

**Studies on the implementation of Labour Law Directives
in the enlarged European Union**

**Directive 2003/72/EC supplementing the Statute
for a European Cooperative Society with regard
to the involvement of employees**

NATIONAL IMPLEMENTATION REPORT



Czech Republic

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Executive summary¹

Council Directive 2003/72 was issued in connection with Council Regulation (EC) No 1435/2003 that establishes a Statute for a European Cooperative Society (SCE). The European Cooperative Society is another in the series of new legal forms of Community business entities with their own legal regimes, and represents a cardinal uniform legal measure on the part of the European Union. The Directive ensues from this Regulation by enhancing the Statute of the European Cooperative Society with regard to the involvement of employees in the management and control of that society.

The Czech Republic adopted the Council Regulation and implemented the ensuing Directive 2003/72 in the context of harmonization efforts since the Czech legal order had not known, until then, any legal regime concerning this type of legal entity. The law of business company in the Czech Republic is currently regulated by the Business Code (Act No. 513/1991 Coll.), which permits establishment and operation of four types of business company: general commercial partnership (v.o.s.), partnership limited by shares (k.s.), limited liability company (s.r.o.), joint-stock company (a.s.) and cooperative. It is also regulated by Act No. 627/2004 Coll. on European Company; Act No. 360/2004 Coll. on European Economic Interest Group, and Act No. 307/2006 Coll. on European Cooperative Society. These are applicable throughout the EU.

Implementation of directive provisions

The Government of the Czech Republic, in conjunction with the social partners, prepared a bill on European cooperative society (hereinafter “SCE”) and ensuing Act No. 308/2006 Coll. amending some laws in connection with the adoption of the SCE Act, the chief aim of which was to marry the Regulation and Directive to the Czech Business Code, Labour Code, Rules of Civil Procedure and Notarial Rules, in 2006. Having suffered protracted gestation due to the Senate’s disapproval of the “too socialist” provisions regulating the involvement of employees of an SCE, both bills were passed by the House of Deputies on 23 May 2006 and entered into force on 18 August 2006.

The law creation was made easier by existing SE Act, the form of which is reflected by the SCE Act. It is safe to conclude, in terms of its compatibility with the provisions of the Directive that the language of the Czech SCE Act is in compliance with Council Directive 2003/72, apart from minor differences. Thus Article 13 of the Directive offers a slightly lower degree of control and sanction elements in connection with the non-compliance with procedures concerning the involvement of the SNB and the employees’ representative body.

Transposition of Article 11 of the Directive is not in compliance, either, as the law omits the explicit requirement for the competent organ of the SCE and the representative body to work together in a spirit of cooperation with due regard for their reciprocal rights and obligations.

And finally omitted from the transposed version is Article 1 of the Directive, concerning its objective. As follows from the Notification Table of the Ministry of Labour and Social Affairs of the Czech Republic, this considered irrelevant in view of the transposition of all the other articles of the Directive.

¹ Report elaborated by Markéta Nekolová.

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Practical implementation

The second level of assessment of the implementation of Council Directive 2003/72 is the explanation of the SCE Act itself from the vantage point of its unambiguousness in the event of practical application. However, it should be noted that, first, there has not been any business entity of this type active in the Czech Republic since the coming into effect of the SCE Act and, second, there have not been made any legal analyses and explications from the vantage point of its unambiguousness in the event of practical application. Therefore it will be possible to assess the implementation of the Directive only after a certain period has elapsed since the coming into effect of the SCE Act.

However, all actors on the Czech labour market as well as legal and economic experts believe that the SCE is a unique business entity associated with the process of single European market and European integration itself.

1. Introduction

Council Directive 2003/72 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees was issued in order to help safeguard the rights of employees of one of the new forms of multinational company, the **European Cooperative Society** under Council Regulation No 1435/2003. Its purpose is to ensure that the establishment of an SCE does not entail the disappearance or reduction of practices of employee involvement existing and usual within the entities participating in the establishment of an SCE.

Prior to adopting Council Regulation No 1435/2003 on the Statute for a European Cooperative Society and transposing Directive 2003/72 in August 2006² it was possible to establish only **cooperatives** active within the framework of the Czech Republic.

There is no separate act regulating the operation of cooperatives in the Czech Republic. Despite of the national representatives of cooperatives have pressed for it since 1992. The cooperatives regulation is part of Business Code. Last years changes in cooperative regulation were relevant to harmonisation of the Czech law with European Union legislation. These changes covered specially tax measures, accounting measures, labour law measures and health and safety in work measures.

The activities of cooperatives in the Czech Republic are governed by **Sections 221-260 of the Business Code**. Under the Business Code, a cooperative is a partnership of any number of persons established for the purpose of business or providing for the economic, social or other needs of its members. A cooperative must have at least five members, this provision ceasing to apply if at least two legal entities are members. Every cooperative is a legal entity all assets of which are liable for any breach of obligations. At the same time, however, members of a cooperative are not generally responsible for its obligations.

The foundation and working capital of a cooperative is the sum of members' investments of not less than CZK 50,000. The statutory body of a cooperative is a board of directors, and the general meeting of members – its top organ – is empowered to vote and remove members of the board of directors and to decide about the use and distribution of profit and loss, and about the merger, transformation, division or dissolution of the cooperative. The regulation is adamant that the members of the board of directors and control commission of the cooperative, and its chief clerks and director, must not be entrepreneurs and members of the statutory and supervisory bodies of legal entities in the same field of business. Ban on competition is vigorously enforced.

Cooperative authorities are cooperative board, general meeting and control commission. Only members of cooperative can be members of cooperative authorities.

All ordinal members of cooperative have the rights which are explicitly defined in the cooperative statutes. The extent of their participation is also defined in them.

² All Member States were required to implement this Directive into their legislative system at this date.

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The condition of membership can be the obligation to be in employment. Then, for all members, who are also the cooperative' employees, apply the same conditions as for any other employees in the CR. This conditions result from the Czech Labour Code.

For employees which are not members of the cooperative apply also the same rules resulting from the Labour Code. Among others, the employees can constitute a work council, representative for health and working conditions or union body. They have the rights for information and consultation. Thus the extent of their participation in cooperative is the same as for any other employees in the Czech Republic.

Business Code does not provide for participation of employees representatives in the general meetings or in section or sectoral meetings with voting rights. Only members of cooperative can have voting rights.

Therefore the implementation of the Regulation and Directive concerning the European Cooperative Society expands the horizons, in (not only) the Czech Republic, of the applicability of the business law to **cooperatives active throughout the territory of the European Union**. The basic purpose is to satisfy the needs of their members and/or the advancement of their economic and social activities. A European Cooperative Society registered in the Czech Republic will be governed by Council Regulation 1435/2003 on the Statute for an SCE, which is directly effective; and by the Czech SCE Act as far as he modification of some technicalities concerning the functions of cooperatives and transposition of Directive 2003/72 are concerned. Furthermore it will be governed by the Czech Business Code provisions concerning cooperatives. This legal regime will be especially advantageous for entities operating throughout Europe, for they will not have to organize cooperatives along the various national regimes.

The principal aim of this study is to provide an **in-depth analysis of the process of implementing transpositions to Directive 2003/72 to the Czech legislation** in both the formal and contextual form, and to discuss to what extent this transposition meets the letter and spirit of the articles of this European Directive. In addition, this paper endeavours to map the practical implementation of directive articles based on the conditions the Directive grants to the Czech labour market, considered from the vantage point of individual actors on the labour market. This data (information) has been used for the purpose of evaluating the overall quality of the legal adjustment vis-à-vis the subject matter of the Directive, and its potential soft spots and its resultant impact on industrial relations within the Czech Republic. Where problem areas occur, a brief conclusion will be followed by recommendations on improving the situation.

2. Implementation

The transposition of Council Directive 2003/72 supplementing the European Cooperative Society with regard to involvement of employees into the Czech environment could be analysed from more than one vantage point. One aspect has to do with the characteristic of the formal course of implementing the Directive on the Czech political scene. Here we consider the choice of transposition modalities, the date of introducing this transposition with regard to the mandatory timeframe, the connotations of this transposition, and whether the social partners have reached consensus as they bargained the nature and manner of this transposition.

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In a second plane, there stands out the very content of implementing individual articles of the Directive. Here we shall dwell on the compatibility of the contents of the Czech legal adjustment with the adjustments dictated by the Directive.

Finally, a third level of our implementation analysis consists in characterizing actual fulfilment of the letter and spirit of the Directive on the Czech labour market as seen by its main actors.

2.1 Formal aspects

Similarly to the drafting of legislation concerning the European Company (SE), the process of creating a law on the European cooperative society was joined by all **social partners in the Czech Republic** – i.e. representatives of employers, employees and the State. No outstanding disputes between individual actors occurred during the process and the bill was drafted within a relatively short period of time.

The Government, or more specifically the **Ministry of Justice of the Czech Republic**, which supervised the drafting process, completed its definitive wording in the spring of 2006, and the bill was put forward in the Parliament of the Czech Republic. The House of Deputies passed the bill and forwarded it to the Senate. However, the **Senate** failed to pass the bill, with some right-wing Senators arguing that the part on the transposition of Council Directive 2003/72 would introduce socialist elements allowing for an overly broad employee involvement. The bill went back to the House of Deputies together with Senate recommendations concerning curbs on the powers of representatives of the employees of a European Cooperative Society.

The House of Deputies defeated the Senate proposal and stuck to its own version, which was definitively adopted on 23 May 2006 as **Act No. 307/2006 Coll. on the European Cooperative Society**. The law entered into force on 18 August 2006, in compliance with the EU deadline for harmonizing national law with *Acquis Communautaire*. Adopted in parallel was **Act No. 308/2006 Coll. amending some laws due to the adoption of the Law on European Cooperative Society**.

Since 18 August 2006, the functions of a European Cooperative Society in the Czech Republic have been governed by **Council Regulation (EC) No 1435/2003 that establishes a Statute for a European Cooperative Society**, Czech Act No. 307/2006 Coll. on the European Cooperative Society, Act No. 308/2006 Coll. amending some laws due to the adoption of the law on European Cooperative Society, and on the basis of that, also by the provisions of **Act No. 65/1965 Coll., Labour Code**³ (and new Act No. 262/2006 Coll., Labour Code) and **Act No. 99/1963, Code of Civil Procedure**⁴ and, finally, Act No. **513/1991 Coll., Business Code**, concerning cooperatives. In regard of the Business Code, Law 308/2006 solves outstanding interpretation problems and rules on who, and under what conditions, shall exercise the rights and obligations of a legal entity if that is a member of the

³ Law 308/2006 supplements Section 25m of the Labour Code with a text concerning SCE that follows up the adopted text concerning the SE.

⁴ Law 308/2006 extended the powers of the regional courts to decisions on matters concerning the dissolution of a European Company (SE) and European Cooperative Society (SCE). It also extended the provisions concerning procedures on the voting rules for SCE employees' representatives within the SNB framework.

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elected body of a cooperative. At the same time it further specifies the provision concerning the merger of cooperatives so as to correct the situation when the merger or division of a cooperative could be endorsed and entered in the Commercial register without communicating this to creditors, debtors and employees of the cooperative concerned; and the cooperatives where a meeting of delegates substitutes for the general meeting of members, and without communicating this to the prevailing number of the members unless these can resist to or comment on such situation.

2.2 Material aspects

The method of analyzing the contents of transposition of Council Directive 2003/72 into the Czech European Cooperative Society Act No. 307/2006 Coll. is determined by the structure of this Directive. The following chapters analyse individual articles of the Directive and the method of their incorporation into and defining them in this act. Special attention is paid to their compatibility with the said Directive and/or possible irregularities and differences.

2.2.1 Objective and definitions

Articles 1 and 2 of Council Directive 2003/72 deal with the objective and main definitions of the Directive. The objective of the Directive, according to its Article 1.1, is to govern the involvement of employees of newly established European Cooperative Societies (SCEs). Correspondingly, the Czech European Cooperative Society Act No. 307/2006 Coll. (SCE Act) defines its objective in accordance with the requirements of the Directive supplementing the statute for the SCE without saying this in explicit terms. Consequently, **Article 1.1 has not been transposed into the Czech SCE Act.** As follows from the Notification Table of the Ministry of Labour and Social Affairs of the Czech Republic, this is considered irrelevant in view of the transposition of all the other articles of the Directive.

Article 1.2 of the Directive governs the obligation of the Member States to adopt, in connection with the establishment of legal arrangements of an SCE, also arrangements for the involvement of its employees. This is in accordance with Section 37 of the Czech SCE Act, under which the employees of a Czech-registered SCE and all its participating units, as well as the employees of an SCE registered in another Member State, active in the Czech Republic, are **entitled to involvement within the limits of this Act**, specifically the provisions of its second part. However, the transposition of **Article 1.2 of the Directive is not verbatim**. The reason for this is as before.

The Czech SCE Act defines the main concepts relating to the objective of the Directive (Article 2) as follows:

- “**SCE**” means, within the meaning of the Directive definition, any cooperative society established in accordance with Regulation (EC) No 1435/2003. (Section 1, par 1 of the SCE Act)
- “**Participating companies**” means, within the meaning of Section 39 of the SCE Act and the Directive definition, the legal entities participating in the establishing of an SCE.
- “**Subsidiary of company**” means, within the meaning of the Directive definition, an undertaking over which another company exercises a dominant influence. A dominant influence is exercised by a legal entity with an over 50% direct or indirect

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share of that company's corporate stock that either controls more than one half of the voting rights associated with the participation in the corporate stock or can nominate a majority of the members of the board of directors, supervisory board, administrative board or any similar competent body of the company. (Section 40 of the SCE Act)

- **‘Concerned subsidiary or establishment’** means, within the meaning of the Directive definition, a subsidiary or establishment of a participating legal entity which are or are to be a part of the SCE. (Section 41 of the SCE Act)
- **‘Employees representatives’:** as per the Czech Labor Code, all employees' representatives are defined as union organizations covering also the field of work safety and security. At the employer with no operating union organization, employees have the right to institute a work council and select a representative for the area of work safety and security who can not be a member of the work council at the same time. Elections of council members and the representative for the area of work safety and security can be held at the same time. The regulation does not allow the co-existence of union organizations, work councils and a representative for the area of work safety and security within one enterprise. The operation of work council and the post of a representative for the area of work safety and security end the day a union organization is established.
- **‘Representative body’** means, within the meaning of the Directive definition, the body representative of the employees set up by agreements referred to in Article 4 of the Directive, representing the employees of the SCE, the employees of the companies to become subsidiaries of the SCE and the employees of the organization units of the undertakings to become organization undertakings of the SCE. (Section 73, par. 1)
- **‘Special negotiating body’** means, within the meaning of Section 43, par 1 of the Czech SCE Act and in accordance with the Directive definition, the body established to represent the employees of the SCE, the employees of the companies to become subsidiaries of the SCE and the employees of the organization units of the undertakings to become organization undertakings of the SCE in negotiations concerning the involvement of SCE employees.
- **‘Involvement of employees’** means, within the meaning of Section 37 of the Czech SCE Act and in accordance with the Directive definition, any mechanism under this law through which the SCE employees may exercise direct or indirect influence on decisions to be taken by the SCE organs. Involvement comprises a person's right to elect, be elected or appoint, recommend or oppose the election or nomination of members of the administrative board or control commission of the SCE.
- **‘Information’** means, within the meaning of Section 38 of the Czech SCE Act and in accordance with the Directive definition, the informing of the negotiating committee, employees' committee, employees' representatives or employees themselves by the competent organ of the SCE on matters which concern the SCE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time. This information shall be given in time for the negotiating committee, employees' committee, employees' representatives or employees themselves to

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undertake a proper assessment of this and to state their position in advance of the planned measures.

- **‘Consultation’** means, within the meaning of Section 38, par 1 of the Czech SCE Act and in accordance with the Directive definition, the establishment of dialogue and exchange of views between the negotiating committee, employees’ committee, employees’ representatives or employees themselves on the one hand and the competent organ of the SCE at a time, in a manner and with a content which allows the negotiating committee, employees’ committee, employees’ representatives or employees themselves, 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 SCE.
- **‘Participation’** means, within the meaning of Section 37 of the Czech SCE Act and in accordance with the Directive definition, the right of the negotiating committee, employees’ committee, employees’ representatives or employees themselves to elect, be elected or appoint, recommend or oppose the election or nomination of members of the administrative board or control commission of the SCE.

2.2.2 Provisions that apply to SCE based in the Member State

A. Field of implementation

Article 15 of the Council Directive defines and delineates its effect vis-à-vis the existing form of involvement of the employees of existing companies and Community-scale employees’ councils therein, whose powers are not affected by the establishment of an SCE. **The Czech Republic’s legal regime is in compliance with the requirements of Article 15.**

a) Procedure for negotiation of the rights of involvement of workers in the SCE

Articles 3-7 of the Council Directive govern the issues associated with the functioning of the Special Negotiating Body with regard to the manner of involvement of the SCE employees. The Czech SCE Act transposed this area into Chapter II, Sections 43-69. The provisions below concerning the special negotiating body apply only to negotiations on the involvement of employees of an SCE that has been or will be registered in the territory of the Czech Republic, unless explicitly stated otherwise.

b) Responsibility of procedure

Article 3.1 of the Council Directive defines the SCE subject responsible for taking the necessary steps to start negotiations with the representatives of the legal entities’ employees (hereinafter ‘representatives of employees of participating units’) on arrangements for the involvement of employees in the SCE.

In accordance with this Directive, and under Section 44 of the Czech SCE Act, this subject comprises the **statutory and other competent organs** of the participating units immediately after proposing the establishment of an SCE. This provision applies also to the participating units in the territory of the Czech Republic whose SCE is to be based elsewhere than in the Czech Republic. They shall provide information on the registered business address and identity of all the participating SCE units, as well as the number of their employees at the date of publishing the proposal for establishing the SCE and the manner and scope of involvement of these employees in the composition of the competent bodies of the participating legal entities, and the number of employees entitled to exercise such involvement.

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The competent organs shall take steps to establish a special negotiating body ('SNB'). This provision applies also to the participating units in the territory of the Czech Republic whose SCE is to be based elsewhere than in the Czech Republic.

B. Start of procedure

Article 3.1 of the Council Directive also sets deadlines for starting negotiations between the statutory and other competent organs on the one hand and the SCE on the other. In accordance with the Council Directive, Section 44 of the Czech SCE Act sets the start of the negotiations **as soon as possible after the drawing up of a plan for establishment of an SCE.**

a) Constitution and composition of the SNB

Article 3.2 of the Council Directive sets the rules for the constitution and composition of an SNB. In accordance with these rules and the Czech SCE Act, an SNB shall consist of the representatives of employees of participating SCE units to be elected according to the number of employees of participating units in each Member State.

In accordance with Section 45 of the Czech SCE Act, the election of the members of the SCE is governed by the applicable provisions of industrial regulations concerning the election to the works councils and representatives for work safety and health protection (i.e. by the **Labour Code of the Czech Republic**), unless otherwise stipulated by this Act.

The regulations of elections of employees' representatives are included in Sections 283 and 284 of the new Labour Code (Sections 25 and 25a of the old Labour Code). The elections are organized by election committees consisting of 3, at most 9 employees. The final number is given by the employer. Committee members are employees respectively stated on the request. The employer informs employees about the committee composition. Employer must provide the committee with information and documentation regarding purposes of elections (the list of all employees).

The election committee determines and pronounces the date and time of elections at least one month before the actual event; and sets deadline for submission of proposal of candidates. The proposal is submitted within the set deadline in writing and must be accompanied by a written consent of the candidate. For the actual realization of elections at least three proposals of candidates for council of employees must be submitted to election committee (as for representatives of for working and health security, at least one proposal is required).

Election committee then draws up and publishes electoral regulations, composes the slate/ticket (the document of candidates) out of provided proposals and publishes the document. The committee then organizes and conducts elections, acts on disputes, counts votes and writes written record/protocol in two copies about the election return. One copy goes to elected works council, eventually to elected representatives of for working and health security; the second copy is handed over to the employer. The election committee shall inform all employers and employees about the election results.

The elections are direct, equal and secret. Voting must be in person. Every voter can vote only for a stated number of candidates (as per the established number of future council of employees); while giving only one vote to one particular candidate. All employees employed by particular employer have the right to vote and the right to be elected.

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Candidates with the highest number of gained votes become members of works council. Candidates in other places are substitutes. In case of a tie, the electing committee establishes the succession by a draw.

The protocol of election return is archived by employer for the period of 5 years from the date of elections.

Eligible for election to an SNB are the following:

- an employee of the participating unit and
- a person that holds a position in or is a representative of the trade union organization even if this person is not an employee of the participating unit.

The person elected a member of SNB shall not lose his/her membership by the termination of his/her employment status with the employer whose employees he/she represents; however, this person may relinquish his/her position by a statement to be made at the nearest meeting of the SNB.

SNB members representing employees from other Member States than the Czech Republic shall be elected or appointed in accordance with the laws of these other Member States.

The rules regarding the number of members of an SCE are governed by Section 46. One SCE member is elected per each portion of employees employed in one Member State which equals 10%, or a fraction thereof, of the number of all employees employed in one Member State taken together, at the date of announcing a proposal for establishing an SCE.

If, in the case of an SCE formed by way of merger, the seats on the SNB are not filled so as ensure that at least one member ('direct representative') following the registration of the SCE, the number of SCE members represents each participating cooperative which it is proposed will cease to exist as a separate legal entity, this number shall be increased, subject to Section 47, so as the SCE can represent the employees of every such cooperative. If the number of SNB members in all Member States should exceed the number of SNB members by more than 20%, the number of SNB members shall not increase over 20% and the additional seats shall be apportioned one each to the direct representatives of the employees of the participating cooperatives by decreasing order of their employees in individual Member States.

The SNB seats allocated to the representatives of employees of participating units in the territory of the Czech Republic shall be apportioned so as to have at least one direct representative per the employees of each participating unit. If this is not feasible, the SCE members shall be elected so as to allow the employees of every cooperative with a registered address in the Czech Republic, which it is proposed will cease to exist as a separate legal entity, and which is participating in the merger, to be represented by one direct representative in the SNB. The remaining SNB seats shall be allocated to the representatives of other employees in the Czech Republic in a manner envisaged by Section 48 (see below). If there are no such seats left, the SNB members shall represent all employees in the Czech Republic.

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If the number of SNB seats is still smaller than the number of cooperatives with a registered address in the Czech Republic, which it is proposed will cease to exist as separate legal entities, and which are participating in the merger, even after the possible increase in the number of SNB members, these seats shall be allocated to the direct representatives of members of the cooperatives with registered addresses in the territory of the Czech Republic, which it is proposed will cease to exist as separate legal entities, by decreasing order of the number of employees they employ. They shall at the same time represent all employees from the Czech Republic, each of them by equal proportion.

In the case of an SCE to be established by any other way than merger, if the number of units based in the territory of the Czech Republic exceeds the total number of SNB seats allocated to employees' representatives from the Czech Republic, these seats shall be allocated, in accordance with Section 48, so as to enable a direct representative to the SNB to represent all units by decreasing order of the number of employees they employ.

In accordance with Section 49, the election of SCE members representing the employees of participating units in the territory of the Czech Republic shall be always governed by the provisions of Sections 47 and 48 even if an SCE is not or is not to be registered in the territory of the Czech Republic.

Seats in an SNB shall be allocated so as to reveal the number of employees to be represented by individual members. Every SNB member shall notify the SNB as soon as possible about:

- the number of employees represented by him or her and
- the Member State and participating units in which these employees are employed, discerning each Member State and each unit separately.

If, in the course of negotiations regarding employee involvement in an SCE, material change occurs in the number of participating units or their employees or in the distribution of the numbers of employees in individual participating units, resulting in material deviation of the composition of the SNB from the rules set by Sections 45, 46 and 47, a fresh reallocation of SNB seats shall be performed. However, these changes shall affect as few extant SCE members as possible.

This arrangement is in full compliance with Article 3.2 of the Council Directive.

b) The functions of the SNB

Articles 3.3 and 6 of the Council Directive define the purpose of the establishing and functioning of an SCE. In accordance with the article 3.3 of the Directive and the Czech SCE Act (Section 52), an **agreement on the method and scope of involvement of SCE employees** shall be produced. Process of negotiation is governed in accordance to Sections 44 – 69 of the SCE Act, in case, the SCE have the residence in the Czech Republic. This provision (Art. 43, par 2 of the SCE Act) is in compliance with the article 6 of the directive.

c) The workings of the SNB

Articles 3.4, 3.5 and 3.7 of the Council Directive define the procedure and decision-making of the SNB as well as the modalities of involving experts of choice.

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First and foremost, in accordance with Section 52, the statutory or other competent organs of the participating units shall, as soon as possible after the establishment of an SNB, undertake the following steps:

- present the SNB with a written proposal for establishing an SCE,
- convey written information to the SNB regarding all details about the process of establishing an SCE up to the point of its formation,
- convey written information to the SNB regarding the number of employees of the participating units discerned according to individual Member States and units,
- provide the SNB and its members with adequate financial, organizational and material conditions for their work and
- initiate negotiations with the SNB on an agreement on the involvement of SCE employees in the decision making regarding its affairs.

If material change in the data provided occurs before the signing of an agreement on the involvement of SCE employees or the adoption of a resolution in accordance with Section 57 (see below), the SNB shall be informed about this as soon as possible after the change has occurred.

In accordance with Section 53, the SNB may, for the purpose of the negotiations, request experts of its choice, especially representatives of Community-level trade union organizations or from the member States where the participating employees are employed, to assist it with its work. However, regardless of the number of experts requested, the participating units shall limit the funding to cover **one expert only** for the given field.

The participating units shall secure in advance and continuously **cover all valid expenses associated with the activity of the SNB** and its members. This obligation applies to all Czech-based participating units regardless of the Member Country in which the SCE has or is to have a registered business address.

The SNB may decide to inform third parties, especially trade union organizations, about the start of the negotiations. The entities that have been informed by the SNB shall maintain confidentiality as per Section 54 (see below).

The employer shall, in accordance with Section 55, provide a SNB member, who is its **employee, with time off with pay in the extent necessary for the discharge of his/her duties** (there is no other specification of the quantity of time off days in the SCE Act) and with compensation for justified and effective costs associated with this discharge. **However, SNB members are not entitled to additional remuneration for their function in SNB.** Nor shall they be directly or indirectly advantaged or discriminated against in connection with the discharge of their duties.

In accordance with Section 56, the SNB shall decide by the majority of the votes of all its members provided that they at the same time represent the majority of employees of all participating units. Any agreement on the involvement of employees leading to the reduction of employee involvement in the composition of the SCE bodies as against the situation, which would have existed if the agreement had not been signed, must be passed by at least

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two thirds of the votes of all members provided that they at the same time represent at least two thirds of all employees of all participating units in at least two Member States.

The procedure may be different if only less than 25% of the overall number of employees has the right of influence in the existing participating units in the case of an SCE to be established by way of merger, and less than 50% of all employees in the case of an SCE to be established by any other way. In general, every member of an SNB has one vote.

However, the SNB may decide, in accordance with Section 57, not to open negotiations on the method and scope of involvement of the employees of an SCE, or to terminate such negotiations. In this case, the involvement of the employees of an SCE shall be limited to the right to be informed and negotiate within the scope set by the legal adjustment of the Member State where the SCE has employees, i.e. the provisions of this law concerning information; negotiation and participation shall not be applied.

The SNB shall be reconvened at the written request of at least 10% of the employees of the SCE or their representatives. However, this obligation shall not apply earlier than after two years of making such decision in accordance with Section 5 (see above). However, both sides may agree to reconvene the SNB at an earlier date.

d) Duration of negotiations

Article 5 of the Council Directive sets the limits for the duration of negotiations on the involvement of employees of an SCE. In accordance with the provision of that Directive and according to Section 58 of the Czech SCE Act, the duration of negotiations on the involvement of employees of an SCE shall not exceed **six month after the meeting to establish a special negotiating body**. However, the parties may agree to extend that by another six months.

e) Involvement agreement

Article 4 of the Council Directive governs the content of the agreement on the method and scope of involvement of employees of an SCE (hereinafter the ‘agreement’). In accordance with Article 4.2 of that Directive and according to Section 61 of the Czech SCE Act, the **agreement shall be written** and shall specify:

- the scope of the agreement,
- the composition, number of members and allocation of seats on the representative body,
- the extent of employees’ powers vis-à-vis the board of directors, control body, administrative board, general director and authorized director in providing information and negotiating employee involvement,
- the frequency and method of convening meetings of the representative body,
- the financial, material and organizational resources to be allocated to the representative body,
- the date of entry into force of the agreement,
- the duration of the agreement, and

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- the cases where the agreement on the involvement of SCE employees should be renegotiated and the procedure for its renegotiation..

In accordance with Section 65 of this Act, if both sides agree on the rules of information and negotiation **without establishing an employees' representative body**, the details of these rules shall be specified in the agreement.

In accordance with section 66 of the Czech SCE Act, the parties may also agree that the employees of an SCE which is not or is not to be registered in the territory of the Czech Republic are entitled to take part and vote in the general meetings, or in the section or sectorial meetings, or in general agreements through members' representatives unless this is precluded by the valid laws of the Member State in which the SCE is registered. **If the registered seat of an SCE is being transferred to the territory of the Czech Republic, the provisions of the agreement on the involvement of employees and their right to participate and vote in the general meetings of the SCE shall cease to apply** at the date of registration of the new seat. This is in compliance with article 4.5 of the Directive.

In accordance with Section 65, par. 2, unless provision is made otherwise in the agreement, the provisions of Sections 73-98 of the Czech SCE Act, the 'reference provisions', shall not apply. This is in compliance with Article 4.3 of the Council Directive.

In accordance with Section 64 of the Czech SCE Act, the agreement on involvement in the SCE, which is to be established or has been established by way of transformation of the legal form of cooperative, shall provide for **at least the same level of all elements of employee involvement** as the ones existing within the cooperative which is to be transformed or has been transformed. This provision is in full compliance with Article 4.4 of the Council Directive.

2.2.3 Reference provisions

Article 7 and Parts 1, 2 and 3 of the Annex to the Council Directive contain reference provisions setting standard rules and policies on the involvement of SCE employees.

A. Field of implementation

Article 7 of the Council Directive contains **reference provisions** governing the process of involvement of the employees of an SCE. This article defines the cases of application of reference rules embodied in Sections 73-90 of the Czech SCE Act.

In accordance with Article 7 of the Council Directive, these rules shall be applied, under the Czech SCE Act, **if stipulated for by the agreement on involvement or the SCE Act itself**. They shall be also applied if an agreement on involvement has not been concluded within the period specified by Section 58 and the SCE has not adopted a decision under Section 57 of the Czech SCE Act (see the chapter on SCE activity). This is to ensure an employee involvement on the legally sanctioned level in case the representatives of employees and participating units fail to reach an agreement on the involvement of future SCE employees in accordance with their conditions and will. This is in **full compliance with Article 7.1 of the Council Directive**.

Moreover, Article 7.2 of the Council Directive defines the application of Part 3 of the Annex, concerning participation and involvement of employees within an SCE. In

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accordance with Section 68 of the Czech SCE Act, the employees of an SCE shall be entitled to involvement if the employees of a cooperative **to be transformed to an SCE** were entitled to involvement at the date of entering the change of legal arrangement in the Commercial Register.

The employees of an SCE established by way of **merger** shall be entitled to involvement if, at the date of establishing, the right to involvement in one or more of the participating legal entities covered **at least 25% of the total number of employees employed by them**. However, the SNB may decide that the employees of an SCE are entitled to involvement even if this entitlement applied to fewer SCE employees before the establishment of that SCE than specified in the previous clause.

The employees of an SCE established by **any other way than merger or change of legal form** shall be entitled to involvement if, before registration of the SCE, one or more forms of participation applied in one or more of the participating legal entities covered **at least 50% of the total number of employees employed by them**. However, the SNB may decide that the employees of an SCE are entitled to involvement even if this entitlement applied to fewer SCE employees before the establishment of that SCE than specified in the previous clause.

In accordance with Section 69 of the Czech SCE Act, if the conditions of exercise of the entitlement to involvement in individual legal entities **vary in a material way, the special negotiating body** shall decide **which of those forms must be established in the SCE** and shall inform the competent organs of the participating legal entities as soon as possible; this decision shall be binding. If the SNB fails to make the decision within an appropriate period, within 60 days of the expiration of the deadline for starting negotiations on the scope and method of involvement of the SCE employees, the employees of the SCE shall enjoy the same conditions of exercise of the entitlement to involvement as those existing in the participating legal entity with the **highest level of entitlement to involvement and the best conditions of exercise for the employees**.

The optional article 7.3 of the Directive was not applied in the Czech SCE Act.

B. Employees' representative bodies: competences, composition and standard rules

Parts 1 and 2 of the Annex to the Council Directive contain provisions concerning the composition of the employees' representative body and rules for its competences in the field of negotiating the entitlement to negotiation and information. **Sections 73-90 of the Czech SCE Act are in compliance with the above parts of the Annex.**

Under Section 73, the employees of an SCE shall have the right to be informed and consulted, within the full scope limited by this Act. This right shall be exercised through an **employees' representative body or in any other way stipulated by the agreement on involvement**. The number of members of the representative committee, the method of their election and that body's competences vis-à-vis the board of directors, administrative board or general director shall be governed by the Statute for the SCE in accordance with the agreement on involvement.

The election of members of the employees' representative body to be elected from among the employees of the SCE employed in the Czech Republic shall be governed by valid provisions of industrial regulations applicable for the election of an employees' and representatives' body in the field of work safety and health protection, embodied in the

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Labour Code of the Czech Republic irrespective of the Member Country of the registered address of the SCE.

The election of members of the representative body of SCE employees from other Member States than the Czech Republic shall be carried out in accordance with the **national legislation and/or practice of the Member State concerned**.

In accordance with Section 76 of the Czech SCE Act, the representative committee shall consist of elected **employees of the SCE**. The tenure of the employees' representative committee shall extend to **5 years** from the date of its election. One member of the representative body shall be elected per each portion of employees of the SCE in all Member States which equals 10% or a fraction thereof.

In accordance with Section 77, if during the tenure of the representative body the **number of employees of the SCE in any Member State increases** so it warrants more seats in line with Section 76, **the number of members of the employees' representative body shall be proportionately increased**. In by-elections to the newly created seats, the newly elected member(s) of the representative body shall represent above all the employees whose number has been added to that of the employees of the SCE in the Member State concerned. Additional members shall be elected for the remainder of the tenure of the employees' representative body.

At the same time, however, Section 78 stipulates that if during the tenure of the representative body the **number of members of the SCE in any Member State decreases** so it warrants fewer seats under Section 76, **the number of members of the employees' representative body shall be proportionately reduced**. The member(s) of the body representing employees from the Member State whose number has decreased and, whose membership is to cease to apply, shall be selected by lottery.

In accordance with Section 79, the employees' representative body shall **inform the board of directors, or the administrative board and director**, as soon as possible, **about any change in the number of its members**, giving the reasons for such change and indicating which members have acquired or relinquished their membership of the representative body.

Procedure in the employees' representative body is governed by Section 80 of the Czech SCE Act. The representative body shall adopt its **rules of procedure**. Where it is appropriate or necessary due to the number of members of the employees' representative body, a **select committee of employees** shall be appointed. Members of the select committee shall be elected from among the members of the representative body. The number of members of the select committee shall be set by the employees' representative body and shall not consist of more than **3 persons**. The select committee coordinates the activities of the employees' representative body and acts on its behalf.

The competences of the employees' representative body shall be governed by Section 81. The competences of the representative body cover **all matters concerning the SCE and its participating units, as well as matters exceeding the powers of decision-making bodies of a single Member State**.

In accordance with Section 82, the employees' representative body or select committee may **meet at any time without the presence of third parties**. A competent SCE organ or a

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member thereof may attend the meeting of the representative body or select committee only if they have been invited in advance and their presence received the approval of two thirds of the representative body. All forms of direct or indirect influence on the representative body and its individual members and all forms of direct or indirect restrictions or hindrance shall be prohibited. Members of the employees' representative body shall be relieved of their employment duties for the duration of the meeting. Prior oral notification of the member's direct supervisor shall be deemed sufficient.

In accordance with Section 83, Four years after the employees' representative body is established, it shall examine whether to reopen negotiations on the involvement of employees of an SE for the purpose of achieving an agreement on the manner and scope of such involvement or to proceed according to Sections 73-90. If the representative body decides in favour of opening negotiations on the involvement of employees of the SCE, the provisions of Sections 56-60 (see procedures in connection with the SNB) shall be applied, whereby the representative body shall negotiate with the SCE. In case an agreement on involvement is not concluded within the period of time specified in Section 58, the scope and method of employee involvement shall remain unchanged and the procedure is according to the rules applicable before the start of negotiations.

The SCE shall provide the members of the employees' representative body with:

- **time off without loss of wages** in so far as this is necessary for training and discharge of their duties, for attending meetings of the representative body, and for travelling to and from the meetings, and
- **reimbursement of efficiently expended costs** associated with the discharge of their duties.

However, in accordance with Section 84, members of the employees' representative body shall not be entitled to remuneration for their serving in the representative body. Any form of direct or indirect advantage or discrimination of members of the representative body in connection with the discharge of their duties shall be prohibited. Legal acts found to be at variance with the above shall be null and void.

In accordance with Section 85 of the Czech SCE Act, the SCE shall provide the employees' representative body with the **financial and material resources needed to enable it to perform its duties in an appropriate manner** within the scope set by the agreement on involvement. If no involvement agreement was concluded, the SCE shall provide the representative committee with material, financial and organizational resources needed to enable it to discharge its essential duties. The SCE shall allocate beforehand, within the limits of its budget, the adequate amount to cover the necessary costs, associated with the proceedings and activities of the representative body. The employees' representative body may be assisted by experts of its choice during the negotiations with the competent organs of the SCE. However, without prejudice to the number of experts invited, the SCE shall reimburse only the costs associated with the presence of only **one expert** in the given field.

In accordance with Section 86, the board of directors or administrative board and general director of the SCE shall present the employees' representative body with regular **reports** at least once every accounting period **on the development of business and prospects of the**

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SCE. This report shall include detailed information on the activity and situation of the European Cooperative Society, in particular information about:

- **the organization** of the SCE and its units indicating their location in individual Member States,
- planned **major organizational and economic changes**, especially the relocation of one or more units,
- the expected consequences of planned organizational and economic changes for employment, especially with regard to possible collective redundancies,
- the economic and financial situation of the SCE,
- the likely course of its business and other activities,
- plans for relocation of headquarters, merger, division or change of legal status of the SCE and
- other significant measures and intended projects.

In accordance with Section 87, the board of directors or administrative board and general director of the SCE shall present the representative body in advance with the **draft agenda of every meeting of the board of directors and supervisory/administrative board** and copies of **all documents to be put before the general meeting, and to inform it about the decisions adopted by all competent organs of the SCE** or present copies of all records on such decisions. They shall also inform the representative board as soon as possible about all circumstances which might have a major adverse impact on the legitimate interests of the employees of the SCE. The employees shall always be informed at least about the relocation or closure of one or more units, forfeiture of participation or the closure and liquidation of one or more units, and collective redundancies.

The employees' representative body shall, in accordance with Section 88, continuously inform the employees of the SCE and employees' representatives in line with industrial regulations about:

- all material circumstances it has learned about in accordance with Section 86 or 87, and
- the outcomes of all negotiations and other activities undertaken within its competences.

In accordance with Section 89, the board of directors or administrative board and general director of the SCE shall discuss with the employees' representative body the report specified by the provision of Section 86 within an appropriate period after its presentation, in a comprehensive manner and with regard to all its aspects, with special emphasis on the employees' legitimate interests in connection with the maintenance of jobs.

The board of directors or administrative board and general director of the SCE shall also meet, as soon as possible, the request of the representative body and, in case of urgency, the select committee to convene a joint meeting in order to provide information and to discuss matters significantly affecting legitimate interests of the employees under conditions specified in Section 87. Where the competent organs decide not to act in accordance with the

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opinion expressed by the representative body or the select committee, these bodies shall have the right to a further meeting with the competent organs of the SCE with a view to seeking agreement. In case of a meeting organized with the select committee, those members of the representative body that represent employees who are directly concerned by the measures in question shall also have the right to participate.

C. Participation of employees

Part 3 of the Annex to the Council Directive sets the rules of employee participation in an SCE and thereby also their right of involvement. **Regulation of these issues by the Czech SCE Act is in compliance with these provisions.** The employees of an SCE shall have the right of involvement under this Act, to be exercised in the manner and under the conditions set by the SCE Statute in accordance with the agreement on involvement.

In accordance with Section 92 of this Act, shall have the right of involvement in the same extent as in the cooperative that has been transformed into an SCE, in line with the relevant legal order as of the date of change of legal status. In the case of an SCE **established by any other way than change of legal form**, the employees of that SCE shall have the right of influence in the extent equal to that enjoyed by the employees of any participating legal entity equal to the highest proportion in force in the participating units concerned at the date of establishment of the SCE.

In accordance with Section 93, the representative body shall decide on:

- the allocation of seats within the administrative or supervisory body of the SCE among the members representing the employees from the various Member States, or
- on the way in which the SCE's employees or their representatives from the various Member States may elect, appoint or recommend the members of these bodies, or endorse or oppose the election of certain persons.

The representative body shall base its decisions on the proportion of the number of SCE employees in various Member States in the total number of SCE employees in all Member States. If the SCE employees of one or more Member States are not represented in the board of directors or supervisory board, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SCE's registered office.

In accordance with Section 94 of the Czech SCE Act, the allocation of seats within the administrative or supervisory body, which according to the decision of the representative committee under Section 93 belong to SCE employees' representative from another Member State, shall be governed by the law of the Member State in question.

The election of members of the administrative or supervisory body by an SCE's employees employed in the Czech Republic shall be always governed by the provisions of this Act even in the case of an SCE without a registered office in the Czech Republic, unless the law of the Member State of the SCE's registered address excludes the application of the Czech legal adjustment.

In conclusion, Section 96 of the Czech SCE Act stipulates that the members of an SCE's administrative or supervisory bodies shall have the same rights and obligations as the members of the administrative or supervisory body elected by the general meeting.

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2.2.4 Common provisions

Articles 10-13 of the Council Directive deal with issues associated with the activity of the employees' representative body within the framework of an SCE.

A. Confidentiality of information

Article 10 defines the obligations of the SNB and experts of its choice associated with the revelation of confidential information concerning an SCE. The article defines also the circumstances under which these persons may not seek such information. The article also regulates procedure following judicial or administrative authorization.

In accordance with Article 10 and under Section 53, par. 4 and Section 54 of the Czech SCE Act, the **members of the special negotiating body and experts who assist them and other persons who were informed by SNB** are not authorized to reveal any information which they have acquired in connection with the negotiations and which has been given to them in confidence. This obligation shall apply regardless of who has given the information and what employees are represented by various members of the SNB. This obligation shall continue to apply even after the termination of negotiations.

The participating legal entities shall provide the SNB with any information it has requested. This provision shall not apply if the court has ruled, on the proposal by the SNB or a participating legal entity, that the **participating legal entity is not obliged to provide information**. The court shall decide in favour of the non-provision of information if the revelation thereof would seriously harm or preclude the functioning of the participating legal entity or the SCE and its units in various Member States and the SNB manifestly is in no need to receive such information.

If an SCE or participating legal entity has requested a member of the SNB to maintain confidentiality without giving a well-based reason, the court may rule, on the proposal of the SNB or a member thereof, which have been asked to maintain confidentiality, that the confidentiality obligation ceases to apply on the date of the entering into force of such ruling.

The onus probandi rests with the person that has refused to provide information or insists on its obligation to maintain confidentiality. The SNB shall always be qualified if the case is brought before the courts in the Czech Republic, even if the SCE does not or is not to have a registered office in its territory. **The method of transposing Article 10 of the Council Directive into the Czech SCE Act is therefore fully compatible with the contents of Article 10.**

B. Protection of employees' representatives

Article 12 of the Council Directive regulates protective measures in connection with the activities of the SNB, the employees' representative body and the employees' representatives within an SCE. In association with this Article and under Sections 55, 84 and 85 of the Czech SCE Act, the members of the SNB, representative body and employees' representatives shall have, within the extent set by the Labour Code, the **right to protection against discrimination and disadvantage, to time off without loss of wage, and the reimbursement of efficiently expended costs associated with the discharge of their duties**. Members of the representative body shall not be advantaged for then discharge of their duties, as stipulated by Section 25 of the Labour Code.

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C. Spirit of cooperation

In accordance with Article 11 of the Council Directive, the representative body and the competent organ of the SCE shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations. **The Czech SCE Act does not explicitly pose this requirement.** It does, however, list the rights and obligations although there are no specific provisions stipulating that these rights and obligations of both parties shall be consistently observed and negotiations shall be held in a spirit of cooperation. The Czech legal arrangement under this article therefore **is not in full compliance with the requirements of the Council Directive.**

D. Misuse of procedures

In accordance with Article 13 of the Council Directive, Member States shall take appropriate measures with a view to preventing the misuse of an SCE for the purpose of depriving employees of rights to employee involvement or withholding such rights. However, the Czech SCE Act **does not explicitly set the duty of the Czech Registration Court to verify the establishment and composition of the SNB, and the course and outcomes of negotiations in the case of an SCE with a registered office in the territory of the Czech Republic.**⁵ It is therefore not clear how potential **conflicts with Council Directive 2002/72** would manifest themselves.

The Czech SCE Act merely states that the Statute of an SCE shall be verified by notarial record which, however, shall verify accordance of the Statute with regulation, and thereby also the SCE Act, only in the case of an SCE with registered office in the Czech Republic. In accordance with Section 14 of the Czech SCE Act, **the Statute of an SCE found to be at variance with the agreement on SCE employees' involvement, concluded under this Act, shall be null and void.** The competent organ shall put the statute in harmony with the employee involvement agreement as soon as possible after a conflict between the statute and the agreement on involvement of SCE employees has been discerned.

Section 65, par. 1 further stipulates that an involvement agreement in breach of the provisions of the SCE Act with view to the rights of the employees of an SCE shall also be rendered null and void.

Hence the Czech SCE Act has transposed certain procedures ensuring the observance of the policies set by the Council Directive with a view to the involvement of SCE employees and the protection of their rights and powers. However, they differ from the procedures concerning the European Society, are less strict, and do not explicitly make the establishment of an SCE conditional on the establishment of an SNB, as in the case of a European Society.

2.2.5 Provisions applicable to work centres and subsidiary companies in the territory of the Member State

A. Identification of national employees' representatives

In accordance with Article 2e of the Council Directive, 'employees' representatives' means the employees' representatives provided for by the national law and/or practice of the Member State concerned. As per the Czech Labor Code, all employees' representatives are defined as **union organizations** covering also the field of work safety and security. At the

⁵ As in the case of the SCE Act

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employer with no operating union organization, employees have the right to institute a **work council** and select a **representative for the area of work safety and security** who can not be a member of the work council at the same time. Elections of council members and the representative for the area of work safety and security can be held at the same time. **The regulation does not allow the co-existence of union organizations, work councils and a representative for the area of work safety and security within one enterprise.** The operation of work council and the post of a representative for the area of work safety and security end the day a union organization is established.

B. Appointment of employees' representatives in the SNB and representative body

Article 3.2.b and part 1b of the Council Directive regulate the way of establishing an SNB and an employees' representative committee in units active in the territory of the Czech Republic although such an SCE has not registered its office directly in the Czech Republic.

a) Special negotiating body

In accordance with Section 45 of the Czech SCE Act, the appointment or election of the members of the SNB representing the employees of participating units based in the territory of the Czech Republic shall be governed by **Section 25e Para 4, 5 and 8 of the Labour Code**. The seats on the SNB reserved for employee representatives from other Member States than the Czech Republic shall be allocated in a manner compatible with the legal order of the Member State in question.

The seats on the SNB shall be allocated so as at least one direct representative represents the employees of every participating unit in the territory of the Czech Republic. In case this cannot be provided for, the members of the SNB shall be elected so as the employees of every Czech-registered cooperative, participating in a merger, which it is proposed will cease to exist, are represented by a single direct representative. The remaining seats on the SNB shall be allocated to representatives of other employees from the Czech Republic as per Section 48 (see below). In case no such seats are left, the members of the SNB shall represent all employees from the Czech Republic.

If the number of seats on the SNB is lower, even after the possible increase of the number of members of the SNB, than the number of Czech-registered cooperatives, participating in a merger and proposed to cease to exist, these seats shall be allocated so as the direct representatives could represent the employees of the ceasing cooperatives with registered offices in the Czech Republic and proposed to cease to exist, in the decreasing order of the number of their employees. At the same time they shall equally represent all employees from the Czech Republic.

If an SCE is formed by any other way than merger and the number of participating units in the territory of the Czech Republic is higher than the total number of SNB seats reserved for employees' representatives in the Czech Republic, these seats shall be allocated, in accordance with Section 48, so a direct representative on the body represents the participating units in the decreasing order by the number of their employees in the Czech Republic.

In accordance with Section 49, the election of SNB members representing the employees of the participating units in the territory of the Czech Republic shall be always governed by the provisions of Sections 47 and 48 even if the SCE does not or is not to have a registered office in the Czech Republic.

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Employees from the Czech Republic may be represented in the SNB by a person **not employed by the participating unit of the SCE** if that person has been empowered or authorized by the trade union organization of those employees.

b) Representative body

The election of the members of the employees' representative body to be elected from among the SCE employees employed in the Czech Republic shall be governed by valid industrial regulations applicable to the election of an employees' representative body and representatives for Work Safety and Health Protection, contained in **Section 25e Para 4, 5 and 8 of the Czech Labour Code**. This is without prejudice to which Member State is the site of the SCE's registered office.

In accordance with Section 76 of the SCE Act, the members of the employees' representative body shall be elected **employees of the SCE**. The term of office of the representative body shall be **5 years** from the date of election. To one seat per each portion of employees employed within one Member State which equals 10% or a fraction thereof, of the number of employees employed in all Member States taken together, one member of the employees' representative body shall be elected.

If, in accordance with Section 77 of the SC, if there are such **further additional SCE employees from any Member State** as to warrant the allocation of more seats in accordance with Section 76, **the number of the members of the representative body shall increase adequately**. These additional seats shall be allocated through by-election so as the newly elected member(s) of the representative body can represent primarily the employees by whose number the number of SCE employees in the concerned Member State has increased. Additional members shall be elected only for the remainder of the term of office of the representative body.

At the same time however, in accordance with Section 78, if the **number of employees of an SCE within a Member State** decreases so as to warrant fewer seats under Section 76, **the number of members of the representative body shall be reduced proportionately**. The member(s) of the representative body representing employees of the Member State concerned and whose number has decreased shall have their membership of the representative body cancelled by lottery.

C. Protection of employees' representatives

Article 12 of the Council Directive regulates protective measures connected with the discharge of duties of the SNB, the representative body and employees' representatives within an SCE. In accordance with this article and Sections 55, 84 and 85 of the Czech SCE Act, members of the SNB, the representative body and employees' representatives enjoy, within the scope defined by the Labour Code and in accordance with the Labour Code, the **right to protection against discrimination and disadvantage, to time off without loss of wage, and the reimbursement of efficiently expended costs** associated with the discharge of their duties. Members of the representative body **shall not be advantaged in the discharge of their duties**, similarly to the provision of Section 25 of the Labour Code.

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2.2.6 Rules applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons

Article 8 of the Council Directive regulates the rules of involvement of SCE employees in the decisions about the SCE matters in the case of an SCE established without a legal precursor.

In accordance with this article and Section 70 of the Czech SCE Act, in the case of an SCE established exclusively by natural persons or by single natural persons and a single legal entity, which together employ at least 50 employees in at least two Member States, employee involvement shall be recognized. This is governed by the provisions of Sections 37-69 (procedure in connection with the application of an SNB) provided that the SCE is the participating legal entity.

In accordance with Section 71, these employees shall have the right to participate in decision-making processes and the right to receive information in the extent of the legal regulations of the Member State in question, where the SCE has or is to have a registered office. The employees of the participating SCE units shall have the right to participate in decision-making processes and the right to receive information in the extent of the legal regulations of the Member State in question, where the SCE has or is to have a registered office.

In accordance with Section 72, the right to employee involvement shall apply if, after the establishment of an SCE, at least one third of the total number of employees of all SCE units from at least two Member States requests such in writing or if the total number of an SCE's employees reaches 50 in at least two Member States.

2.2.7 Participation in the General Meeting or Section or Sectoral Meeting

Article 9 of the Council Directive regulates the participation and voting rights of employees of an SCE and/or their representatives in the general meetings or in the section or sectorial meetings. **The Czech SCE Act implemented this option in Section 91 and 92 of the SCE Act.**

SCE employees have right of participation and voting rights defined in the statute of SCE under conditions of the SCE Act. Articles of statute of the SCE prescribe the way and conditions of this influence in accordance with the agreement on SCE employees' involvement. (Section 91)

SCE employees have right of participation and voting rights within the scope as were in a cooperative changed into SCE. If SCE was founded unlike change of its legal form, the employees have right of participation and voting rights within the scope as they were in either of legal entities involved or at the most favourable range from all of legal entities involved at the time of the SCE foundation. (Section 92)

Transposition of Article 9 is in compliance with the directive requirements. The possibility mentioned in Section 59, par. 4 of the Council Regulation No. 1435/2003 was not applied in the Czech Republic. The Czech Business Code this provision did not contain on the entry into force of this Regulation.

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2.2.8. Observance of the directive

In accordance with Section 14 of the Czech SCE Act, **the Statute of an SCE found to be at variance with the agreement on SCE employees' involvement, concluded under this Act, shall be null and void.** The competent organ shall put the statute in harmony with the employee involvement agreement as soon as possible after a conflict between the statute and the agreement on involvement of SCE employees has been discerned.

Section 65, par. 1 further stipulates that an involvement agreement in breach of the provisions of the SCE Act with view to the rights of the employees of an SCE shall also be rendered null and void.

Hence the Czech SCE Act has transposed certain procedures ensuring the observance of the policies set by the Council Directive with a view to the involvement of SCE employees and the protection of their rights and powers. However, they differ from the procedures concerning the European Society, are less strict, and do not explicitly make the establishment of an SCE conditional on the establishment of an SNB, as in the case of a European Society.

2.3 Practical application

There is virtually 150 years tradition of the cooperatives in the Czech Republic. After 1990, in the frame of the Czech economic and social transformation, the cooperatives significance decreased for ideological reasons. Cooperatives were associated with communism era and its style of the socialist economy control and also with frustration of individual property rights. The cooperatives experienced large-scale transformation and lost important part of their property and members. Despite of, the cooperatives have retained important share in national economy.

At present, cooperatives representatives are treated as powerful partner in the course of government negotiations. They also have their representatives in many important commissions of the Czech Government.

In the Czech Republic, all cooperatives associations are part of the **Cooperative Association of the Czech Republic** as the national cooperative centre. This centre associates following units:

- Association of Czech and Moravian Housing Cooperatives;
- Association of Czech and Moravian Consumer Cooperatives;
- Association of Czech and Moravian Production Cooperatives;
- Agrarian Association of the Czech Republic.

Above mentioned associations associate approximately 2.5 thousands cooperatives and 1.2 millions members.

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In the Czech Republic, the cooperatives have very different property and organisational structure. Sometimes they look like joint-stock company. There are most agrarian and production cooperatives in the CR. Some agrarian cooperatives were transformed in joint-stock companies and their shareholders are also their employees. Among production and agrarian cooperatives and agrarian joint-stock companies predominate successful enterprises.

Cooperative Association of the Czech Republic considers statute of the European cooperative society very important for development of cooperatives in European Union countries. Since the beginning of the Czech implementation process it has reported its members on this area. Provided information were related to possibilities and changes relevant to the SCE Act adoption in the Czech Republic.

Inasmuch the Council Directive entered into force as recently as August 2006, **no SCE has been established in the Czech Republic to date**. It is therefore not possible to single out a case law relating to the SCE. No relevant Czech or foreign literature on the practical aspects of Council Directive 2003/72 is available. In light of the recent adoption of the regulation and transposition of the Council Directive there has been no hands-on experience with the application of employee rights within this form of transnational business company.

As indicated by the involved actors on the labour market of the Czech Republic, they welcome this new type of European Company. The Czech Republic's main TU organization – the **Bohemian-Moravian Confederation of Trade Unions** (hereinafter “the ČMKOS”) welcomes chiefly the regulation of method and form of employee involvement in the SCE and representation of their interests. The ČMKOS profiled its positive attitudes to the contents of the Council Directive at the Senate hearings in the spring of 2006. The ČMKOS Chairman, Social Democrat Senator Milan Štěch pleaded for the adoption of a draft legislation with implemented Directive concerning the involvement of employees, arguing that this mode of involvement of transnational company employees has previously been adopted by the Czech Republic, and also arguing that if the Directive is not projected into the Czech legal order, this country could face serious practical consequences thereof. Moreover, he warned that unless this is duly projected, the working conditions in this type of transnational company would discriminate against the employment relationships of other business entities, both national and transnational.

The main Czech employees' representative organ – the **Industry and Transport Association** (“SPD ČR”) is very positively inclined to extending the realm of business companies to the transnational SCE and considers the principles of Directive 2003/72 sufficient to maintain the adequate representation of the employees' representatives and to adopt measures in the case of such representation becoming impractical for any of the participants.

Likewise Vít Janeček, Chairman of the **Association of Czech and Moravian Housing Cooperatives** (the biggest organization representing Czech cooperatives) welcomes the adoption of the SCE Act, saying that Regulation 1435/2003 and Directive 2003/72 will standardize the rules of establishment and functioning of cooperatives within the European Union so they interact and develop more effectively.

3. Effects of implementation

Until 2004 the business company law was regulated only by the Business Code, Act No. 513/1991 Coll., and permitted the establishment and operation of only four types of Business Company: general commercial partnership (v.o.s.), partnership limited by shares (k.s.), limited liability Company (s.r.o.), and joint-stock company (a.s.) and a cooperative.

In 2004, in connection with the adoption of Act No. 627/2004 Coll. on European Society, the corporate law took in two new transnational forms – the European Cooperative Company and Act No. 307/2006 Coll., and Act No. 308/2006 Coll. that amends some laws in connection with the adoption of the law on adopting the European Cooperative Society. The latter legislation made it possible to harmonize the requirements and content of Council Directive 2003/72 with the **Labour Code** of the Czech Republic namely in the field of negotiation of the involvement of employees of an SCE. Likewise it harmonized the contents of the Council Directive with the legal arrangement concerning the Czech Business Code, Notarial Order and Civil Judicial Order.

Generally speaking, the SCE Act is in full agreement with the Constitution of the Czech Republic, international treaties binding for the Czech Republic and the law regulations of the European Communities. The legal adjustment concerning the SCE has no bearing on the state budget, other public budgets and entrepreneurs, nor does it have any social and environmental impacts.

This legal arrangement fairly closely builds upon the **national cooperative law** of the Czech Republic but is governed by it only in a subsidiary way in the extent not otherwise stipulated by regulations. Normatively, this arrangement is based on Council Regulation (EC) No 1435/2003 of 22 July 2003 that establishes a Statute for a European Cooperative Society and on Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for A European Cooperative Society with regard to the involvement of employees.

Regrettably, the authors of the Czech SCE Act **could not make use of the experience of other EU Member States** as the early stage of the drafting process precluded the use of any preparatory materials. As stated above, there does not yet exist any relevant Czech or foreign relevant literature on this subject. The resources were thus limited to the text of the Directive and Regulation; the outputs from the process of drafting Act No. 627/2004 Coll. on the European Society, and a sample of articles in periodicals, the use of which was limited as the bulk of them were opinions on the various versions of the draft regulation.

Inasmuch a radical re-codification of private law is being prepared in the Czech Republic, which will affect also the present Business Code, it would have been inappropriate to include the SCE arrangement in that code. The resultant solution of transposition of the Council Directive and implementing provisions concerning Regulation 1435/2003 in the form of separate law is obviously much easier to take in and does not prevent the inclusion of this subject matter in a new commercial code at a later date.

As stated above, this legal adjustment does not place additional burdens on the public budgets. However, marginal increase of material costs is to be expected in association with **newly added duties of the registration courts** which will include provision of registering SCEs in the **Commercial Register** and forwarding notifications to the **EC Official Prints**

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Office as required by the Regulation. It is, however, not possible to assess the amount of these costs as it is impossible to estimate the level of public interest in forming SCEs. The social implications of the new legal adjustment should be favourable as the formation of new subjects could lead, in the event of their efficient development, to potential increases in the State's tax revenues and an extended offer of jobs on the market, including jobs for socially handicapped persons. However, more precise quantification is not possible. The adjustment also introduces a new area of **activity for notaries** in producing public deeds but the associated costs will be borne by the private sector and not by public budgets.

Since, however, no Czech-based SCE has been established as yet, it is not possible to discuss other effects of implementation, either positive or negative.

4. Assessment of the results

The outcome of transposing Council Directive 2003/72 into the Czech legal environment could be evaluated on two levels.

One has to do with the resulting compatibility of the Directive articles and their transposition into the Czech SCE Act. It is safe to say that in principle, the language of the Czech SCE Act is in compliance with Council Directive 2003/72. Nevertheless, certain deviations from it do exist.

Problems arise mainly in the field of checking noncompliance with the procedures given by the Directive and/or the SCE Act to safeguard the right of involvement of the employees of an SCE. This issue was discussed in the analytical section concerning the contents of implementation, specifically in Chapter 2.2.4 and it is appropriate to point out that by comparison with the Law on European Society. The SCE Act includes a lower level of control and sanction elements connected with noncompliance with procedures associated with the functioning of the SNB and the employees' representative body.

Nor is the transposition compatible with Article 11 of the Council Directive that requires that the representative committee and the competent organ of the SCE work together in a spirit of cooperation with due regard for their reciprocal rights and obligations. This requirement is not mentioned, either explicitly or implicitly, in the Czech SCE Act. Although it sets the rights and obligations of both parties, the Czech SCE Act does not contain specific provisions that these rights and obligations must be consistently observed and negotiations must be conducted in a spirit of cooperation.

And finally missing out in the transposed version of the Council Directive is its Article 1 defining the objective of that directive. This is explained in the notification table of the Czech Ministry of Labour and Social Affairs by saying this paragraph is irrelevant with regard to the transposition of all other articles.

The other level of evaluation is the field of explaining the SCE Act itself from the point of its unambiguousness in the event of practical application. At this point, however, it is only possible to assess its resultant form by comparison with the two years older law on European Society. Thanks probably to the experience gathered in the course of drafting the SE Act; the final wording of the Czech SCE Act is incomparably clearer, more readily comprehensible

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and more transparent. Whether this is the reason why the legal adjustment of the European cooperative is also much simpler than that of the European society, remains to be seen.

However, this is just a fleeting impression. Its correctness can hardly be proved since, as stated above, there are no legal analyses on hand as yet or indeed explanations of this act from the vantage point of its unambiguousness in the event of practical application. An evaluation of the outcomes of implementing the directive will be possible later on after the coming into force of the Czech SCE Act.

5. Conclusion

The Czech Republic implemented Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees in the second part of Law 307/2006 Coll. on the European Cooperative Society (SCE Act) in the spring of 2006, effective from 18 August 2006. This was in compliance with the required date of the coming into force of the regulation on the SCE and ensuing directive. All social partners took part in the creation of the SCE Act.

The law creation was made easier by the existing SE Act, the form of which is reflected by the SCE Act. The two directives governing the involvement of employees in the SE and SCE are based on a similar principle. The process of approving the SCE draft legislation was a protracted one since many right-wing Senators considered the part of the bill projecting Council Directive 2003/72 on the involvement of employees of an SCE too socialistic, and the bill was sent back to the House of Deputies with numerous amendments proposed. However, the House did not incorporate the proposed amendments and finally passed the bill on 23 May 2006.

As for its content, the transposition of the Council Directive into the bill could be considered almost fully compatible with the Directive articles. We say ‘almost’ since not all articles of that directive have been projected into the Czech SCE Act in the required extent. They are Articles 1, 11 and partly also Article 13. These discrepancies are thoroughly discussed in Chapter 4.

Explication of the legal adjustment of the SCE Act is a somewhat more complicated task. It is only possible to compare its final version with that of the two years older SE Act. Thanks probably to the experience gathered in the course of drafting the SE Act; the final wording of the Czech SCE Act is incomparably clearer, more readily comprehensible and more transparent. It is not possible to tell as yet just how correct this superficial evaluation is correct, in the absence of legal expertise and explications with a view to problem spots and ambiguities in the event of practical application.

In view of the recentness of the SCE Act, few people are probably able to predict what problems could arise in connection with its practical application. As yet no SCE has been established in the Czech Republic.

Nevertheless, all Czech labour market actors believe that the implementation of Council Directive 2003/72 into the Czech SCE Act is a very important step forward for the Czech Republic with regard to its EU membership in that it enables, in line with the Single European market idea, the establishment of a historically third transnational form of business

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company, operating throughout the European Union and addressing new business and working conditions within the framework of the EU.

6. Recommendations

No relevant recommendations stand out, for the time being, in connection with the final version of implementing Council Directive 2003/72 into the legal environment of the Czech Republic. The same holds true of the Czech and Community levels.

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- www.mpsv.cz (web site of the Czech Ministry of Labour and Social Affairs)
- www.spcr.cz (web site of the main organization representing the employers in CR)

Annex I - List and description of the national legislative implementation measures

1. Act No. 65/1965 Coll., Labour Code – fundamental piece of national legislation regulating various main individual and collective labour relationships in a systematic way. (old)
2. Act No. 262/2006 Coll., Labour Code – fundamental piece of national legislation regulating various main individual and collective labour relationships in a systematic way. (new)
3. Act No. 307/2006 Coll., on European Cooperative Society – law regulating legal relations ECS, if they are not regulated by Council regulation n. 1435/2003 or Council directive n. 2003/72.
4. Act No. 308/2006 Coll. – piece of law changing certain laws in context of European cooperative law adoption.
5. Act No. 513/1991 Coll., Business Code – fundamental piece of national legislation regulating enterprisers' situation, business relations and certain relations associated with business.
6. Act No. 358/1992 Coll., Notary Public Code – law regulating relations associated with notarial acts.
7. Act No. 99/1963 Coll., Code of Civil Procedure – fundamental piece of national legislation providing for just protection of rights and of legitimate interests of the parties as well as for raising awareness to the importance of the observance of law and of respecting the rights of others.

Annex II – Case studies, statistical information, legal cases

There are no available case studies, statistical information or legal cases in the Czech Republic.

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Annex III – Table of correspondence

Content	Articles in the Directive	Articles in National legislation (Act No. 307/2006 Coll., on European Cooperative Society)
Objective	1	Irrelevant in light of transposition
Definitions	2a) 2b) 2c) 2d) 2e) 2f) 2g) 2h) 2i) 2j) 2k)	Art. 1, par. 1 Art. 39 Art. 40 Art. 41 Art. 43; 44; 45; 47; 48; 61; 62; 63; 64; 67; Art. 73, par 1 Art. 43, par. 1 Art. 37 Art. 38 Art. 38, par. 1 Art. 37
Creation of a special negotiating body	3.1 3.2 3.3 3.4 3.5 3.6 3.7	Art. 44 Art. 45-48 Art. 52 Art. 56 Art. 53, par.1,3 and 4 Art. 57; 59; 60 Art. 53, par. 2
Content of agreement	4.1 4.2 4.3 4.4 4.5	Art. 52, letter e) Art. 61 Art. 65, par. 2 Art. 64 Art. 66
Duration of negotiation	5.1 – 5.2	Art. 58
Process of negotiations	6	Art. 43, par. 2
Standard rules	7.1 7.2 7.3	Art. 67 Art. 68; 69 This optional provision was not applied
Rules applicable to SCEs established by natural persons or a single legal entity and natural persons	8.1 8.2 8.3	Art. 70 Art. 42, par 1; Art. 71 Art. 72
Participation in the general meeting or section or sectoral meeting	9	Art. 91; 92

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Content	Articles in the Directive	Articles in National legislation (Act No. 307/2006 Coll., on European Cooperative Society)
Reservation and confidentiality	10	Art. 53, par. 4; Art. 54
Operation of the representative body and procedure for the information and consultation of employees	11	Art. 73; 86; 87; 89; 90
Protection of employees' representatives	12	Art. 55; 84; 85
Misuse of procedures	13	Art. 14; Art. 65, par. 1
Compliance with this directive	14	Art. 14; Art. 65, par. 1
Link between this Directive and other provisions	15.1 – 15.2 15.3 15.4	Art. 57 Irrelevant in light of transposition Art. 281, par. 5/LC ⁶
Standard rules	Annex 1 Annex 2 Annex 3	Art. 73-79 Art. 86-90; 97; 98 Art. 91- 98

⁶ LC – Act No. 262/2006 Coll., Labour Code