of European companies or public limited liability companies; this restriction applies solely to persons who are to become a member of the administrative organ of a European company.

Section 29

Chairperson of the Administrative Organ

(1) The administrative organ elects a chairperson from the ranks of its members forthwith. The administrative organ may remove the chairperson from this office at any time. The chairperson of the administrative organ may be removed only if an absolute majority of the number of votes demanding the chairperson's removal belongs to members of the administrative organ elected by the general meeting.

(2) If the chairperson is temporarily incapable of holding office, then administrative organ may temporarily delegate a member of the administrative organ to act in the capacity of the chairperson. This delegation is valid for a limited period of time, which may be renewed.

(3) The chairperson is elected for a period which shall not exceed the duration of his/her term of office as a member of the administrative organ.

(4) The chairperson of the administrative organ represents the administrative organ. The chairperson organizes and manages the administrative organ's activities, and submits reports in this respect to the general meeting. The chairperson oversees the high-quality functioning of the organs of a European company and monitors whether members of the administrative organ are capable of duly holding office.

Section 30

(1) The statutes of a European company regulate rules concerning the convening and quorum of the administrative organ, and designate rules for keeping records of those presents, minutes-taking, and the form and particulars of decisions passed by the administrative organ.

(2) If the administrative organ is not convened for a period of more than two months, at least one third of the members of the administrative organ may demand that the chairperson convene the administrative organ, with the agenda drawn up by the petitioners.

(3) The managing director shall be entitled at any time to demand that the chairperson convene a meeting of the administrative organ with an agenda drawn up by the managing director.

(4) The chairperson of the administrative organ shall be bound by requests presented in accordance with paragraphs (2) and (3).

(5) If the administrative organ is not convened for a period of longer than three months, members constituting at least one third of all members of the administrative organ may convene a meeting of the administrative organ themselves.

Section 31

Besides the members of the administrative organ, all persons who attend a meeting of the administrative organ shall have the duty not to divulge any information, within the meaning of Article 49 of the Council Regulation, in cases of information which the chairperson of the administrative organ deems to be confidential.

Section 32

The managing director and, if the statutes so stipulate, delegated managing directors shall be invited to attend meetings of the administrative organ. The statutes may contain further rules regarding the method of, or reasons for, the attendance of any or all the delegated managing directors.

Section 33

(1) Each agreement or contract concluded directly or indirectly between a one-tier European company and its managing director or delegated managing director, or chairperson or member of the administrative organ, or shareholder holding more than 5% of voting rights, or the controlling undertaking (hereinafter referred to as 'participating person'), shall be presented to the administrative organ for advance approval.

(2) Paragraph (1) shall also apply to agreements and contracts in which any of the persons specified therein is indirectly involved.

(3) Contracts and agreements which are to be concluded between a one-tier European company and another party are also subject to prior approval as set forth in paragraph (1) if the managing director, delegated managing director, chairperson, or member of the administrative organ of the one-tier

European company is the owner of an undertaking of this party, a member with unlimited liability, a member of the management or supervisory organ or, in the general sense, the manager of an undertaking of this party.¹⁴⁾

(4) The provisions of paragraphs (1) to (3) shall not apply to ordinary contracts and agreements concluded under ordinary conditions. However, these contracts and agreements shall be reported by the person involved to the chairperson of the administrative organ forthwith on conclusion thereof. A list of these contracts and agreements, with information on the object thereof, shall be presented by the chairperson of the administrative organ to the members of the administrative organ and to the auditor once a year.

(5) A person involved in the conclusion of a contract or agreement in accordance with paragraphs (1) to (3) shall inform the chairperson of the administrative organ forthwith on learning that the contract or agreement is to be concluded. This person shall not cast a vote in the administrative organ's vote on the approval of the contract or agreement, and this person's vote shall not be included in the quorum or required majority.

(6) The chairperson of the administrative organ shall inform the auditor forthwith of all approved agreements and contracts and shall present them to the next general meeting for approval. The involved person shall not be entitled to vote and his/her votes shall not be included in the quorum and the required majority.

(7) The auditor shall present a special report on contracts and agreements approved and reported, together with the ordinary financial statements, to the general meeting, which shall make a decision on the report. The involved person shall not be entitled to vote on the report and his/her votes shall not be included in the quorum and the required majority.

(8) Contracts and agreements under paragraphs (1) to (3) which have been approved by the general meeting, and contracts and agreements not approved by the general meeting, shall be valid and effective in relation to third parties unless, at the proposal of the European company or shareholders holding shares with an aggregate nominal value of more than 5% of the share capital, submitted in the name of the European company, a court declares them to be null and void in the event of unlawful conduct during the negotiation of such contracts and agreements. In its decision-making, the court shall take account of the interests of third parties who acquired rights in good faith. Even in cases where contracts have not been concluded on the basis of unlawful conduct, the court may issue a ruling, at the proposal of the European company or shareholders holding shares with an aggregate nominal value of more than 5% of the share capital, submitted in the name of the European company, that the involved person and, if appropriate, the chairperson and other members of the administrative organ are obliged, jointly and severally, to reimburse damage to the European company incurred on the basis of contracts or agreements which have not been approved by the general meeting and which have had a harmful effect on the company.

(9) Contracts and agreements under paragraphs (1) to (3) which have been concluded without the prior approval of the administrative organ may, at the proposal of the European company or shareholders holding shares with an aggregate nominal value of more than 5% of the share capital, submitted in the name of the European company, be declared null and void by a court if they have had harmful effects on the European company. The right to a declaration of annulment shall be statute-barred three years as of conclusion of the contract or agreement. If, however, the conclusion of an agreement or contract has been concealed, the limitation period begins as of the moment the conclusion of the agreement or contract becomes known. The person involved shall be held liable to the European company for damage caused.

(10) Annulment cannot be declared in cases where the conclusion of the contract or agreement is retroactively approved by the general meeting based on a special auditor's report containing a statement of grounds on why indicative approval by the administrative organ did not occur. The involved person shall not be entitled to vote and his/her votes shall not be included in the quorum and the required majority.

(11) The provisions of the Commercial Code on measures to prevent a conflict of interests¹⁵⁾ shall not apply.

Section 34

(1) Members of the administrative organ shall be prohibited from concluding contracts with the European company on the granting of a loan or extending of credit in favour of such members or any other contracts the object of which would require similar fulfilment; the European company shall not conclude a contract where the object thereof would be a guarantee of the liabilities of members of the administrative organ in relation to third parties, and shall not provide such guarantees in any form. Contracts concluded at variance with this provision shall be null and void.

(2) If a European company is a bank or a financial institution, the prohibition under paragraph (1) shall not apply to ordinary operations in the scope of its objects of business which are concluded under normal conditions.

(3) The prohibition under paragraph (1) shall also apply to the managing director and delegated managing directors. It shall also apply in relation to next of kin and to any person who acts as an intermediary for [persons specified in this provision].

Business Management

Section 35

(1) The business management of a company shall be carried out by the chairperson of the administrative organ, who shall be held liable for such management (the chairperson—managing director), or by another natural person appointed by the administrative organ who has the job title of 'managing director'.

(2) Under the conditions laid down in the statutes, the administrative organ shall select one of the two possibilities specified in paragraph (1) and shall inform the shareholder and their persons thereof by means of an entry in the commercial register. Based on an application submitted by the chairperson of the administrative organ forthwith after a decision by the administrative organ on whether a European company which has a one-tier structure is managed by the chairperson – managing director or by another managing director, the court shall register this decision in the commercial register.

(3) If a European company is managed by a chairperson – managing director, the provisions on the managing director shall apply.

(4) The status of the managing director and delegated managing directors is governed by Section 66 of the Commercial Code and other provisions on the organs of a public limited liability company.

Section 36

(1) The administrative organ may, at the proposal of the managing director, appoint one or more natural persons who shall be delegated to assist the managing director and who shall have the title of 'delegated managing director'.

(2) The statutes shall specify a maximum number of delegated managing directors, which must not be more than five.

(3) The administrative organ shall set the remuneration due to the managing director and delegated managing directors.

Section 37

(1) A single natural person shall not hold concurrently more than one position of managing director of a European company with a registered office on the territory of the Czech Republic.

(2) However, it is possible to carry out another mandate within a European company controlled by a European company in which the first mandate is carried out if the shares of the controlled European company are not listed.

(3) Any person who breaches the provisions of paragraphs (1) and (2) shall be obliged to resign from one of the positions within three months of election or appointment thereto which has caused such a breach; should this time limit expire without result, the latter of the positions to be acquired shall cease to exist and the person who held this office shall refund the remuneration received for holding this office, without prejudice to the force of resolutions where the managing director contributed to the adoption of such resolutions.

Section 38

(1) The managing director may be removed by the administrative organ. A delegated managing director may be removed by the administrative organ at the proposal of the managing director. If removal occurs without good reason, the managing director or delegated managing director shall be entitled to compensation, unless the managing director is concurrently the chairperson of the administrative organ.

(2) If the managing director ceases to act in the capacity of his/her office or is unable to act in such a capacity, the delegated managing director remains in office until the appointment of a new managing director, unless the administrative organ decides otherwise.

Section 39

(1) The managing director carries out the business management of a European company. The managing director exercises his/her powers in the scope of the European company's objects of business, with the exception of powers which the Council Regulation or the law expressly grants to the general meeting or administrative organ.

(2) The managing director acts in the name of the European company in external affairs in all matters.

(3) The provisions of the statutes and decisions of the administrative organ restricting the competence of the managing director shall be ineffective in respect of third parties.

(4) The administrative organ, by agreement with the managing director, shall set the scope of powers entrusted to the delegated managing director and his/her term of office.

(5) In relation to third parties, the delegated managing director has the same scope of representative authorization as the managing director.

Competence of the Administrative Organ

Section 40

- (1) The administrative organ shall determine the orientation of the European company's activities and oversee the implementation of such activities. With the exception of powers expressly granted to the general meeting and in the scope of the objects of business, the administrative organ may occupy itself with any fundamental issue significant for the due functioning of the European company and shall manage the affairs related to these issues through resolutions.
- (2) The administrative organ may act in the name of the European company in external affairs in all matters. In relation to third parties, a European company is bound by the action of the administrative organ, even if it transgresses the objects of business of the European company, unless this is conduct transgressing the powers which are vested in or may be vested in the administrative organ under the law. Restrictions in the representative authorization of the administrative organ stemming from decisions adopted by the bodies of a European company cannot be applied in relation to third parties even if they are published.
- (3) The administrative organ shall conduct inspections and verifications of the management of the European company, its financial management, and the operation of the undertaking as it sees fit.
- (4) The administrative organ may entrust one or more of its members or shareholders or other persons with special authorizations related to one or more specific areas of competence. It may also decide to set up committees tasked with the study of issues which the administrative organ or its chairperson shall transfer thereto for examination. At the same time, the administrative organ shall determine the composition and competence of committees that act in the scope of the administrative organ's responsibility.

Section 41

- (1) Suretyship, avals, and other security provided by European companies which are not banks or financial institutions shall be subject to approval by the administrative organ under the conditions specified in paragraphs (2) to (5).
- (2) The administrative organ may grant authorization to the chairperson of the administrative organ to provide suretyship, avals, and other securities in the name of the European company in the scope of a total amount set by the administrative organ. A decision of the administrative organ may also determine the amount per security liability, which no granted suretyship, aval, or other security shall exceed. If an adopted liability exceeds the limit stipulated under the first or second sentence, each case of suretyship, aval, or other security shall be subject to advance approval by the administrative organ.
- (3) The authorization under paragraph (2) cannot be granted by the administrative authority for a period of longer than one year, irrespective of the duration of adopted security liabilities.
- (4) By way of derogation from paragraph (1), the chairperson of the administrative organ may, in the name of the European company, provide suretyship, avals, and other securities in respect of the claims of tax administration authorities and customs authorities without any limitation in the amount of the liability.
- (5) If suretyship, avals, or other security are granted up to an amount exceeding the sum stipulated for a particular period, such a transgression cannot be refused in respect of third parties who did not know and could not have known of the transgression.

Section 42

The administrative organ may decide on the transfer of the registered office of a European company in the scope of a single region or in the scope of adjacent regions, with the condition of retroactive approval by the next general meeting.

Sub-Chapter 3 General Meeting

Section 43

- (1) Shareholders of a European company shall be entitled to convene a general meeting and specify the agenda thereof under the conditions laid down in the Commercial Code.
- (2) The constituent general meeting may be held at any time during the 18 months as of the incorporation of the European company.

Section 44

The relevant provisions of the Commercial Code regarding votes on an amendment to the articles of association of a public limited liability company shall apply to voting on an amendment to the statutes of

a European company unless a higher number of votes is required under Article 59 of the Council Regulation.

CHAPTER VII CONVERSION OF A EUROPEAN COMPANY INTO A PUBLIC LIMITED LIABILITY COMPANY

Section 45 Expert Report

The provisions of the Commercial Code on merger experts and on merger expert reports¹⁰) shall apply mutatis mutandis to the appointment of an expert and the production of an expert opinion in accordance with Article 37 of the Council Regulation. An expert report shall contain the findings laid down in Article 66(5) of the Council Regulation.

PART TWO INVOLVEMENT OF THE EMPLOYEES OF A EUROPEAN COMPANY

CHAPTER I GENERAL PROVISIONS

Section 46

(1) The employees of a European company which has its registered office on the territory of the Czech Republic, the employees of its subsidiaries, and employees working in organizational components of the undertaking of a European company (hereinafter referred to as 'employees of a European company') shall have the right to be involved in the affairs of the European company in the limits laid down by this Act. This right shall be exercised in the manner agreed under Chapter II or in the manner laid down in Chapters III and IV of this Part of the Act.

(2) For the purposes of this Act, 'involvement' shall mean methods and procedures whereby a committee of employees or the representatives of the employees of a European company, or the employees of a European company, in accordance with an agreement on the method and scope of involvement of employees of a European company in accordance with Section 54(2), in cases where no committee of employees has been set up, may have an influence on the decision-making of the organs of a European company. Involvement includes the right to information and consultation and, if the agreement on the method and scope of involvement of the employees of a European company as set forth in Section 54 of this Act so stipulates, the right to be elected or to cast votes, the right to appoint or recommend, and the right to oppose the election or appointment of members of the administrative or supervisory organ of the European company (hereinafter referred to as 'influence on the composition of the organs of a European company'). The right to receive information and hold consultations applies to matters which concern the European company as a whole, its subsidiaries, or the organizational components of an undertaking on the territory of another Member State, or which exceed the powers of the decision-making bodies in a Member State.

(3) The information shall be provided and consulted sufficiently in advance so that the negotiating body, the employee committee, the employee representatives, or the employees can duly assess the provided information and express their opinion on the planned measures in the manner agreed under Section 54(2). 'Consultation' shall mean the establishment of dialogue and exchange of views between the negotiating body, the employee committee, the employees' representatives or employees, and the competent organ of the European company, at a time, in a manner and with a content which allows the negotiating body, employee committee, employees' representatives or employees, 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 European company.

(4) For the purposes of this Part of the Act, 'employee' shall mean a person in a labour-law relationship. This definition shall apply solely to legal relations in the Czech Republic.

(5) For the purposes of this Part of the Act, 'subsidiary' shall mean a company over whose activities another company has a controlling influence. A controlling influence over the activities of another company is held by a company which

a) contributes, directly or otherwise, to more than half of the share capital of this other company,
b) holds a majority of voting rights stemming from its stake in the share capital of the company, or
c) is entitled to appoint more than half of the members of the administrative, management, or supervisory organ of this company.

(6) If several companies from the same grouping meet any of the conditions laid down in the second sentence of paragraph (5), the company holding the controlling influence shall be the company which meets the condition stipulated in paragraph (5)(c), unless it is proven that another company holds the controlling influence.

(7) For the purposes of the application of paragraph (5), the voting rights of a company or rights to appoint members of the company's organ shall include rights which can be exercised by its subsidiaries

or persons or bodies acting in the name or to the account of this company or in the name or to the account of its subsidiaries.

(8) Neither a company specified in Article 3(5)(a) or (c) of the Council Regulation (EEC) on the control of concentrations between undertakings¹⁶) nor a company whose influence stems solely from the discharge of obligations imposed by the law of the relevant Member State in the performance of a function related to liquidation, the suspension of payments, bankruptcy, composition, or similar proceedings shall be considered a company wielding controlling influence over the activities of another company.

(9) Whether a company wields controlling influence over the activities of another company shall be determined in accordance with the law of the Member State governing the internal relations of the assessed company. If the internal relations of the assessed company are not governed by the law of a Member State, the law of the Member State on whose territory the representative office of the assessed company is based shall apply. If the assessed company does not have representative offices in any Member State, the law of the Member State in which the head office of the company from the group belonging to the assessed company employing the largest number of employees is located.

CHAPTER II NEGOTIATIONS ON THE INVOLVEMENT OF THE EMPLOYEES OF A EUROPEAN COMPANY

Section 47 Negotiating Body

(1) During negotiations on the involvement of the employees of a European company, the employees of legal entities directly involved in the incorporation of the European company (hereinafter referred to as 'participating legal entities'), employees of companies which are to become subsidiaries of the European company (hereinafter referred to as 'affected subsidiaries'), and employees working in organizational components of an undertaking which are to become organizational components of the European company's undertaking (hereinafter referred to as 'affected organizational components of an undertaking') are represented by a negotiating body. The negotiating body comprises representatives of the employees of the participating legal entities and affected subsidiaries, and representatives of employees working in the affected organizational components of an undertaking.

(2) Unless specified otherwise, the provisions of this Chapter shall apply solely to negotiations on the involvement of the employees of a European company which has or will have a registered office on the territory of the Czech Republic.

(3) Without undue delay after the publication of a proposal for a merger or for the formation of a holding European company, or after the approval of a proposal for the formation of a subsidiary European company or for the conversion of a public limited liability company into a European company (hereinafter referred to as 'proposal for the formation of a European company'), the management organs of the participating legal entities shall adopt the measures required to commence talks with the representatives of their employees, the employees of the affected subsidiaries, and employees working in the affected organizational components of an undertaking to negotiate the future involvement of the employees of the European company. This shall apply to the participating legal entities with a registered office on the territory of the Czech Republic even in cases where the European company has a registered office on the territory of another Member State.

(4) The management organs of the participating legal entities shall provide the representatives of their employees, of the employees of the affected subsidiaries, and of employees working in the affected organizational components of an undertaking, and where appropriate all such employees themselves, with information on the registered office and the forms of all the participating legal entities, affected subsidiaries, and affected organizational components of an undertaking, information on the number of employees of the participating legal entities and affected subsidiaries, and employees working in the affected organizational components of an undertaking, as at the date of publication or approval of the proposal for the formation of a European company, information on the manner and scope of influence of these employees on the composition of the bodies of the participating legal entities, and information on the number of employees who are entitled to wield this influence. The management organs of the participating legal entities are also obliged to take the action required to set up a negotiating body. This shall apply to the participating legal entities with a registered office on the territory of the Czech Republic even in cases where the European company has a registered office on the territory of another Member State.

Section 48 Composition of the Negotiating Body

(1) The number of places in the negotiating body shall be set in such a manner that there shall be one member of the negotiating body per 10% inclusive of the employees of the participating legal entities and affected subsidiaries, and employees working in the affected organizational components of an undertaking, who are employed in the same Member State, calculated from the total number of employees of the participating legal entities and affected subsidiaries, and employees working in the affected organizational components of an undertaking in all Member States. The number of members of

the negotiating body shall correspond to the total number of places determined in the manner specified in the first sentence. The number of employees as at the date of publication of the proposal for the formation of a European company shall be used as the basis in this calculation.

(2) The appointment or election of the members of the negotiating body representing the employees of participating legal entities and affected subsidiaries and the employees of the affected organizational components of an undertaking with a registered office on the territory of the Czech Republic shall be governed by Section 25e(4) of the Labour Code and the provisions of paragraphs (5) to (8) irrespective of the Member State in which the European company has or will have its registered office. The places in the negotiating body assigned to the representatives of employees from a Member State other than the Czech Republic shall be occupied in the manner laid down by the law of that Member State.

(3) If a European company is formed by a merger and the places in the negotiating body will not be occupied, under this Act or the law of the relevant Member State, in such a manner that the employees of each participating legal entity which is to be wound up by the merger are represented in the negotiating body by at least one member from the ranks of these employees, or elected or appointed directly or otherwise by these employees (hereinafter referred to as 'direct representative'), the number of members of the negotiating body shall be increased so that the employees of each such legal entity involved can be represented by a direct representative in the negotiating body.

(4) If the number of members of the negotiating body increased in accordance with paragraph (3) in all Member States were to exceed the number of members of the negotiating body appointed under paragraph (1) by more than 20%, the number of members of the negotiating body shall be increased only by 20%, whereby the additional places shall be assigned, one at a time, to the direct representatives of employees of participating legal entities in an order determined by the number of their employees in the individual Member States.

(5) Places in the negotiating body intended for the representatives of the employees of the participating legal entities and affected subsidiaries and employees working in the organizational component of an undertaking with a registered office on the territory of the Czech Republic shall be occupied in such a manner that the employees of each participating legal entity and affected subsidiary and the employees working in each organizational component of an undertaking on the territory of the Czech Republic shall have at least one direct representative.

(6) If a European company is being formed by a merger and the procedure under paragraph (5) cannot be used, the places in the negotiating body are occupied in such a manner that the employees of each participating legal entity with a registered office on the territory of the Czech Republic which is to be wound up by the merger are represented in the negotiating body by one direct representative. The remaining places in the negotiating body shall be divided among the representatives of other employees from the Czech Republic in accordance with the principles laid down in paragraph (7); if no such places remain, the members of the negotiating body elected or appointed in accordance with the first sentence above shall also represent other employees from the Czech Republic equally. If the number of places in the negotiating body appointed for the representatives of employees from the Czech Republic is less than the number of participating legal entities with a registered office on the territory of the Czech Republic which are to be wound up by the merger, even after an increase in the number of members of the negotiating body in accordance with paragraphs (3) and (4), or in accordance with the corresponding provisions of the law of the state in which the European company is to have its registered office, these places shall be distributed in such a manner that the direct representatives shall represent the employees of the participating legal entities which are to be wound up by the merger in an order determined according to the number of their employees; these representatives shall also represent other employees from the Czech Republic equally in the negotiating body.

(7) If a European company is being formed by means other than a merger and the number of participating legal entities, affected subsidiaries, and affected organizational components of an undertaking with a registered office on the territory of the Czech Republic is higher than the number of places in the negotiating body appointed for the representatives of employees from the Czech Republic, these places will be occupied in such a manner that the direct representative shall represent, in the negotiating body, participating legal entities, affected subsidiaries and affected organizational components of an undertaking progressively, in an order based on the number of their employees on the territory of the Czech Republic. Members of the negotiating body elected or appointed in accordance with the preceding sentence shall also represent other employees from the Czech Republic equally in the negotiating body.

(8) Employees from the Czech Republic may also be represented in the negotiating body by a person who is not in a labour-law relationship with a participating legal entity or affected subsidiary, or who does not work in an affected organizational component of an undertaking, if this person is authorized or delegated by a trade union organization of such employees.

(9) The places in the negotiating body shall be distributed in such a manner that it is evident how many employees each member of the body represents. Without undue delay after the establishment of the negotiating body, members shall inform the negotiating body how many employees they represent, in which Member State, and in which participating legal entities, affected subsidiaries, or affected organizational components of an undertaking these employees are employed.

(10) If, in the course of negotiations on the involvement of the employees of a European company, there is a significant change in the composition of the participating legal entities, affected subsidiaries or

affected organizational components of the undertaking, or in their number of employees, which results in a situation where the composition of the negotiating body significantly derogates from the rules laid down in paragraphs (1) to (4), places in the negotiating body will be newly distributed forthwith. The new distribution of places in the negotiating body shall take place in such a manner that the composition of the negotiating body is disrupted as little as possible, in particular in such a manner that the mandates of the largest possible number of current body members is preserved.

Section 49

(1) The management organs of participating legal entities shall submit a proposal for the formation of a European company to the negotiating body forthwith on establishment of the negotiating body, disclose all information to the negotiating body regarding progress in the formation of the European company until the incorporation thereof and regarding the number of employees in individual participating legal entities, affected subsidiaries, and affected organizational components of an undertaking, and commence negotiations with a view to reaching an agreement on the method and scope of involvement of the employees of the European company. This shall apply to the participating legal entities with a registered office on the territory of the Czech Republic even in cases where the European company has a registered office on the territory of another Member State.

(2) The negotiating body may invite expert advisers to negotiations, especially the representatives of trade union organizations at the level of the European Communities. Without prejudice to the number of invited expert advisers, however, the participating legal entities shall bear the cost of only one expert adviser in a given area.

(3) Participating legal entities are obliged to ensure that the negotiating body and its members have sufficient financial, material, and organizational conditions for the due performance of activities. In particular, members of the negotiating body have an entitlement to the refund of costs purposefully expended on the due performance of activities; they are not due remuneration for the performance of such activities. Participating legal entities are obliged to earmark in advance, in the scope of a set budget, the corresponding volume of funds for the refund of necessary expenditure, including, without limitation, funds for the organization of the negotiating body's meetings, translations and interpreting, travel expenses, accommodation, a subsistence allowance, and the cost of expert advisers. This shall apply to participating legal entities with a registered office on the territory of the Czech Republic even in cases where the European company has a registered office on the territory of another Member State.

(4) The negotiating body may decide to inform other organizations and associations, especially trade unions, of the commencement of negotiations. The provisions of Section 50 shall apply to these cases.

Section 50

Reservation and Confidentiality

(1) Members of the negotiating body and their expert advisers shall keep confidential all information of which they learn in connection with negotiations and which is labelled 'confidential' when divulged. The obligation under the first sentence shall remain in force even after the end of negotiations and shall apply to all members of the negotiating body irrespective of the Member State the employees they represent come from.

(2) If the management organ of a participating legal entity labels certain information divulged in connection with the negotiations as confidential, the negotiating body may take action with the objective of having the supervisory organ of this legal entity or a court rule that the information was labelled as confidential without due reason. The provisions of the Commercial Code concerning the denial of information to the shareholder of a public limited liability company shall apply mutatis mutandis to the exercise of this right.

(3) The management organ of a participating legal entity may refuse to fulfil the obligation to divulge specific information to the negotiating body under the same conditions as those laid down in the Commercial Code concerning the refusal to disclose such information about a public limited liability company to a shareholder. The negotiating body may seek the disclosure of information in judicial proceedings in the same scope and under the same conditions as a shareholder as set forth in the Commercial Code. The provisions of the preceding sentences shall apply to participating legal entities with a registered office on the territory of the Czech Republic even in cases where the European company has a registered office on the territory of another Member State.

(4) A member of the negotiating body is entitled, in the scope laid down by the Labour Code, to protection against discrimination and deprivation and to time off from work with remuneration in lieu of wages. Time off from work and remuneration in lieu of wages shall be granted by a participating legal entity with a registered office on the territory of the Czech Republic even in cases where the European company has a registered office on the territory of another Member State.

(5) For the purposes of the proceedings mentioned in paragraphs (2) and (3), the negotiating body shall be eligible to be a party to the proceedings if the participating legal entity or organizational component of an undertaking whose representative is involved has its registered office on the territory of the Czech Republic, even if the European company has its registered office in another Member State.

Section 51
Decisions of the Negotiating Body

(1) Unless this Act provides otherwise, the negotiating body makes decisions by a resolution passed by a majority of the votes of all members, provided that these members represent a majority of employees of all the participating legal entities and affected subsidiaries and employees working in affected organizational components of an undertaking. Each member of the negotiating body shall have one vote.

(2) An agreement on the manner and scope of involvement of the employees of a European company that would result in a reduction of the influence wielded by the employees on the composition of the organs of the European company compared with the situation that would exist if no agreement had been concluded must be approved by at least two thirds of the votes of all members, provided that these members represent at least two thirds of all employees of the participating legal entities and affected subsidiaries and employees working in affected organizational components of an undertaking, such being from at least two different Member States.

(3) The provisions of paragraph (2) shall not apply if the right to hold an influence over the composition of organs in hitherto participating legal entities is held only

a) by less than 25% of the total number of employers of participating legal entities in cases where the European company is being formed by a merger, or

b) by less than 50% of the total number of employers of participating legal entities in cases where a holding or subsidiary European company is being.

Section 52
Decision on the Termination of Negotiations

(1) The negotiating body may decide by a majority of votes, as specified in Section 51(2), not to commence negotiations on the involvement of the employees of the European company or to terminate such negotiations, and to restrict the involvement of the employees of the European company to the right to information and consultation in the scope laid down by the legislation in the Member State in which the European company has employees. The provisions of Chapters III and IV of this Part shall not apply in this case; the provisions on access to supranational information and consultation under the Labour Code¹⁷⁾ shall apply mutatis mutandis if the conditions specified therein have been fulfilled.¹⁸⁾

(2) If at least 10% of the employees of a European company or their representatives so request in writing, the European company shall reappoint a negotiating body, such being no earlier than two years as of the adoption of the resolution under paragraph (1), unless the parties agree to an earlier establishment of this body. If the negotiating body decides to resume negotiations and no agreement is reached on the manner and scope of the involvement of employees of the European company, the provisions of Chapters III and IV in this Part of the Act shall not apply.

(3) The provisions of paragraphs (1) and (2) shall not apply if a European company is to be or has been formed by the conversion of a public limited liability company whose employees have, or at the date of conversion had, the right to exercise an influence over the composition of the bodies of this company.

Section 53

(1) Negotiations on the involvement of employees of a European company must not last more than six months as of the establishment of the negotiating body. The parties may agree to a single extension of the time limit by a further six months.

(2) If the parties fail to conclude a written agreement on the manner and scope of the involvement of employees of a European company in the time limit specified in paragraph (1), and if, in the same time limit, the negotiating body fails to adopt a resolution as set forth in Section 52(1) and the management organ of each participating legal entity expresses consent to the application of Chapters III and IV of this Part, the involvement of the employees of the European company shall be governed by the provisions of Sections 56 to 62 and, if the conditions laid down in paragraphs (3) to (5) are met, Section 64.

(3) If a European company is formed by the conversion of a public limited liability company, the provisions of Section 64 shall apply only if the employees of this company had the right to influence the composition of the company's bodies as at the date of conversion.

(4) If a European company is formed by a merger, the provisions of Section 64 shall apply only if at least 25% of the total number of employees of all participating legal entities had the right to influence the composition of the company bodies of one or more participating legal entities as at the date of formation of the European company.

(5) In cases of a holding or subsidiary European company, the provisions of Section 64 shall apply only if at least 50% of the total number of employees of all participating legal entities were entitled to influence the composition of the bodies of one or more participating legal entities as at the date of formation of the European company.

(6) The negotiating body may decide not to take account of the condition laid down in paragraph (4) or (5) for the purposes of paragraph (2).

(7) If the method used to exercise the right to influence the composition of the bodies of individual participating legal entities by employees differs significantly in the cases specified in paragraphs (4) or

(5), the negotiating body shall make a decision on which method to apply at the European company, and shall notify the decision to the management organs of the participating legal entities. If no decision is made within a reasonable time limit, the method that is closest to the method used to exercise this right at a public limited liability company under the Commercial Code shall apply.

Section 54

Agreement on the Manner and Scope of the Involvement of Employees of a European company

(1) Any agreement on the manner and scope of the involvement of employees of a European company shall be drawn up in writing and shall specify

- a) the scope of the agreement,
- b) the composition of the employees' committee, the number of members, and the distribution of places in the employees' committee as a body entitled to information and consultation with the management organ or administrative organ of the European company in the set scope, the authorization of the employees' committee in relation to the management or administrative organ of the European company and the procedure for the disclosure of information and consultation between the management or administrative organ of the European company and the employees' committee,
- d) the frequency of meetings and the method used to convene meetings of the employees' committee,
- e) the financial, material, and organizational bases that will be formed by the employees' committee to ensure the due exercise of its powers,
- f) the moment as of which the agreement enters into effect and its duration, and
- g) cases where it is necessary to commence new negotiations of the involvement of the employees of the European company, and the procedure for such negotiations.

(2) If the parties agree on rules for the disclosure of information and consultations without setting up an employees' committee, these rules must be defined in detail in the agreement on the manner and scope of involvement of the employees of the European company. The provisions of paragraph (1)(b) to (e) in such a case shall not apply; the provisions of Section 49(3) and Section 50 shall apply *mutatis mutandis* to persons through whom employees of a European company, based on the agreement under the first sentence, can exercise the right to information and consultation instead of an employees' committee.

(3) If the parties agree that the employees of a European company shall be entitled to influence the composition of the organs of the European company, the agreement on the manner and scope of involvement of the employees of the European company must define in detail the method and scope of this influence; in particular, it shall specify the number of members of the administrative or supervisory organ of the European company that the employees of the European company have the right to elect, appoint, or recommend, or express opposition to an election or appointment, and the manner in which they may exercise this right.

(4) Unless the agreement on the manner and scope of involvement of employees of a European company provides otherwise, the agreement excludes the application of the provisions under Chapters III and IV of this Part.

(5) The agreement on the manner and scope of involvement of employees of a European company which is to be formed or has been formed by the conversion of a public limited liability company shall ensure at least the same level of all components involved in the European company as those existing in the company which has been or is to be converted.

CHAPTER III

INVOLVEMENT OF THE EMPLOYEES OF A EUROPEAN COMPANY VIA AN EMPLOYEES' COMMITTEE

Section 55

(1) The provisions of this Chapter shall apply only if the agreement on the manner and scope of involvement of employees of a European company or this Act so decrees.

(2) The employees of a European company have the right to information and consultation in the scope laid down herein. This right shall be exercised through the employees' committee or by other means laid down in the agreement on the manner and scope of involvement of employees of a European company as set forth in Section 54(2).

(3) The number of members of the employees' committee and the method of their election, as well as the authorization of the employees' committee in relation to the management or administrative organ of a European company shall be regulated by the statutes of the European company based on the results of negotiations on the involvement of the employees of the European company. The provisions of Sections 56 to 62 shall apply only if the agreement on the manner and scope of involvement of employees of a European company or this Act so decrees.

(4) The members of the employees' committee, if set up at a European company, who are to be elected or appointed from the ranks of the employees of a European company in the Czech Republic shall be appointed by the employees' representatives at a joint meeting. If employee representatives are not appointed at a European company, its subsidiary, or in the organizational component of an undertaking, the employees may elect representatives to attend joint meetings on their behalf. The distribution of votes at a joint meeting is determined proportionately, based on the number of employees represented.

The provisions of this paragraph shall apply even in the European company does not have a registered office on the territory of the Czech Republic.

(5) The provisions of Section 49(2) and (3) and Section 50 shall apply mutatis mutandis to members of the employees' committee and its expert advisers in relation to the European company.

Ancillary Provisions

Section 56

Composition of the Employees' Committee

(1) The employees' committee is composed of the employees of a European company who are elected or appointed from the ranks of these employees via representatives of the employees of the European company, or via all employees of the European company. The term of office of the employees' committee is five years.

(2) The number of places in the employees' committee shall be set in such a manner that one member of the employees' committee shall be appointed for every 10% of employees of the European company inclusive, if they are employed in the same Member State, calculated from the total number of employees of the European company in all Member States. The number of members of the employees' committee shall correspond to the total number of places determined in the manner specified in the first sentence.

(3) If, in the course of the term of office of the employees' committee, there is an increase in the number of employees of the European company in a particular Member State to such an extent that there should be a rise in the number of places for these employees in accordance with paragraph (2), the necessary number of new places shall be appointed for the representatives of employees from this Member State. The new places in the employees' committee shall be occupied in such a manner that a newly elected or appointed member of the employees' committee represents, in particular, those employees by whose number the number of employees of the European company has increased in a given Member State. The term of office of subsequently elected or appointed members of the employees' committee shall end with the term of office of the employees' committee.

(4) If, in the course of the term of office of the employees' committee, there is a reduction in the number of employees of the European company in a particular Member State to such an extent that there should be a decrease in the number of places for these employees in accordance with paragraph (2), the mandate of the relevant number of members of the employees' committee who represent the employees from this Member State shall be withdrawn. The member of the employees' committee elected or appointed in the given Member State whose mandate shall expire shall be decided by a draw of lots.

(5) The employees' committee shall inform the management organ or administrative organ of the European company forthwith of its composition and of any change thereto.

Section 57

The method used to elect or appoint members of the employees' committee who will represent the employees of the European company from Member States other than the Czech Republic in the employees' committee shall be governed by the law of this other Member State or by the practices in force in this Member State. This shall also apply to the representation of employees from the Czech Republic in the employees' committee of a European company which has its registered office on the territory of another Member State.

Section 58

Conduct of the Employees' Committee

(1) The employees' committee shall adopt its rules of procedure at its first meeting.

(2) If there are legitimate grounds with respect for the number of members of the employees' committee, the employees' committee shall establish a select committee and shall elect members of the select committee from the members of the employees' committee. The select committee may have a maximum of three members. Members of the select committee coordinate the activities of the employees' committee and act on behalf of the employee's committee in accordance with the resolutions adopted by this committee.

Section 59

Competence of the Employees' Committee

(1) The competence of the employees' committee exclusively applies to matters which concern the European company as a whole, its subsidiaries, or the organizational components of an undertaking on the territory of another Member State, or which exceed the powers of the decision-making bodies in a Member State.

(2) Once four years have passed since its establishment, the employee's committee shall make a decision on whether to renew negotiations on the involvement of employees of the European company

with a view to reaching an agreement on the manner and scope of involvement of the employees of the European company or whether to continue applying the provisions of Sections 56 to 62.

(3) If the employees' committee decides to commence negotiations on the involvement of the employees of the European company, Sections 51, 52, and 53(1) shall apply mutatis mutandis; the employees' committee shall hold negotiations with the competent organs of the European company. If no agreement on the manner and scope of the involvement of the employees of the European company is reached in the time limit in Section 53(1), involvement shall be governed by hitherto regulations.

Section 60

(1) Members of the employees' committee shall be entitled to time off from work and remuneration in lieu of work for the period strictly necessary for training related to the performance of their activities in the employees' committee, unless serious operating reasons prevent this.

(2) The organs of the European company shall ensure that the employees' committee has the opportunity to meet at any time for private meetings without the presence, in particular, of members of the organs of the European company. The employees' committee may invite expert advisers to meetings with the organs of the European company. Without prejudice to the number of invited expert advisers, however, the European company shall bear the cost of only one expert adviser in a given area.

(3) The European company shall ensure that the employees' committee and its members have sufficient financial, material, and organizational conditions for the due performance of activities. Members of the employees' committee have an entitlement to the refund of costs purposefully expended on the due performance of activities; they are not due remuneration for the performance of activities in the employees' committee. In the scope of an appointed budget, the European company earmarks, in advance, the corresponding volume of funds for the coverage of essential expenditure, especially for the organization of the meetings of the employees' committee, translations and interpreting, the fees due to expert advisers, travel expenses, accommodation, and subsistence allowances.

Section 61

Right to Information

(1) The management or administrative organs of a European company are obliged to present to the employees' committee, on a regular basis (at least once a year), a report on the business activities of the European company and its further prospects.

(2) The management or administrative organs of a European company are obliged to provide the employees' committee forthwith with the draft agenda of each meeting of the management organ, supervisory organ, or administrative organ of the European company and a copy of any and all instruments submitted to the general meeting of the European company.

(3) The management organ or administrative organ of the European company is obliged to inform the employees' committee forthwith of all exceptional circumstances which could have a significant negative impact on the interests of the employees of the European company, especially information on the transfer or closure of operations or organizational components of an undertaking or collective redundancies.

(4) The employees' committee shall keep employees' representatives or, where appropriate, the employees of the European company updated in respect of information it receives in the scope of its competence from the management organ or administrative organ of the European company, and in respect of the outcome of talks which it has held in the scope of its capacity. The provisions of Section 55(5) are not hereby affected.

Section 62

Right to Consultation

(1) The management organ or administrative organ of the European company is obliged to consult the regular report specified in Section 64(1) with the employees' committee in a reasonable time limit, especially from the aspect of the structure of the European company, its economic and financial situation, probable developments in its business activities, output, and sales, the current and probable developments in employment and investments, significant changes concerning organization, the introduction of new work methods or production processes, the relocation of production, mergers, organizational changes, or the closure of operations, organizational components of an undertaking or important parts thereof, and collective redundancies.

(2) If the circumstances specified in Section 61(3) occur, the management organ or administrative organ of the European company, or the chairperson of the administrative organ shall comply forthwith with a request of the employees' committee or, in urgent cases, with a request of the select committee to convene a joint meeting in order to pass on information and consult matters which could have a significant negative influence on the interests of the employees of the European company.

(3) If the management organ or administrative organ of the European company, or the chairperson of the administrative organ, decides to act at variance with the opinion of the employees' committee or the select committee as divulged at a joint meeting held in accordance with paragraph (2), prior to making

this decision they are obliged to comply with any new request of the employees' committee or select committee for another joint meeting with a view to reaching an agreement.

(4) If the select committee acts on behalf of the employees' committee in the cases specified in paragraphs (2) and (3), the members of the employees' committee who represent the employees of the European company who are directly affected by the procured concerned shall also be entitled to attend a joint meeting. These members of the employees' committee shall also be entitled, in respect of the given issues, to attend all private meetings of the select committee.

CHAPTER IV INVOLVEMENT OF THE EMPLOYEES OF A EUROPEAN COMPANY IN THE FORM OF INFLUENCING THE COMPOSITION OF ITS ORGANS

Section 63

Under the conditions laid down by this Act, the employees of a European company shall be entitled to influence the composition of the organs of a European company in the manner and in the scope appointed in the statutes of the European company, based on the outcome of negotiations on the involvement of the employees of the European company. The provisions of Section 64 shall apply only if the agreement on the manner and scope of involvement of employees of a European company or this Act so decrees.

Section 64 Ancillary Provisions

(1) If a European company has been formed by the conversion of a public limited liability company, employees of the European company shall be entitled to influence the composition of its organs in the same manner and in the same scope as in the transformed public limited liability company in accordance with the relevant legislation as at the date of conversion.

(2) If a European company has been formed other than by the conversion of a public limited liability company, employees of the European company shall be entitled to influence the composition of its organs in a scope which corresponds to the most favourable scope of influence existing in any participating legal entity as at the date of incorporation of the European company. If employees have not had the right to influence the composition of the organs of any of the participating legal entities, the employees of the European company shall not have this right either.

(3) The employees' committee shall decide on the distribution of places in the administrative or supervisory organ of the European committee which shall be occupied by the representatives of the employees of the European company in accordance with paragraph (1) or (2) among the representatives from individual Member States, or on the method used by the European company's employees from individual Member States or their representatives to make recommendations for the election of appointment of members of the administrative or supervisory organ of the European company, or the method to express opposition to an election or appointment, whereby this decision shall be made on the basis of the ratio of the European company's employees in individual Member States to the total number of the European company's employees in all Member States. If the method of distribution under the first sentence results in a situation where the European company's employees from one or more Member States will not be represented in the administrative or supervisory organ of the European company, the employees' committee appoints one member from these Member States; a choice from the Member State in which the European company has its registered office shall be favoured.

(4) The method used to occupy places in the administrative or supervisory organ of the European company which, based on a decision of the employees' committee under paragraph (3), are assigned to the European company's employees from a Member State other than the Czech Republic, shall be governed by the law of that Member State.

(5) The election or appointment, to the administrative or supervisory organ of a European company, of representatives of the employees of a European company who are employed in the Czech Republic shall be subject to the provisions of the Commercial Code concerning the election of the members of the supervisory board of a public limited liability company by its employees, irrespective of the Member State in which the European company has its registered office, unless the legislation in the Member State in which the European company has its registered office excludes the application of Czech law. If employees from more than one company or organizational component of an undertaking contribute to the election under the first sentence, the election shall be governed mutatis mutandis by the provisions of Section 55(4).

(6) Unless the law provides otherwise, the members of the administrative or supervisory organ of the European company who have been appointed, elected, or recommended to their office by the employees of the European company or by the representatives of these employees shall have the same rights and obligations as the members of these organs elected or appointed by the general meeting.

PART THREE
AUTHORIZING AND TRANSITIONAL PROVISIONS

Section 65
Authorizing Provision

The Ministry of Justice shall stipulate by way of an implementing regulation, in accordance with Section 14(3) and Section 16(2), which documents evidencing the completion of actions and accomplishment of formalities the company shall be obliged to present to the notary for the issue of the certificate.

Section 66
Transitory Provision

If the Czech Republic does not enter the third stage of the European Economic and Monetary Union, the share capital of a European company must be expressed, and the financial statements and consolidated financial statements of the European company shall be prepared and published, in monetary units of the Czech currency. This shall not affect the possibility of a European company to present information on its share capital and to prepare and publish financial statements or consolidated financial statements concurrently in the euro.

PART FOUR
EFFECT

Section 67

This Act shall enter into effect on the date of promulgation hereof.

Zaorálek, manu propria
Klaus, manu propria
Gross, manu propria

Footnotes

¹⁾ Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).

²⁾ Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.

³⁾ Act No 116/1985 on conditions for the activities of organizations with an international element in the Czechoslovak Socialist Republic, as amended by Act No 157/1989.

⁴⁾ Annexes I and II to Council Regulation (EC) No 2157/2001.

⁵⁾ Section 68(7) of the Commercial Code.

⁶⁾ Sections 27 to 34 of the Commercial Code.

Sections 200a to 200d of the Code of Civil Procedure.

Governmental Order No 503/2000 on the Commercial Bulletin.

⁷⁾ Section 28(1) and (6) and Section 28a of the Commercial Code.

⁸⁾ Section 28(1)(e) of the Commercial Code.

⁹⁾ Act No 15/1998 on the Czech Securities Commission and on an amendment to other laws, as amended.

¹⁰⁾ Section 220c and Section 59(3) of the Commercial Code.

¹¹⁾ Section 220k of the Commercial Code.

¹²⁾ Section 220m(2) to 6 of the Commercial Code.

¹³⁾ Section 194(2) of the Commercial Code.

¹⁴⁾ Section 66(6) of the Commercial Code.

¹⁵⁾ Section 196a of the Commercial Code.

¹⁶⁾ Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings.

¹⁷⁾ Section 25d to 25k of the Labour Code.

¹⁸⁾ Section 25(2) to (7) of the Labour Code

