

**Study on the implementation of the Directive
2003/72/EC (employee involvement in the European
cooperative society) in ten Member States**

NATIONAL IMPLEMENTATION REPORT



Slovakia

Content

EXECUTIVE SUMMARY	3
1. BACKGROUND	6
2. FORMAL ASPECTS OF THE IMPLEMENTATION	9
3. OBJECTIVE (ART. 1 OF THE DIRECTIVE)	9
4. DEFINITIONS (ART. 2)	10
5. PROVISIONS THAT APPLY TO SCE BASED IN THE MEMBER STATE	12
5.1 FIELD OF IMPLEMENTATION (ART. 15)	12
5.2 PROCEDURE FOR NEGOTIATION OF THE RIGHTS OF INVOLVEMENT OF WORKERS IN THE SCE	13
5.2.1 <i>Responsibility and Start of Procedure (Art. 3 (1))</i>	13
5.2.2 <i>Creation and Composition of the Special Negotiation Body (Art. 3 (2))</i>	14
5.2.3 <i>The Functions of the SNB (Art. 3 (3) and Art. 6)</i>	15
5.2.4 <i>The Workings of the SNB (Art. 3 (4, 5 a 7))</i>	16
5.2.5 <i>Duration of Negotiations (Art. 5)</i>	19
5.2.6 <i>Involvement Agreement (Art. 4)</i>	18
5.3 STANDARD RULES	20
5.3.1 <i>Field of Implementation (cases in which they are applied) (Art. 7)</i>	20
5.3.2 <i>Employees' Representative Bodies: Competencies, Composition and Standard Rules (Annex, Part 1 and 2)</i>	21
5.3.3 <i>Information and consultation - Part 2 of the Annex (Article 41 to 44 of the Act on SCE)</i> 23	
5.3.4 <i>Participation of Employees (Annex, Part 3 of the Directive)</i>	25
5.4 CONFIDENTIALITY OF INFORMATION (ARTICLE 10).....	26
5.5 SPIRIT OF CO-OPERATION (ARTICLE 11)	28
5.6 PROTECTION OF EMPLOYEES' REPRESENTATIVES (ARTICLE 12).....	28
5.7 MISUSE OF PROCEDURES (ARTICLE 13)	30
6. ACCESSORY PROVISIONS	31
7. RULES APPLICABLE TO SCES ESTABLISHED EXCLUSIVELY BY NATURAL PERSON OR SINGLE LEGAL ENTITY AND NATURAL PERSON (ARTICLE 8)	35
8. PARTICIPATION IN THE GENERAL MEETING OR SECTORAL MEETING (ARTICLE 9)	35
9. LEGAL PROCEDURES/SANCTIONS FOR NON-COMPLIANCE	36
10. CONCLUSIONS	36
BIBLIOGRAPHY	39
ANNEX I: NATIONAL GLOSSARY OF TERMS	40
ANNEX II: CORRESPONDENCE TABLE	42

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

Executive Summary¹

Delay in Transposition

Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees (the “**Directive**”) has not been transposed to the Slovak law in a due time.

The delay in its transposition was caused mainly by the fact of early (pre-matured) election in the Slovak Republic. The former (Dzurinda's) government had prepared the draft of the act transposing the Directive and submitted it to the parliament in spring 2006 (with aim to meet the deadline for the transposition being 18 August 2006). However, parliament decided not to handle the act before the election. After the election, “new” (Fico's) government was created and decided to redraft the draft of the act transposing the Directive prepared by Dzurinda's government. (In fact, this re-draft changed nothing crucial in the wording of the previous act's draft.)

Date and Method of Transposition

The draft of the Act on European Cooperative Society transposing the Directive was prepared and approved by the current Slovak government on 16 October 2006 (the “**Draft**”). It was submitted to the parliament on 23 October 2006 and the parliament passed it on 6 February 2007 under Act no. 91/2007 Coll. on European Cooperative Society (the “**Act on SCE**”). The Act on SCE became effective on 1 April 2007.

The Act on SCE itself refers to Regulation of the Council 1435/2003/EC (the “**Regulation**”) in respect of European Cooperative Society (“**SCE**”) setting up, registration, management and administration and governs only issues not covered within the Regulation.² Issues, which are covered neither under the Regulation nor the Act on SCE, are governed by provisions of the Slovak Commercial Code governing cooperative.

The Directive is transposed through third part of the Act on SCE. Most of transposed provisions are almost verbatim translation of the Directive.

Drawbacks in Transposition

However, under Slovak law, there are missing provisions under which:

- (i) “the method used to nominate, appoint or elect employee representatives should seek to promote gender balance” (see Article 3 (2) (b) last sentence and Part 1 (b) last sentence of the Annex of the Directive);
- (ii) also the local management must be informed about and in respect of regular reports drawn up by the competent organ (as laid down under Part 2 (b) last sentence of first paragraph of the Directive); and

¹ Report elaborated by Monika Čambáliková

² See Article 1 of first part of the Act on SCE

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

(iii) also the select committee shall be entitled to meet without the representatives of the competent organ being present (see Part 2 (d) of the Annex).

Transposition of Article 12 is not perfect, too. Please in this respect refer to section IV. “Common Provisions”, part c. “Protection of Employees’ Representatives” of this Report.

Problematic in respect of the transposition is the also fact that provisions governing confidentiality of information, especially those enabling the supervisory or administrative body of the SCE not to provide information that could seriously harm the SCE, are too general. There are missing detailed binding regulations or detailed explanations what information should be considered to be that one that could cause harm to the SCE.

Also use of wording under Slovak law: “Board of Directors or Administrative Board of participating legal entities” instead of wording of the Directive: “managing or administrative/competent organ of participating legal entities” is not correct as managing or administrative/competent organ of the participating legal entities does not have to be in each case Board of Directors or Administrative Board (Board of Directors is an executive and managing body of Slovak cooperative as well as an SCE established and registered in Slovak Republic if using two-tier system, i.e. in case of the two-tier system, the Board of Directors is only managing and executive body but not a supervisory body due to the fact that supervision is done by the Supervisory Board (on a second-tier). On the other hand, Administrative Board is an executive and managing as well as supervisory body of an SCE established and registered in Slovak Republic if using one-tier system.)

Transposition of Article 11 of the Directive is only partial and indirect. Under Article 31 (1) of the Act on SCE “*managing or administrative organ of the SCE commence negotiations with the SNB with aim to reach agreement on arrangements for the SCE's employees involvement*” and under provisions binding competent body of the SCE and the representative body to consult together in an appropriate time, comprehensible way and in adequate content (expressed in definitions of “information” and “consultation” under Article 28 of the Act on SCE).

Possibility to transpose voluntary provisions of the Directive (Article 4 (5), Article 10 (3)) was not used under the Slovak law.

Article 9 of the Directive on participation in General Meeting shall not be effective under, and is not transposed to, Slovak law due to the fact that pre-condition of Article 59 (4) of the Regulation is not met, i.e. Slovak law does not enable employees’ participation in the General Meeting. In case of the SCE established in a Member State, which’s law enables employees’ participation in the General Meeting, Slovak law does not provide explicit provisions regulating election and/or appointment of employees’ representatives from Slovakia to the General Meeting of the SCE. Therefore amendment of the Act on SCE could be helpful in this respect.

General Assessment of Transposition and Implementation

In spite of above mentioned drawbacks of the Directive transposition the Act on SCE meets purposes and main aims (namely to guarantee rights of involvement to the SCE’s employees) of the Directive.

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

Postponed transposition of the Directive (and so also postponed implementation of the Act important for enforceability of the Regulation in the Slovak Republic), was not notably discussed in Slovak public or media and according to available information it is not deemed to be very problematic in view of Slovak citizens. None relevant research was done in this respect, however “the silence about this issue” might be also the sign that no obvious interest in immediate setting up of the SCEs exists in the Slovak Republic.

At the time when there is none SCE established/incorporated in the Slovak Republic (and according to the publicly available information, none SCE is going to be incorporated in the Slovak Republic in the near future), it is impossible to speak about any transposition and implementation effects in practice. That is why the template of this report in part devoted to transposition and implementation effect is left blank.

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

1. Background

The Directive and especially the Regulation brought new type and form of the legal entity (an SCE) to the Slovak law. In history of the Slovak law, none similar legal concept has existed. Consequently, it is not possible to compare situation before the Directive transposition and after it. However, Slovak legal form of the cooperative exists. Historically the conception of a cooperative has been linked to the existence of a planned economy. Today the usage of the legal form of cooperatives for the legal entities is far less popular and far less frequent. In last years, only less than 0.3% of all legal forms of economic subjects in Slovakia are cooperatives.³ Out of all 1,535 cooperatives existing in Slovakia in 2008 only one cooperative had more than 1,000 employees; 14 cooperatives had 500 up to 999 employees; 14 cooperatives had 250 up to 499; 230 cooperatives had 50 up to 249 employees; 541 cooperatives had 10 up to 49 employees; and 680 cooperatives belonged to the category of employers with 0 up to 9 employees. (Source: Statistical Office of the Slovak Republic)

Legal Regulation of the Slovak Cooperative Society

Slovak cooperative is considered to be a legal entity. It is not considered to be a business company (as the cooperative can be established also for different purposes than profit gaining), but it is governed by the special part of the Commercial Code (similar as the business companies, e.g. limited liability company and joint-stock company are).

Legal Definition of Cooperative Society

Under Slovak law, a cooperative is governed under Articles 221 – 260 of Act No. 513/1991 Coll. Commercial Code. Slovak law defines cooperative as “*a community of unclosed⁴ number of persons/entities established for the purposes of entrepreneurial activities or procurement of economic, social or other needs of its members*”. In Slovak practice, there exist especially but not only (i) agricultural cooperatives (performing especially entrepreneurial activities and seeking profit)⁵, (ii) housing cooperatives (as communities of owners of particular flats in blocks of flats established with aim to jointly administrate the building/block of flats and its surrounding, not with aim to gain financial profit) and (iii)

³ In 2005: 0.31% of all economic subjects registered (existing) in Slovakia were cooperatives; in 2006 it was 0.28%, in 2007: 0.27% and in 2008: 0.26%. Economic subjects are all legal entities and natural persons performing any economic (not just business) activity, including public offices administrating state property.

⁴ Please note that the term “unclosed number“ (in Slovak: “*neuzavretý počet*“) used in the respective provision of Slovak law, which defines the cooperative, indicates the fact that maximal number of its members is unlimited, as well as the fact of certain “openness” of a cooperative, which means that its members may freely enter into as well as cease/leave their membership in a cooperative. The term “community of unclosed number of persons/entities” indicates especially (possibility of) floating membership base of the Slovak cooperative.

⁵ Due to the involuntary collectivisation during the communist regime, when private farmers were forced to submit their rights to land and other agricultural premises, staff and livestock to the cooperatives owned by the state, agricultural cooperatives in Slovakia have a long history. In many cases, after rights to land and still existing premises were transferred from the communist cooperatives back to its original owners (or better their successors), these put their ownership (land or premises) “back” to the registered capital of the cooperatives and became its members OR rent their land and premises back to the cooperative.

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

producing cooperatives of disabled persons (established for entrepreneurial activities as well as for procurement of social and economic needs of its members).

Membership in Cooperative Society

Minimum number of members to establish and maintain the cooperative is **either five natural persons or two legal entities**. Its maximum number is not limited. Members have to provide their contributions into the registered capital of the cooperative. Amount of members' contributions is not determined by law (monetary contributions as well as contributions in kind are allowed); its amount is determined under the Bylaws of the cooperative. Law, however, requires that **minimum registered capital** of the cooperative (summation of members' contributions) must be at least **EUR 1,250**. Members of the cooperative are not liable for the obligations of the cooperative in amount exceeding their unpaid contribution into the registered capital of the cooperative (however, Bylaws of the cooperative may state otherwise). The cooperative is liable for all its obligations up to (guarantees them by) all its property.

Bodies of the Cooperative Society

The bodies of the cooperative are (i) **General Meeting** (being the most “powerful” body of the cooperative. It decides on the most important matters of the cooperative, including adoption of Bylaws of the cooperative, under which most of organisational and administrative matters of the cooperative can be determined, division of the cooperative's profit, its business plan, increase or decrease of the registered capital of the cooperative, merger or transformation or even decision to wind-up cooperative. It also elects members of the Board of Directors and Supervisory Commission. Quorum for adoption of decisions at the General Meeting is a simple majority of all members present at the General Meeting. General Meeting decides by simple or in some cases qualified majority of votes.); (ii) **Board of Directors** (being statutory and executive body of the cooperative performing and procuring realisation of decisions adopted by the General Meeting and managing whole cooperative); (iii) **Supervisory Commission** (empowered to supervise all activities of the cooperative, being independent body, accountable only to the General Meeting. It must have at least three members and these cannot be members of the Board of Directors.); and (iv) other bodies of the cooperative pursuant to the Bylaws (if any). The Bylaws of a small cooperative, understand cooperative of less than 50 members, may establish that the General Meeting shall perform also functions of the Board of Directors and Supervisory Commission and these two shall not be established.

Employees' Participation in Bodies

Employees of Slovak cooperative (if not being also members of the cooperative) are **not entitled to vote**, appoint or otherwise **participate in creation of the organs/bodies** of the cooperative (they are not entitled to vote, appoint, nominate or refuse nomination of members of the Board of Directors, Supervisory Commission or Administrative Board). Employees of Slovak cooperative (if not being also members of the cooperative) have the same rights and duties (including employee involvement rights) as employees of other legal entities. In case of an employee, who is not a member of the cooperative, there is no difference between this employee and other Slovak employees.

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

The special law regulation (special legal regime) applies only on employees of the Slovak cooperative, who are at the same time also members of the cooperative. These employees – members are authorised to participate in creation of the organs/bodies of the cooperatives (i.e. they are entitled to vote, appoint, nominate or refuse nomination of members of the Board of Directors, Supervisory Commission or Administrative Board) and also are authorised to be fully informed about all matters and aspects regarding the cooperative as well as to vote (decide) on the General Meeting of the cooperative.

Procedure of Cooperative Society Establishment

To establish the cooperative, its potential/future members (at least five natural persons or two legal entities) must (i) meet on the first General Meeting that shall adopt Bylaws, determine amount of registered capital of the cooperative (at least EUR 1,250) and elect members of the Board of Directors and Supervisory Commission; (ii) bind themselves to pay-up their contributions into the registered capital in full and (iii) after at least one half of registered capital was paid-up by members, the petition to Commercial Register to register/incorporate the cooperative can be filed by the Board of Directors. The Commercial Register shall register the cooperative within five days after the complete and correct petition to its registration was filed. The cooperative is fully established/incorporated and may commence its activities after its registration within the relevant Commercial Register maintained by District Court in Slovakia.

Winding up of Cooperative Society

If cooperative ceases to meet certain legal requirements (e.g. number of its members is less than required minimum (due to the termination of some members membership) or its registered capital was decreased under EUR 1,250 or General Meeting did not vote Board of Directors or Supervisory Board within six months etc.) the court may wind-up the cooperative. The General Meeting may decide that the cooperative shall be wound-up. The cooperative shall definitely cease to exist after its deletion from the Commercial Register.

Special Provision

Please note that Bylaws of Slovak cooperative may establish that one of conditions of the membership in the cooperative is also employment relationship of the members to the cooperative. Where Bylaws bind each member of the cooperative to be also employee of the cooperative, Bylaws may also govern this employment relationship. However, Bylaws must respect Slovak labour law provisions and may depart from them only if regulation under Bylaws shall be more advantageous for the member/employee of the cooperative than labour law regulation is.

Disclaimer

Please note that above is only very general and brief overview of legal regulation of the cooperative in Slovakia, not covering all aspects of its legal regulation.

2. Formal aspects of the implementation

The Slovak legislator decided to transpose the Directive through adopting new act. The same act is also a mean for adopting of provisions necessary for the Regulation applicability and enforceability.

The preparation of this act was in its first phase (during Dzurinda's government) marked by the effort of its hurry transposition (with aim to meet the deadline for its transposition) and it was not consulted with social partners. Dzurinda's government contacted social partners only after the draft of the act transposing the Directive was approved by the government. Social partners strongly opposed this “method” of ex post consultation and refused it. The parliament refused to handle this draft of the act before the early (pre-matured) election took place, too.

After the election, “new” (Fico's) government was created and decided to redraft the draft of the act transposing the Directive prepared by Dzurinda's government. (In fact, this redraft changed nothing crucial in the wording of the previous act's draft.) This new government's draft of Act on European Cooperative Society transposing the Directive was delivered to **social partners (Confederation of Trade Unions of the SR/KOZ SR and Federation of Employers' Associations of the SR/AZZZ SR as well as National Union of Employers/RUZ) to comment on it**. Social partners submitted none objections against wording of the draft of the Act transposing the Directive to the government.

The draft of the Act on the SCE transposing the Directive was prepared and approved (after consultations with social partners) by the current Slovak government on 16 October 2006 (the “**Draft**”). It was submitted to the parliament on 23 October 2006. The parliament **passed the Draft on 6 February 2007 as Act no. 91/2007 Coll. on European Cooperative Society** (the “**Act on SCE**”). **Slovak Act on SCE became effective on 1 April 2007.**

In respect of the Act transposing the Directive there has not been initiated any national debate. It was subject of interest only of government, main social partners active on the national level (and only very partially of narrow circuit of labour law experts).

3. Transposition of the Directive. Objective (Art. 1)

The objective of the Directive is correctly expressed under Article 27 of the Act on SCE.

According to this Article 27 of the Act on SCE:

“Employees of the SCE, which has its registered seat in the territory of the Slovak Republic, employees of the subsidiary companies of the SCE and employees of establishments of the SCE (hereinafter referred to together as “employees of the SCE”) have a right of involvement in the SCE under the conditions stated by this Act. This right of employees' involvement shall be performed in accordance with the procedure/way/manner agreed under

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

Articles 29 to 35 of the Act⁶ or in accordance with procedure/way/manner established under Articles 36 to 46 of the Act⁷.

4. Definitions (art. 2)

Definitions are transposed especially through Article 28 (1) to (8) of the Act on SCE. Definition of SCE (but Slovak law uses full wording “European Cooperative Society” instead) is met under Article 1 of the Act on SCE. “Subsidiary” as well as “establishment” are generally known legal terms used in Slovak law and defined under the Slovak Commercial Code. Also “employees’ representatives” is a general term and it is defined under the Slovak Labour Code.

Under Article 1 of the Act on SCE: *“This Act governs issues of status of the European Cooperative Society with its registered seat in the territory of the Slovak Republic and issues connected with establishment, managing/administration and supervision of the European Cooperative Society, that are not governed under the Regulation.”* In spite of this wording, the Act on SCE provides for also rules in respect to election, appointment and protection of Slovak employees’ representatives in the SCEs established in other Member States. For example, Article 30 (2) of the Act on SCE states that “The members of the SNB representing employees of participating legal entities or concerned subsidiaries and establishments with their registered seat in the SR shall be elected or appointed in accordance with Article 244 of the Labour Code, regardless of the fact in which Member State the SCE shall have its registered seat.” Similarly, Article 39 of the Act on SCE establishes that: “The election or appointment of the representative body members, who shall represent employees of the SCE from other Member States (not from Slovakia) shall be governed by law of the respective Member State; and the same applies in case of representation of employees from Slovakia in the representative body of the SCE with its seat on the territory of other Member State (not Slovakia).” Relevant is also Article 36 (2): “If an SCE, concerned subsidiary and/or concerned establishment were established exclusively by natural persons or by natural persons and a single legal entity, which together employ fewer than 50 employees, or employ minimally 50 employees in only one Member State, employee involvement in the SCE itself shall be governed by the provisions of the Member State of the SCE’s registered office and employee involvement in its subsidiaries and establishments shall be governed by the provisions of the Member State where they are situated.”

Under Article 28 (2) of the Act on SCE, *participating legal entities* means legal entities directly participating in the establishment of the SCE.

Subsidiary means a company, in which other entity (company) has a majority of votes due to the fact that this entity holds shares of the company to which the majority of votes is attached, or due to the fact that it can - based on agreement with other entities - perform majority of voting rights in this company. (Article 66a of the Commercial Code)

⁶ corresponding to Articles 3 to 6 of the Directive

⁷ corresponding to provisions of Article 7 and 8 and the Annex of the Directive

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

Subsidiary of a participating legal entity or of an SCE means a company, over which the participating legal entity or the SCE exercises a dominant influence due to the fact that it either directly or indirectly holds a majority of registered capital/shares of the company, or holds the majority of votes attached to the shares ownership, or due to the fact that it can nominate more than half of all members of the Board of Directors, Supervisory Board or Administration Board of the company. (Article 28 (3) of the Act on SCE)

Concerned subsidiaries mean companies that are proposed to become subsidiaries of the SCE. (Article 29 (1) of the Act on SCE)

Concerned establishments mean establishments of the cooperative societies, which is proposed to become establishments of the SCE. (Article 29 (1) of the Act on SCE)

Employees' representatives means relevant trade union, employees'/work council or employees'/work trustee." (Article 11a (1) of the Labour Code)

"In a cooperative, in which members ("shareholders") of the cooperative are also employees of the cooperative, also special body of the cooperative elected by the General Meeting is deemed to be the employees' representative." (Article 11a (2) of the Labour Code)

Slovak law does not define who employees' representatives are under laws of other Member States (as Slovak legislator is not allowed to do so). These definitions are provided for under laws of the respective Member States and Slovak law acknowledges/respects them.

Representative body means body, which represents employees and is established upon agreement on manner and extent of the involvement of the SCE's employees⁸ for the purposes of informing them and consulting with them in relationship with the Board of Directors or Administrative Board⁹ in established extent¹⁰ and where it is applicable also for purposes of participation rights in relation to the SCE. (Article 28 (4) of the Act on SCE)

Special negotiating body means body established in accordance with Article 29 of this Act for the purposes of negotiations with the competent bodies of the participating legal entities about manner and extent of the involvement of the SCE's employees in managing/administration of the SCE. (Article 28 (5) of the Act on SCE)

Involvement of employees of the SCE means a mechanism, including right to information, consultation and participation in managing/administration, through which employees'

⁸ Please note that in accordance with Article 27 (1) of the Act on SCE, the term/definition "employees of the SCE"/"SCE's employees" covers employees of the SCE, which has its registered seat in the territory of the Slovak Republic, employees of the subsidiary companies of the SCE and employees of establishments of the SCE.

⁹ Under Slovak law, Board of Directors is a managing (and administrating) body in two tier system (supervisory body is Supervisory Commission). Administrative Board is a managing (and administrative) as well as supervisory body in one tier system.

¹⁰ The term "established extent" (used by Slovak law) means extent of the involvement of the SCE's employees agreed under agreement on manner and extent of the involvement of the SCE's employees concluded between the special negotiating body and Board of Directors or Supervisory Board of involved legal entities.

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

representatives may exercise their influence on decisions to be taken. (Article 28 (1) of the Act on SCE)

Information means provision of information to the special negotiating body, representative body, employees' representatives or employees themselves by Board of Directors or Administrative Board on questions, which concerns the SCE itself, 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, in a manner and with a content, which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with Board of Directors or of Administrative Board. Information must be provided and consulted at the appropriate time that the special negotiating body, representative body, employees' representatives or employees themselves may (in a manner and procedure agreed under Article 34 (2) of the Act) assess provided information and express its standpoint before projected measures are taken. (Article 28 (6) of the Act on SCE)

Consultation means dialogue and exchange of views between the special negotiating body, representative body, employees' representatives or employees themselves and the Board of Directors or Administrative Board at the appropriate time, comprehensible way and with appropriate content, which allows the special negotiating body, representative body, employees' representatives or employees themselves to express (on the basis of information provided) an opinion on measures envisaged by the Board of Directors or Administrative Board, which may be taken into account in the decision-making process within the SCE. (Article 28 (7) of the Act on SCE)

Participation in managing/administration of the SCE means mechanism under which representative body or employees' representatives or SCE's employees (if body representative is not established) may influence decision-making of the SCE's bodies through right to elect or appoint some of the members of the Supervisory Commission or Administrative Board or the right to recommend and/or oppose the appointment of some or all of the members of the Supervisory Commission and Administrative Board. (Article 28 (8) of the Act on SCE)

Please note that Slovak law recognises “direct” right of employees themselves to be informed, consulted as well as to participate in managing of the SCE if their representatives are not established/existing.

5. Provisions that apply to SCE based in the Member State

5.1 Field of Implementation (Art. 15)

The provision of Article 15 of the Directive is transposed to Slovak law through existence of the separate Act on SCE. The Act on SCE (transposing the Directive) and so governing the involvement of the SCE's employees constitutes the *lex specialis* in relationship to the Labour Code. The Labour Code is a *lex generalis* and governs involvement of employees in general and *inter alia* transposes Directive 94/45/EC as well as e.g. Directive 2002/14/EC. Pursuant to the legal theory, the *lex generalis* (the Labour Code as a general legal regulation of involvement of employees) shall apply only if *lex specialis* (the Act on SCE constituting

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

specific regulation of involvement of the SCE's employees) does not state something else. That means that the Act on SCE (transposing the Directive) shall apply in all issues/matters specifically governed by the Act on SCE. Other acts governing the issue of involvement of employees (in our case the Slovak Labour Code, transposing *inter alia* also Directive 94/45/EC and Directive 2002/14/EC) shall apply only if (and always if) the Act on SCE does not contain different regulation of the issue/matter.

Article 15 (1) second subparagraph of the Directive is transposed under Article 33 (1) of the Act on SCE. Under Article 33 (1) of the Act on SCE: *“The special negotiating body may - by the majority of votes established under Article 32 (2) of this Act - decide not to open negotiations on involvement of the SCE's employees or to terminate already opened negotiations; and involvement of the SCE's employees shall be restricted to right for informing and consulting in the extent established under the law of the Member State, in which the SCE has its employees. In this case, Articles 37 to 48 of this Act¹¹ shall not apply; in this case legal regulation of supranational information and consultation pursuant to the Labour Code shall apply accordingly, if conditions for its application are met.”* Legal regulation of supranational information and consultation of the Labour Code transposes Directive 94/45/EC. Thanks to the reference to the part of the Labour Code transposing Directive 94/45/EC under the Act on SCE (within its Article 33 (1)), Article 15 (1) second subparagraph of the Directive is met under Slovak law.

5.2 Procedure for Negotiation of the Rights of Involvement of Workers in the SCE

5.2.1 Responsibility and start of procedure (Art. 3 (1))

Article 3 (1) of the Directive is transposed via its almost verbatim translation under Article 29 (2) of the Act on SCE.

Under Slovak law, same as under the Directive, management or administrative organs of the participating legal entities are responsible for the commencement of the procedure.

In accordance with Slovak law, the **management or administrative organs** of participating legal entities **must commence procedure as soonest as possible**. They must take necessary steps to commence negotiations with employees' representatives of participating legal entities, concerned subsidiaries and concerned establishments about future involvement of the SCE's employees and provide employees' representatives or directly employees with following information:

- a) seat and legal form of all participating legal entities, concerned subsidiaries and concerned establishments;
- b) number of all employees as of the date of publishing the plan for the SCE establishment;

¹¹ Transposing the Annex of the Directive

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

- c) number of employees having right to influence composition of participating legal entities' supervisory or administrative bodies/organs and about manner and extent of this influence.

Under Slovak law, obligations of the management or administrative organs to commence the procedure and provide relevant information, binds the participating legal entities with the registered seat in the Slovak Republic also if the SCE shall have its seat outside the Slovak Republic.

Please note that the Act on SCE does not explicitly state that management or administrative organ of participating legal entities must commence negotiations as soon as possible *after draw up a plan for the establishment of the SCE*. The Act on SCE only binds management or administrative organ of participating legal entities to commence negotiations with employees *as soonest as possible*. However thanks to the definition of participating legal entities as legal entities directly participating in the establishment of the SCE as well as other provisions of the Act on SCE it is possible to conclude that negotiations must be commenced “as soonest as possible” in the course of process of the SCE establishment. And the soonest moment is the moment when participating legal entities draw up a plan for the SCE establishment. But to make it indisputable, it would be appropriate to add wording “*after draw up a plan for the establishment of the SCE*” to Article 29 (2) of the Act on SCE.

Article 29 (2) of the Act on SCE states: “*Board of Directors or Administrative Board of the participating legal entities shall as soon as possible take the necessary steps to commence negotiations with employees' representatives of these participating legal entities, concerned subsidiaries and establishments about future involvement of employees of the SCE. Board of Directors or Administrative Board of participating legal entities are obliged to - without undue delay - provide employees' representatives or all employees with information about seat and legal form of all participating legal entities, concerned subsidiaries and concerned establishments and about number of all employees as of the date of publishing the plan for the SCE establishment, and about number of employees having right to influence composition of participating legal entities' bodies/organs and about manner and extent of this influence. These obligations bind Board of Directors or Administrative Board of the participating legal entities with the registered seat in the SR also in the case that the SCE shall have its seat outside the SR, in another Member State.*”¹²

5.2.2 Creation and Composition of the Special Negotiation Body (Art. 3 (2))

Article 3 (2) of the Directive is correctly transposed under Articles 29 (1) and 30 of the Act on SCE.

Under Article 29 (1) of the Act on SCE: Special negotiating body (the “**SNB**”) represents employees of the participating legal entities, concerned subsidiaries and concerned establishments on the negotiations about involvement of employees of the SCE. SNB is

¹² Please note that using of term “*Board of Directors or Administrative Board of the participating legal entities*” under Slovak law instead of the Directive’s wording “*management or administrative organs of the participating legal entities*” is not appropriate one due to the fact that participating legal entities may have different management or administrative organs than Board of Directors or Administrative Board.

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

composed of employees' representatives of participating legal entities, employees' representatives of concerned subsidiaries and employees' representatives of concerned establishments.

Manner and procedure of creation of the SNB is governed under Article 30 of the Act on SCE:

*“Number of seats in the SNB shall be determined in that way **that for each 10%, or a fraction thereof, of employees of participating legal entities and concerned subsidiaries and establishments who are employed in the same Member State, counted from the whole number of all employees of all participating legal entities and concerned subsidiaries and establishments in all Member States taken together, there shall be one seat in the SNB. The number of employees shall be the number of employees as of the date of publishing the plan for the SCE establishment.**”* (Art. 30 (1) of the Act on SCE)

Article 3 (2) (a) (ii) of the Directive handling with case of merger is duly transposed through Article 30 (3, 4) of the Act on SCE: “30 (3): *If an SCE is formed by way of **merger** and seats in the SNB is, in accordance with this Act or law of the relevant Member State, not occupied in the way, that employees from each participating entity, which should cease to exist, shall be represented by at least one representative from these employees or elected or appointed directly or indirectly by these employees, there are **such further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating legal entity.*** 30 (4): *If the number of the SNB members enhanced in accordance with subparagraph 30 (3) above in all Member State shall exceed the number of additional seats available pursuant to the 30 (1) for more than 20%, **the number of seats of the SNB shall be increased for 20% and additional seats shall be allocated to cooperatives in different Member States by decreasing order of the number of employees they employ**”.*

Article 3 (2) (b) of the Directive is transposed under Article 30 (2, 5 - 11) of the Act on SCE. The drawback in transposition of Article 3 (2) (b) of the Directive is **missing statement that “the methods used to nominate, appoint or elect employee representatives should seek to promote gender balance”**. For further detail please refer to section V. Accessory Provisions of this Report.

5.2.3 The Functions of the SNB (Art. 3 (3) and Art. 6)

Article 3 (3) of the Directive is recognised under Article 31 (1) of the Act on SCE:

According to Article 31 (1) of the Act on SCE:

“The SNB and Board of Directors or Administrative Board of the participating legal entities shall determine, by written agreement, arrangements for (manner of) involvement of employees in the managing of the SCE.

Board of Directors or Administrative Board of the SCE shall inform the SNB without undue delay after its constitution about:

- a) drafted plan of the SCE establishment,

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

- b) all information about process of its establishment until its registration within the Commercial Registry,
- c) number of all employees of all participating legal entities,

and commence negotiations with the SNB with aim to reach agreement on arrangements for (manner and extent of) the SCE's employees involvement. This applies also to participating legal entities with their registered seat in the territory of the SR also if the registered seat of the SCE will be in a different Member State.”

Please note that Article 4 (1) of the Directive is partially expressed in Article 31 (1) of the Act on SCE, according to which “*managing or administrative organ of the SCE commence negotiations with the SNB with aim to reach agreement on arrangements for the SCE's employees involvement*”.

Article 6 of the Directive is transposed via Article 27 of the Act on SCE, under which the right to the involvement of employees of the SCE with its registered seat in the SR shall be exercised in a way/manner agreed under Articles 29 - 35 of this Act (transposing Articles 3 to 6 of the Directive) or in a way/manner established under Articles 36 to 46 of this Act (transposing Articles 7 and 8 and Annex of the Directive).

5.2.4 The Workings of the SNB (Art. 3 (4, 5 a 7))¹³

Article 3 (4) of the Directive is transposed via its almost verbatim translation under Article 32 (1, 2) of the Act on SCE:

*“(1) The SNB shall take **decisions by an absolute majority of its members**, provided that such a majority also represents **an absolute majority of the employees** of all participating legal entities, concerned subsidiaries and establishments, unless this Act state otherwise. Each member shall have one vote.*

¹³ Article 3 (6) of the Directive is properly transposed under Article 33 (1, 2, 3) of the Act on SCE. Article 33 (1, 2, 3) of the Act on SCE establishes:

“(1) The special negotiating body may - by the majority of votes established under Article 32 (2) of this Act - decide not to open negotiations on involvement of the SCE's employees or to terminate already opened negotiations; and involvement of the SCE's employees shall be restricted to right for informing and consulting in the extent established under the law of the Member State, in which the SCE has its employees. In this case, Articles 37 to 48 of this Act (note: Articles 37 to 48 transpose the Annex of the Directive) shall not apply; in this case legal regulation of supranational information and consultation pursuant to the Labour Code shall apply accordingly, if conditions for its application are met.

(2) If at least 10% of employees of the SCE, its subsidiaries or establishments or their representatives requests in writing re-establishment of the special negotiating body (re-openness of negotiations), the SCE shall re-establish (re-open) it after the lapse of two-years from approval of the decision under (1) above; unless parties agree on sooner re-opening of the negotiations. If the special negotiating body decides to re-open negotiations and the agreement on manner and extent of the SCE's employees' involvement has not been entered into, Articles 37 to 48 of this Act shall not apply in respect of the provision in the previous sentence.

(3) If the SCE is going to be or was established by transformation of the cooperative society, whose employees have (or at the moment of transformation had) right to influence composition of bodies/organs of that cooperative society, the provisions under (1) and (2) above shall not apply to such SCE.”

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

*(2) Should the agreement on manner and extent of involvement of the SCE's employees lead to a **reduction of participation rights** in comparison with situation if that agreement was not entered into/concluded, the majority required for a decision to approve such agreement shall be the **votes of two thirds of the members of the SNB representing at least two thirds of the employees** of participating legal entities, concerned subsidiaries and establishments, including the votes of members representing **employees employed in at least two Member States**¹⁴; this shall not apply in cases where participation (right to influence composition of bodies/organs) in participating legal entities covers*

- less than 25 % of the overall number of employees of the participating legal entities in the case of an SCE to be established by way of merger or

- less than 50% of the overall number of employees of the participating legal entities in the case of an SCE to be established by any other way."

Article 3 (5) of the Directive is met under Article 31 (2,4) of the Act on SCE, pursuant to which:

*"The SNB may invite experts to the negotiations. Regardless of number of invited experts, the participating legal entities shall borne **expenses only for one expert for relevant sphere**". (Article 31 (2) of the Act on SCE)*

"The SNB may decide that it shall inform other organisations and associations about commencement of the negotiations. Obligation of confidentiality covers also these organisations and associations". (Article 31 (4) of the Act on SCE)

Article 3 (7) of the Directive is recognised under Article 31 (3) of the Act on SCE, according to which:

*"Participating legal entities shall provide for **sufficient financial funds/sources, material sources and organisational precondition for the appropriate performance of the SNB's tasks to the SNB and its members**. Members of the SNB are entitled especially for compensation for the expenses used for the performance of their task; they are not entitled for the remuneration for the performance of tasks of the member of the SNB. Participating legal entities shall in advance set aside (from the determined budget) relevant financial sources for compensation of costs needed especially for organisational arrangement of the negotiations of the SNB, translation costs, travel expenses, accommodation, meals expenses and costs for experts. This binds participating legal entities with its registered seat in the SR also if the registered seat of the SCE will be outside of the SR."*

Limit to fund "one expert for relevant sphere" is stated under Article 31 (2) of the Act on SCE. This limit might be interpreted (and understood) in a way that costs for one expert per each (relevant) sphere (e.g. law, sociology, finance, technique etc.) shall be borne by the participating legal entities. However, such interpretation shall be very probably refused and challenged by the participating legal entities. Current wording of the Slovak law in this

¹⁴ This provisions solves the situation when parties wish to agree on reduced extent of employees' rights under the agreement on manner and extent of involvement of the SCE's employees (- reduced in comparison with situation if no agreement is concluded) and requires higher majority of votes to conclude such agreement.

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

respect (whether to fund only one expert of all experts invited by the SNB, who is expert on the relevant sphere or to fund one expert for each separate sphere/field, which is relevant in respect of particular negotiations) is unclear and binding interpretations are (as far as now) missing. It is possible that also interpretation of the term “relevant sphere” shall be disputable. According to previous experience, it is very probable that the final interpretation shall depend on the usual practice in other EU Member States, i.e. to limit the funding to one expert only.

5.2.5 Involvement Agreement (Art. 4)

Article 4 of the Directive is duly transposed under Article 31 (1) and especially under Article 34 of the Act on SCE.

Under Article 31 (1) of the Act on SCE, Board of Directors or Administrative Board of the SCE commences negotiations with the SNB **with aim to reach agreement** on arrangements for the SCE's employees' involvement.

The agreement on SCE's employees' involvement concluded under Slovak law must contain all requirements as required under the Directive. Same as under the Directive, the agreement “has priority” over method/way of involvement established under the law and performed through representative body. Freedom of parties to agree information and consultation procedure and its characteristics, prerequisites, conditions etc. appropriate for their purposes and different from that one established under the law is limited only by facts that (i) it must be agreed in sufficient detail (and agreement must contain certain prerequisites); (ii) persons active under this agreement substituting members of the representative body must be provided with the same protection and guarantees and obliged with the same duty of confidentiality as members of the representative body are and (iii) the agreement must provide for at least the same level of all elements of employees' involvement as the ones existing within the cooperative to be transformed into the SCE if the SCE is established by means of transformation of the cooperative.

Under Article 34 of the Act on SCE:

(1) “The agreement on manner and extent of the SCE's employees involvement is concluded between the SNB and relevant Board of Directors or Administrative Body (i.e. management or administrative organs) of the participating legal entities (the SNB and management or administrative organs together hereinafter referred to as the “parties”). This agreement must be executed in writing and must contain:

- (a) the scope of the agreement,
- (b) the composition of the representative body, number of its members and allocation of seats in the representative body,
- (c) entitlements/rights of the representative body, which it has towards the Board of Directors or Administrative Body and procedure of informing the representative body by the Board of Directors or Administrative Body and procedure of consulting between the Board of Directors or Administrative Body and the representative body,

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

- (d) the frequency of meetings of the representative body and method of convening of the representative body sessions,
- (e) the financial and material resources to be allocated to the representative body,
- (f) the date of entry into force of the agreement and its duration,
- (g) the cases when it is necessary to commence new negotiations on SCE's employees' involvement, including structural changes in the SCE, its subsidiaries and establishments ,and procedure for these negotiations.

(2) If, during negotiations, the parties decide to establish one or more information and consultations procedures instead of a representative body establishment, the arrangement for implementing those procedures must be arranged in detail under the agreement.¹⁵ In this case, provisions of (1) (b) to (e) above shall not apply. Persons, who shall under the agreement perform right for informing and consulting instead of the representative body, are governed under Article 31 (3)¹⁶ and Article 47¹⁷ - 48¹⁸ accordingly.

(3) If, during negotiations, the parties decide to establish right of the SCE's employees to influence composition of the SCE's bodies/organs, the agreement must contain detailed arrangements on manner and extent of this influence. Especially it must determine number of members of the Administrative Body or the Supervisory Commission, who shall be voted, appointed or recommended by employees or their representatives or with whose appointment or election employees or their representatives must agree with and a way/manner, in which employees may perform this right.¹⁹

(4) The arrangement under the agreement shall not, unless provision is made otherwise therein, be subject to Articles 37 - 46 of the Act.²⁰

(5) If the SCE is established by means of transformation of the cooperative, the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the cooperative to be transformed into the SCE".²¹

5.2.6 Duration of Negotiations (Art. 5)

Article 5 of the Directive is correctly transposed to Slovak law under Article 35 (1) of the Act on SCE. As required under the Directive, negotiations on arrangement for the SCE's employees involvement may not exceed six or if it is agreed twelve months.

“Negotiations on arrangement for (manner and extent of) the SCE's employees involvement shall commence as of the SNB establishment. The duration of this negotiation may not exceed six months after the SNB was established. The parties may agree to extend/suspend

¹⁵ Transposes Article 4 (2) (f) of the Directive

¹⁶ transposing Article 3 (7) of the Directive

¹⁷ transposing Article 10 of the Directive

¹⁸ transposing Article 12 of the Directive

¹⁹ Transposes Article 4 (2) (g) of the Directive

²⁰ Transposes Article 4 (3) of the Directive

²¹ Transposes Article 4 (4) of the Directive

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

this deadline up to one year after the SNB was established". (Article 35 (1) of the Act on SCE)

5.3 Standard Rules (Art. 7)

5.3.1 Field of Implementation

Article 7 is duly transposed to the Slovak law under Article 35 (2 - 7) of the Act on SCE.

Pursuant to Article 35 of the Act on SCE:

(2) Where no written agreement on manner and extent of SCE's employees has been concluded by the deadline laid down in Article 35 (1)²² or during the period before lapse of this deadline the SNB has not taken the decision pursuant to Article 33 (1)²³ and the competent organ of each of the participating legal entities decides to accept the application of Articles 37 to 48²⁴ involvement of the SCE's employees shall be governed by Articles 38 to 44²⁵; and where conditions of sub-articles 3 to 5 below are met involvement of the SCE's employees shall be governed by Article 46²⁶.

(3) In the case of an **SCE established by transformation**, involvement of the SCE's employees shall be governed by Article 46 if employees of the cooperative have - as of the date preceding its transformation - right to participation.

(4) In the case of an **SCE established by merger**, involvement of the SCE's employees shall be governed by Article 46 if at least 25% of the total number of employees of all participating legal entities have – as of the date preceding to the SCE registration - right to participation applied in one or more participating legal entities or if less than 25% of the total number of employees of all participating legal entities have – as of the date preceding to the SCE registration - right to participation applied in one or more participating legal entities and the SNB so decides.

(5) In the case of an **SCE established by any other way** (not by merger or transformation), involvement of the SCE's employees shall be governed by Article 46 if at least 50 % of the total number of employees employed by all participating legal entities have – as of the date preceding to the SCE registration - right to participation applied in one or more participating legal entities or if less than 50% of the total number of employees of all participating legal entities have – as of the date preceding to the SCE registration - right to participation applied in one or more participating legal entities and the SNB so decides.

(6) The SNB may decide that condition of sub-article 4 above shall not be taken into account for the purposes of sub-article 2 above.

(7) If the **forms of participation** applied in various participating legal entities pursuant to sub-articles 4 or 5 above **are vitally different, the SNB shall decide** which of the forms

²² Transposing Article 5 of the Directive

²³ Transposing Article 3 (6) of the Directive

²⁴ Transposing whole Annex of the Directive and Articles 10 and 12 of the Directive

²⁵ Transposing Part 1 and 2 of the Annex of the Directive

²⁶ Transposing Part 3 of the Annex of the Directive

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

must be established in the SCE; and shall inform the Board of Directors or Administration Board²⁷ of the participating legal entities of any decisions taken pursuant to this paragraph.

5.3.2 Employees' Representative Bodies: Competencies, Composition and Standard Rules (Annex, Part 1 and 2)

Part 1 and 2 of the Directive are transposed under Articles 37 - 44 of the Act on SCE. Slovak transposition of Part 1 and 2 of the Annex is (almost) correct save for:

- i) missing statement that “*the methods used to nominate, appoint or elect employee representatives should seek to promote gender balance*” (see Part 1 (b) last sentence of the Annex);
- ii) missing obligation of the representative body to inform local management (stated under Part 2 (b) first subparagraph of the Annex); and
- iii) missing entitlement of select committee to meet without the representatives of the competent organ being present (recognised under Part 2 (d) of the Annex).

Composition of the representative body - Part 1 of the Annex (Articles 37, 38, 40 and 41 of the Act on SCE)

In accordance with Article 37 (1) of the Act on SCE, Articles 38 to 48 of the Act shall apply to involvement of the SCE employees if agreement on arrangement for (manner and extent of) involvement of the SCE employees or this Act states so.

Pursuant to Article 37 (2) of the Act on SCE: The SCE's employees have right to information and consultations in extent determined under this Act. They exercise this right through representative body or other manner/way/procedure determined under the agreement pursuant to Article 34 (2) of this Act.

Article 37 (1, 2) of the Act on SCE in the way cited above reflects **first sentence of Part 1 of the Annex**.

Part 1 (a) of the Annex is transposed under Article 38 (1) of the Act on SCE: “*Representative body comprises of employees of the SCE²⁸ elected or appointed by representatives of employees of the SCE or directly by employees of the SCE themselves. Term of office of the representative body members is five years.*”

Part 1 (b) of the Annex is transposed via Articles 37 (4) and 38 (2) of the Act on SCE. However, transposition of Part 1 (b) is incomplete as establishment of promotion of gender balance is missing under the Slovak law.

²⁷ It is not correct that Slovak law uses the term “Board of Directors or Administrative Board of the participating legal entities” instead of the term “competent organs of the participating legal entities” (used under the Directive) as participating legal entities might have different competent organs than Board of Directors or Administrative Board.

²⁸ I just remind that the term “employees of the SCE/SCE's employees” covers employees of the SCE as well as employees of subsidiaries and establishments of the SCE under Slovak law.

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

Article 37 (4) of the Act on SCE: “Members of the representative body, who should be elected or appointed from employees of the SCE with its registered seat in the Slovak Republic, shall be appointed by employees' representatives during their joint session²⁹. If there are no employees' representatives active in the SCE, concerned subsidiary or establishment, employees themselves may elect their representative who shall represent them on the joint session. The division of votes shall be done proportionally to number of employees represented. This shall apply also in the case of election or appointment of employees' representatives of employees of concerned subsidiary or establishment located in the Slovak Republic when the SCE itself is located outside of the Slovak Republic.”

Article 38 (2) of the Act on SCE: “Number of seats in the representative body shall be determined in that way that for each 10%, or part thereof, of the SCE's employees employed in the same Member State, counted from the total number of all SCE's employees taken together, there shall be one seat in the representative body. The number of the representative body members shall correspond to the number of seats determined in accordance with first sentence.”³⁰

Article 40 (2) of the Act on SCE transposes **Part 1 (c)** of the Annex: “Where its size so warrants, the representative body shall elect select committee from among its members. The select committee shall have at least three members. Members of the select committee coordinate activities of the representative body and act on behalf of the representative body in accordance with its resolutions.”

Pursuant to Article 40 (1) of the Act on SCE (which transposes **Part 1 (d)** of the Annex): “*The representative body shall adopt its rules of procedure during its first session.*”

Article 38 (3) of the Act on SCE transposes **Part 1 (e)** of the Annex: “If, during the term of office of the representative body, **the number of employees of the SCE in one Member State shall increase** in that number, that they should be - in accordance with 38 (2) above - entitled for more seats in the representative body, **the relevant number of new seats shall be created and allocated for their representatives**. The term of office of these additional representatives/members of the representative body shall expire at the same time as term of office of the (original members of the) representative body.”

Part 1 (f) of the Annex is transposed via Article 38 (5) of the Act on SCE: “*The representative body shall inform the Board of Directors or Administrative Board about its composition and each change of its composition without undue delay.*”

Part 1 (g) of the Annex is transposed via Article 41 (2,3) of the Act on SCE: “After the lapse of four years after its establishment, the representative body shall decide whether to re-open negotiations for the consultations of the agreement on arrangements for (manner and extent of) the SCE's employees' involvement or to continue to apply Articles 37 to 48 of the Act³¹. If decision has been taken to re-open negotiations of an agreement, Articles 33, 34 and 35 (2)

²⁹ All employees' representatives shall meet on this joint session and elect/appoint the members of the representative body.

³⁰ Transposes Annex, Part 1, (b) of the Directive

³¹ These Articles of the Act transposes the Annex of the Directive

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

shall apply *mutatis mutandis*, in which case the representative body shall negotiate with competent SCE's body. Where, by the deadline under Article 35 (1), no agreement has been concluded, the law of the respective Member State shall apply to the involvement of employees.”

Information and consultation - Part 2 of the Annex (Article 41 to 44 of the Act on SCE)

Part 2 (a) is transposed via its verbatim translation under Article 41 (1) of the Act on SCE: “The competence of the representative body is limited to questions which concerns the SCE itself, its subsidiaries or establishments situated in another Member State or which exceed the powers of decision making organs in a single Member State.”

Due to the fact that the Act on SCE establishes right to information in Article 43 and right to consultation in separate Article 44, **Part 2 (b)** is transposed under Articles 43 (1,2) and 44 (1). In spite of this fact, its transposition is correct, save for the missing obligation to inform local management accordingly when informing the representative body about regular report.

Article 43 (1) of the Act on SCE: “The Board of Directors or the Administrative Board shall regularly, at least once a year, provide the representative body with the report about anticipated progress of the business of the SCE.”³²

Article 43 (2) of the Act on SCE: “The Board of Directors or the Administrative Board shall, without undue delay and beforehand provide the representative body with the agenda for each meeting of the Board of Directors, Administrative Board or Supervisory Commission and copies of documents provided to the General Meeting.”³³

Article 44 (1) of the Act on SCE: The Board of Directors or the Administrative Board shall, in an appropriate time period, consult the report referred to under Art. 43 (1), with emphasis on structure of the SCE, its economic and financial situation, anticipated progress of the business, production and sale, situation and anticipated progress of employment and investment, significant changes in organisation, introduction of new working methods and procedures, relocation or transfer of production/undertaking, merger, organisational changes or closure of establishments and undertakings and collective redundancies.³⁴

Part 2 (c) is correctly transposed via below cited Articles 43 (3) and 44 (2,3,4) of the Act on SCE.

“The Board of Directors or the Administrative Board shall, without undue delay, **inform** the representative body about all exceptional circumstances that could in a considerable extent influence interests of employees of the SCE, especially information about relocations or closures of establishments or undertakings or about collective redundancies.”³⁵ (Article 43 (3) of the Act on SCE)

³² Transposes Annex, Part 2 (b) first paragraph of the Directive

³³ Transposes Annex, Part 2 (b) second paragraph of the Directive

³⁴ Transposes Annex, Part 2 (b) first and third paragraph of the Directive

³⁵ Transposes Annex, Part 2 (c) first paragraph of the Directive

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

“If the circumstances as referred to under Art. 43 (3) occur, the Board of Directors or the Administrative Board shall meet with the representative body or selected committee upon their request without undue delay with aim to **provide information and consult** issues that can in considerable extent influence interests of the SCE's employees.”³⁶ (Article 44 (2) of the Act on SCE)

“If the Board of Directors or the Administrative Board decides not to act in accordance with standpoint of the representative body or selected committee announced during the joint meeting referred to under Art. 44 (2), the Board shall, before realisation of this act/step, satisfy the new request of the representative body or selected committee to a further joint meeting **with an aim to seeking an agreement**.”³⁷ (Article 44 (3) of the Act on SCE)

“Where, in case of Article 44 (2) and (3) above, select committee acts on behalf of the body representative, those members of the representative body who represent employees who are directly concerned by the measures in the question shall also have the right to participate on joint meetings; their right to participate shall be, in this case, applicable also to all closed meetings of select committee.”³⁸ (Article 44 (4) of the Act on SCE)

Transposition of **Part 2 (d) first sentence** is voluntary (as “Member State *may* lay down rules on chairing of meetings”) and Slovak **legislator decided not to transpose it**.

Transposition of **Part 2 (d) second sentence** is incomplete due to the fact that Slovak law establishes only that: “Board of Directors or Administrative Board shall procure that the representative body can whenever meet on its closed meeting/session without the members of Board of Directors or Administrative Board being present” (Article 42 (2) first sentence of the Act on SCE). Slovak law omits to entitle also select committee (and enlarged select committee) to meet whenever on its closed meeting/session without the members of competent organ being present. However, there is possible to interpret the term representative body used in Article 42 (2) first sentence of the Act on SCE extensively, namely so that it covers also term select committee in respect to entitlement to closed meetings.

Part 2 (e) is transposed via Article 43 (4) of the Act on SCE according to which: “The representative body shall, without prejudice to Article 37 (5), provide employees' representatives or directly employees of the SCE, its subsidiaries or establishments with information acquired from the Board of Directors or the Administrative Board in the course of their performance and about outcomes of the negotiations.” Article 37 (5) establishes that members of select committee as well as its experts/experts consulted by them are covered *inter alia* by Article 47, which transposes Article 10 of the Directive on confidentiality. That means that **the representative body shall provide employees with information acquired from the Board of Directors or the Administrative Board/Body only if requirements of confidentiality (obligation of keeping relevant information confidential) are met**.

Part 2 (f) is transposed through Article 42 (2) second sentence of the Act on SCE based on which: “The representative body **may invite experts** to assist it by negotiations with Board

³⁶ Transposes Annex, Part 2 (c) first paragraph of the Directive

³⁷ Transposes Annex, Part 2 (c) second paragraph of the Directive

³⁸ Transposes Annex, Part 2 (c) third paragraph of the Directive

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

of Directors or Administrative Board.” Due to the fact that select committee is, in fact, part of the representative body and it act in the name and on behalf of the representative body, (also) select committee may invite experts to assist it.

Part 2 (g) is transposed via Article 42 (1) of the Act on SCE pursuant to which: “Members of the representative body are entitled to **time off without loss of wage** for the necessary period of time for participation on trainings that are necessary for the fulfilment of their tasks.”

Part 2 (h) is transposed via Article 42 (3) and Article 42 (2) last sentence of the Act on SCE. According to Article 42 (3) of the Act on SCE: “**The SCE shall provide the representative body and its members with sufficient financial funds**, material sources and organisational prerequisites needed for duly fulfilment/performance of its tasks. Members of the representative body are entitled to compensation for costs spent in accordance with performance of their tasks; they are not entitled to remuneration for performance of their tasks. The SCE shall beforehand determine relevant amount of financial funds in its budget for payment of necessary/needed costs, especially for organising of representative body meetings, interpretation and translation facilities, remuneration of experts, travelling expenses, accommodation and meal vouchers.” In accordance with Article 42 (2) last sentence: “Regardless of the number of experts invited to assist the representative body, the SCE shall borne costs for assistance of one expert for relevant sphere only.” Limit to borne costs for “one expert for relevant sphere”. This provision of Article 42 (2) of the Act on SCE might be interpreted and understood (same as the similar provision of Article 31 (2) of the Act on SCE regarding SNB) in a way that costs for one expert per each (relevant) sphere (e.g. law, sociology, finance, technique etc.) shall be borne by the SCE. However, such interpretation shall be very probably refused and challenged by the SCEs. Current wording of the Slovak law in this respect (whether to fund only one expert of all experts invited by the representative body, who is expert in the relevant sphere or to fund one expert for each separate sphere/field, which is relevant in respect of particular negotiations) is unclear and binding interpretations are (as far as now) missing. It is possible that also interpretation of the term “relevant sphere” shall be disputable. According to previous experience, it is very probable that the final interpretation of this Slovak law provision shall depend on the usual practice in other EU Member States , i.e. to limit the funding to one expert only.

Participation of Employees (Annex, Part 3 of the Directive)

Part 3 of the Annex of the Directive is correctly transposed into Slovak law under Article 46 of the Act on SCE.

Pursuant to Article 45 of the Act on SCE: “**Employees of the SCE have the right to influence composition of the SCE's organs** in a manner and extent determined under the Statute of the SCE based on outcomes of negotiations about involvement of employees of the SCE. If the agreement about manner and extent of the SCE's employees' involvement states so or if this Act states so, the involvement of the SCE's employees shall be governed under Article 46.”

Part 3 (a) is transposed via Article 46 (1) of the Act on SCE, based on which: “If the SCE was established by transformation, the employees of the SCE shall have the right to influence composition of its organs/bodies at the same way and at the same extent as they had in a cooperative based on law applicable to it as of the date preceding to transformation.”

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

Part 3 (b) is transposed through Article 46 (2) first sentence of the Act on SCE, according to which: “If the SCE was established otherwise (not by the transformation), the SCE’s employees shall have the right to influence composition of its organs at the extent which corresponds/is equal to the highest proportion in force in any of participating legal entities as of the date preceding to establishment of the SCE.”

Part 3 (c) is transposed via Article 46 (2) second sentence of the Act on SCE: “If employees of none of the participating legal entities had right to influence composition of its organs, employees of the SCE shall not have this right, too; unless the Bylaws of the SCE shall establish something else.”

Part 3 (d) is transposed via Article 46 (3) and (4) of the Act on SCE: “The representative body shall decide on the allocation of seats within Administrative Board or Supervisory Commission in accordance with Article 46 (1) or (2) above among the members representing the employees from the various Member States or on the way in which the SCE's employees from respective Member States or their representatives may recommend or oppose the appointment of the members of administrative or supervisory body. The representative body shall decide according to the proportion of the SCE's employees in each Member State in relation to all employees of the SCE in all Member States. If the employees of one or more Member States are not represented in administrative or supervisory body by use of this proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SCE's registered office where that is appropriate.” And according to 46 (4): “Method of allocation of seats in administrative or supervisory body, that are – based on decision of the representative body pursuant to Article 46 (3) - allocated to representatives of employees from another Member State (not from Slovak Republic), shall apply law of this Member State.”

Part 3 (e) is transposed in Article 46 (5), based on which “Members of the Administrative Board or Supervisory Commission of the SCE who has been elected, appointed or recommended by the SCE’s employees or their representatives shall be a full member with the same rights and obligations as the members elected or appointed by general meeting of the cooperative.”

5.4 Confidentiality of information (Article 10)

Article 10 of the Directive is transposed under Article 47 of the Act. The drawback of this Article transposition is too general provision regarding specification and definition of information that do not have to be provided and/or can be provided in confidence.

Under the Slovak law (Article 47 (1) of the Act on SCE): “*Members of the SNB, experts as well as members of the representative body may not reveal any information, which has been given to them during, and in connection with, negotiations in confidence. This obligation shall continue to apply also after the expiry of their terms of office.*” This Article 47 (1) of the Act on SCE transposes **Article 10 (1) first and third sentence of the Directive**.

Article 10 (1) second sentence of the Directive is transposed via Article 34 (2) last sentence of the Act on SCE, based on which: “*Persons, who shall under the agreement concluded in accordance with Article 34 (transposing Article 4 of the Directive) perform right for*

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

informing and consulting instead of the representative body, are governed under Article 31 (3)³⁹ and Article 47⁴⁰ and 48⁴¹ accordingly". That means that persons performing right for informing and consulting instead of the representative body under the agreement concluded in accordance with Article 34 (transposing Article 4 of the Directive) shall be bound by the same duty of confidentiality as members of the representative body are.

Article 10 (2) of the Directive is transposed via Article 47 (2) first sentence of the Act on SCE, which establishes that: *"Supervisory Board or Administration Board of the SCE or of the participating legal entity⁴² may refuse to provide information, which is of that nature that its reveal could, according to objective criteria, seriously harm the functioning of the SCE or participating legal entity, or their subsidiaries or establishments; or it may provide certain information, which is provided in connection with the negotiations, in confidence."* Slovak legislator decided **not to transpose voluntary provision** of second subparagraph of Article 10 (2) of the Directive and did not made possibility of the relevant SCE's body not to provide certain information subject to prior administrative or judicial authorisation.

Slovak legislator also **did not use possibility to voluntarily transpose Article 10 (3) of the Directive** and did not transpose it.

Article 10 (4) of the Directive is transposed via Articles 47 (2) last sentence and 47 (3) of the Act on SCE that enables employees' representatives to initiate judicial appeal procedure when relevant body of the SCE or of the participating legal entity demands confidentiality or does not reveal information. According to Article 47 (2) last sentence: *"The SNB or representative body may require the court to determine/decide that the information was provided in confidence without adequate reason; this applies to participating legal entities having their registered seat in the SR also in case the SCE shall have its registered seat outside the SR in a different Member State."* And pursuant to Article 47 (3): *"The SNB as well as representative body has legal capacity to be participant of the procedure for the purposes defined in Article 47 (2) ((understand judicial procedure)) also in case that the SCE has its registered seat in the different Member State if the relevant participating legal entity, subsidiary or establishment has its registered seat in the SR."*

As can be seen from above, Slovak law is very brief in context of possibility of management organ not to provide some information or provide them in confidence. There is missing any closer definition or specification of *"information that could because of its nature and based on objective criteria seriously harm the SCE or its subsidiaries or establishments"*. Even worse is the situation in case of possibility to provide information in confidence. Slovak law enables management organ to mark *"certain information"* as confidential, but does not define the term *"certain information"*.

The SNB/representative body may only initiate judicial procedure - they may ask court to determine whether certain information *"could, based on objective criteria, seriously harm*

³⁹ transposing Article 3 (7) of the Directive

⁴⁰ transposing Article 10 of the Directive

⁴¹ transposing Article 12 of the Directive

⁴² Please refer to footnote No. 9

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

the SCE/subsidiaries/establishments” or whether this information may be provided in confidence. According to reachable information there have not been initiated none lawsuit of this kind in the SR. Too general law in this respect and missing interpretation rules can, in practice, lead to misuse of possibility/right of the management not to provide information (or obligation to keep their confidential) by the management.

Above mentioned issue of too general legal regulation of providing of confidential information relates not just to SCE's representative bodies but also to Slovak national representative bodies (as the legal rules in this respect are very similar (understand are too general and too vague) for national as well as supranational representative bodies under the Slovak law).

5.5 Spirit of Co-operation (Article 11)

General provision of Article 11 of the Directive binding the competent body of the SCE and the representative body/employees' representatives to work together in a spirit of co-operation with due regard to reciprocal rights and obligations is missing under Slovak law.

Slovak law provisions binding:

- (i) competent body of the SCE and the representative body to consult together in an appropriate time, comprehensible way and in adequate content (provided for under the definition of consultation under Article 28 (7) of the Act on SCE) and
- (ii) Board of Directors or Administrative Board of the SCE to commence negotiations with the SNB with aim to reach agreement on arrangements for the SCE's employees involvement (under Article 31 (1) of the Act on SCE)

can only partially compensate the drawback of Article 11 of the Directive missing transposition.

5.6 Protection of Employees' Representatives (Article 12)

Article 12 (1) is transposed into Slovak law via its not proper translation under Article 48 (1) of the Act on SCE. What is missing under this translation is wording “*who are employees of the SCE*”. Problematic is also wording of the Slovak law: “*concerned subsidiaries or concerned establishment*” as these are defined as subsidiaries/establishments, which is proposed to become subsidiary/establishment of the SCE, and not that which is already SCE's subsidiary/establishment. I think these drawbacks were caused by chance-medley and not by intention.

Slovak law establishes: “*The members of the SNB, the members of the representative body, any employees' representatives entitled to involvement in the SCE and any employees' representatives in the Administrative Board or Supervisory Commission of the SCE, who are employees of concerned subsidiaries or concerned establishments or of participating legal entities, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation in force in their Member State of employment.*” (Article 48 (1) of the Act on SCE)

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

Missing wording “*who are employees of the SCE*” may cause certain problems with interpretation of Article 48 (1) of the Act on SCE. One may assert that employees of the SCE are not provided with the protection (only employees of concerned subsidiaries or concerned establishments or of participating legal entities are). However, this would be too restrictive interpretation of this Article and it is very probable that it would not be accepted mainly due to the (i) “higher principles” such as general purpose and intention of the Act to provide employees of the SCE with right to involvement, which is indisputably established under the Act and (ii) fact that members of the representative body (being upon its definition body of the SCE representing SCE’s employees) as well as employees’ representatives in the Administrative Board or Supervisory Commission of the SCE shall be provided with the protection under this Article 48 (1) regardless of the fact whether they are employees of the SCE or not (and most probably they will be employees of the SCE). But for 100% certainty it would be appropriate to amend wording of Article 48 (1), namely to add wording “*who are employees of the SCE*” into it.

Protection and guarantees provided for employees’ representatives under Slovak law are listed below in Section V. Accessory Provisions of this Report.

Under Article 48 (2) of the Act on SCE (which transposes Article 12 second paragraph): “*Protection of employees’ representatives applies especially to attendance at meetings of the SNB or representative body, any other meeting referred to in Article 34 (2) of the Act⁴³ and any meeting of Administrative Board or Supervisory Commission. Member of the SNB and/or member of the representative body enjoy the protection against discrimination and right for paid days off at the extent and under the conditions determined under the Labour Code. Paid days off shall be provided by participating legal entity with its registered seat in the SR also if the SCE has or shall have its registered seat in the territory of different Member State.*”

Also Article 34 (2) last sentence of the Act on SCE is relevant in respect of Article 12 of the Directive transposition as it says that: “*Persons, who shall under the agreement concluded in accordance with Article 34 (transposing Article 4 of the Directive) perform right for informing and consulting instead of the representative body, are governed under Article 31 (3)⁴⁴ and Article 47⁴⁵ and 48⁴⁶ accordingly.*” That means these are provided with the same level of protection as members of the representative body are.

Due to the fact that Slovak law refers (in respect of employees’ representatives protection) only to two bodies of the SCE, namely to the Administrative Board or Supervisory Commission of the SCE, someone may assert that the protection does not cover employees’ representatives participating in a foreign General Meeting (or other bodies) of the SCE. Such an assertion can be easily overcome by the general wording (as well as purpose and spirit) of the Act on SCE, according to which all *employees’ representatives entitled to involvement in the SCE...in the exercise of their functions, enjoy the same protection and guarantees provided for employees’ representatives by the national legislation in force in their Member State of employment* (see Art. 48 (1) of the Act on SCE). When referring to concrete

⁴³ Transposing Article 4 (2) (f) of the Directive

⁴⁴ transposing Article 3 (7) of the Directive

⁴⁵ transposing Article 10 of the Directive

⁴⁶ transposing Article 12 of the Directive

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

meetings or bodies or activities of the employees' representatives, Slovak law uses demonstrative (not taxative) lists. That means that Slovak law guarantees protection to each employees' representative entitled to involvement in the SCE (regardless of the fact in the framework of which body, procedure or activity s/he is active).

Considering Slovak law provisions mentioned above, it is not clear why Slovak law establishes in Article 48 (2) that *“member of the SNB and/or member of the representative body enjoy the protection against discrimination and right for paid days off at extent and under the conditions determined under the Labour Code”*, when in accordance with Article 48 (1) not only members of the SNB and the members of the representative body, but also *“all employees' representatives entitled to involvement in SCE and any employees' representatives in the Administrative Board or Supervisory Commission of the SCE enjoy the same protection and guarantees provided for employees' representatives by the national legislation in force in their Member State of employment”*.

Slovak law (as legislation in force in case when Slovak Republic is a Member State of employment) involves under *protection and guarantees provided for employees' representatives* also *protection against discrimination and right for paid days off*. That is why it is not needed to repeat (some of) these rights in Article 48 (2). And when Slovak legislator decided to repeat these rights, it should be done in the way as it is done under the Directive (by using word *“in particular”*). It is not correct that Slovak law in Article 48 (2) establishes right for paid days off and protection against discrimination (being two of more protections and guarantees provided under Slovak law to all representatives of employees) only in respect to members of the SNB and of representative body due to the fact that it can be interpreted that only these members are entitled to it. On the other hand, it is not probably that court/other relevant body would accept such an interpretation especially due to the fact that right for paid days off and protection against discrimination are part of protections and guarantees provided under Slovak law to all representatives of employees (not only to members of the SNB or representative body, but also to them).

With aim to reach compliance with Article 12 of the Directive, (i) Article 48 (2) of the Act on SCE should be amended in that way that not only members of the SNB/representative body are referred to in its provision on right to paid days off and protection against discrimination, but also other representatives of employees should be referred to in it; and (ii) Article 48 (1) should be amended subsequently: *“The members of the SNB, the members of the representative body, any employees' representatives entitled to involvement in the SCE and any employees' representatives in the supervisory or administrative organ of the SCE, who are employees of the SCE, its subsidiaries or establishments or of a participating legal entities, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation in force in their Member State of employment.”*

5.7 Misuse of Procedures (Article 13)

Requirements of Article 13 of the Directive are met, in general, under Article 27 of the Act on SCE:

*“Employees of the SCE, which has its registered seat in the territory of the Slovak Republic, employees of the subsidiary companies and employees of establishments of the SCE (together hereinafter referred to as **“employees of the SCE”**) have a right to be involved in*

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

the managing and administration of the SCE. This right of employees' involvement shall be performed in accordance with the procedure/manner agreed under Articles 29 to 35 of the Act⁴⁷ or in accordance with procedure/manner established under Articles 36 to 46 of the Act⁴⁸.”

Article 13 of the Directive is met under the Slovak law also thanks to the transposition of the Directive into Slovak law under the act (Act on the SCE).

6. Accessory provisions

Identification of national employees' representatives

Under the Slovak law, national employees' representatives mean:

- a. relevant trade union, employees'/ work council or employees'/ work trustee” (Article 11a of the Labour Code) and
- b. in a cooperative, in which members (“shareholders”) of the cooperative are also employees of the cooperative, also special body of the cooperative elected by the general meeting is deemed to be the employees' representative.” (Article 11a (2) of the Labour Code)

Employees' representatives in the SNB from the Slovak Republic shall be appointed/elected in the following way:

The members of the SNB representing employees of participating legal entities or concerned subsidiaries and establishments with their registered seat in the SR shall be elected or appointed in accordance with Article 244 of the Labour Code, regardless of the fact in which Member State the SCE shall have its registered seat. Seats determined for representatives of employees from other Member States shall be determined by the procedure governed by law of the relevant Member State. (Art. 30 (2) of the Act on SCE)

That means that in the Slovak Republic, the employees' representatives appoint members of the SNB from Slovak Republic **on joint session of employees' representatives active at the employer/participating entity** or participating entities (if there are more Slovak participating entities going to form the SCE and number of seats determined for Slovak employees' representatives is lower than number of participating entities). The employees' representatives are: one or more trade unions and/or works council or works trustee (and in a cooperative, in which members (“shareholders”) of the cooperative are also employees of the cooperative, also special body of the cooperative elected by the General Meeting). If works council is active in the participating company or concerned subsidiary or establishment, the works council shall appoint members of the SNB. Only if the works council is not established in the participating company/concerned subsidiary or establishment, trade union(s) shall appoint the member of the SNB. If there are more trade unions active in the participating legal entity/concerned subsidiary or establishment, trade unions shall vote for

⁴⁷ corresponding to Articles 3 to 6 of the Directive

⁴⁸ corresponding to Articles 7,8 and provisions of the Annex of the Directive

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

member of the SNB at their joint session. Each trade union shall have number of votes determined proportionally to the number of employees who are its members. Provided that there are none employees' representatives active in the participating legal entity or concerned subsidiary or establishment, the employees themselves shall directly vote their representatives/members of the SNB from all employees of relevant participating legal entity or concerned subsidiary or establishment. (Article 244 (4) of the Labour Code).

Article 30 (2) of the Act on SCE referring to Article 244 of the Labour Code, which states that *“provided that there are none employees' representatives active in the participating legal entity or concerned subsidiary or establishment, the employees themselves shall directly vote their representatives/members of the SNB”* fully transposes Article 3 (2) (b) third subparagraph of the Directive.

The seats at the SNB determined for the representatives of employees from the participating legal entities, concerned subsidiaries and establishments with registered seat in the Slovak Republic, shall be occupied in that way that **employees of each participating company, concerned subsidiary and concerned establishment are represented by at least one direct representative.** (Art. 30 (5) of the Act on SCE)

If the SCE is formed by way of merger and it is not possible to proceed in accordance with Article 30 (5) above, the seats in the SNB shall be occupied in that way that each participating legal entity⁴⁹ with its registered seat in the SR, which is proposed to cease to exist as a separate legal entity, shall be represented by at least one direct representative in the SNB. The remaining seats in the SNB shall be divided among representatives of other employees from the SR according to the principles put down under Article 30 (8). If there are none resting seats left, the representatives appointed or elected in accordance with first sentence shall represent also other employees from the SR, each of these representatives in the same proportion. (Article 30 (6) of the Act on SCE)

If the number of seats in the SNB determined for the representatives/members from the SR is (even after increase under Article 30 (3,4) or under law of the state, where the SCE shall have its registered seat) lower than number of participating legal entities with their registered seat in the SR, which are proposed to cease to exist as a separate legal entities, the seats shall be divided in that way that direct representatives represents employees of participating legal entities proposed to cease to exist, by decreasing order of the number of employees these legal entities employ. These representatives shall represent also other employees from the SR, each of these representatives in the same proportion. (Article 30 (7) of the Act on SCE)

If the SCE is formed by another way, not by merger, and number of participating legal entities with its registered seat in the SR is higher than total number of seats determined for the representatives from the SR, the seats shall be occupied in that way that each direct representative shall represent all employees of legal entities with their registered seat in the SR by decreasing order of their number of employees employed in the SR. These representatives shall represent also other employees from the SR, each of these representatives in the same proportion. (Article 30 (8) of the Act on SCE)

⁴⁹ In further text “participating legal entity” stands for participating legal entity, concerned subsidiary and concerned establishment.

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

Article 3 (b) second paragraph is recognized under Article 30 (9) of the Act on SCE. “Employees from the SR can be represented in the SNB also by the natural person, who is not employee of the participating legal entity, if s/he is authorized to do so by the employees' representatives.”

Allocation of the seats in the SNB shall be done in that way that it is clear how many employees are represented by concrete representative/member of the SNB. The representative/member of the SNB shall without undue delay after s/he was appointed/elected notify the SNB about number of employees s/he represents, and in which Member State and in which participating legal entities are these employees employed. (Article 30 (10) of the Act on SCE)

If the composition of participating legal entities or number of employees in the participating legal entities shall change during the negotiations of the SNB on involvement of the SCE's employees in that way that allocation of seats does not correspond to the principles put down above, the new allocation of seats shall take place without undue delay. The new allocation shall be done in the way, which minimally distorts original composition of the SNB. (Article 30 (11) of the Act on SCE) Slovak law is mute about concrete/particular way how to allocate new seats (whether by in-between elections or adjustment of the relative number of votes or in any other way). The only condition stipulated under Slovak law is that the new allocation must be done in the way, which minimally distorts original composition of the SNB. The concrete way shall therefore depend on the particular situation and decision of involved parties and their understanding of (as well as arguments for) what is the way, which minimally distorts original composition of the SNB, in particular situation. As the implementation practice in Slovakia is missing in this respect, it is probable that the implementation practice from other EU member States shall be “copied”.

To sum it up, Article 3 (2) (b) of the Directive is transposed under Article 30 (2, 5 - 11) of the Act on SCE cited above. The drawback in transposition of Article 3 (2) (b) of the Directive is missing statement that “the methods used to nominate, appoint or elect employee representatives should seek to promote gender balance”.

Employees' representatives in the representative body from the SR shall be appointed/elected in the following way:

Members of the representative body, who should be elected or appointed from employees of the SCE with its registered seat in the Slovak Republic, shall be appointed by employees' representatives during their session of employees' representatives active at the employer. If there are no employees' representatives active in the SCE, concerned subsidiary or establishment, employees themselves may elect their representative who shall represent them on the joint session. The division of votes shall be done proportionally to number of employees represented. This shall apply also in the case of election or appointment of employees' representatives of employees of concerned subsidiary or establishment located in the Slovak Republic when the SCE itself is located outside of the Slovak Republic. (Article 37 (4) of the Act on SCE)

Number of seats in the representative body shall be determined in that way that for each 10%, or part thereof, of the SCE's employees employed in the same Member State, counted from the total number of all SCE's employees taken together, there shall be one seat in the representative body. The number of the representative body members shall correspond to the

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

number of seats determined in accordance with first sentence.⁵⁰ (Article 38 (2) of the Act on SCE)

Part 1 (b) of the Annex is transposed via Article 37 (4) and 38 (2) of the Act on SCE. However, transposition of Part 1 (b) is incomplete as establishment of promotion of gender balance is missing under the Slovak law.

Protection of employees' representatives

Employees' representative in Slovak Republic are protected especially through following rights and guarantees provided to them by law (Labour Code) and enforceable either via administration procedure (as Labour Inspection is allowed to penalise employer breaching this provisions as well as to order employer to adhere to these provisions) or judicial procedure:

- performance of duties and obligations resulting from office/duties of the employees' representatives is considered to be a working time, for which an employee is entitled to salary;
- employer shall provide employees' representatives with paid days off for performance of their office and for participation on education/trainings organised by relevant trade union, employees' council or employer;
- employees' representatives may not be penalised or affected by an employer due to the performance of their office/duties;
- employees' representatives are protected against measures, which could harm them, (termination of their employment contract including) and which were motivated by their office, during the term of their office and six months after its expiration;
- employer may terminate employment contract of an employees' representative only after consent of other employees' representatives, otherwise this employment contract termination is invalid. It is valid only if the reason for termination was the one recognised by law and the court shall decide that it is not fair to require employer to further employ this employee;
- employer shall relieve an employee for long-lasting performance of his duties as an employees' representative after the agreement with employees' representatives. Employer shall further provide him/her with a salary. After expiry of his/her office, an employer shall provide him/her with the same job at the same workplace. If this is not possible due to the fact that this job is cancelled or the workplace is abolished, employer shall provide him/her with another work corresponding to employee's employment contract.

(above cited are Articles 136 (3), 157 and 240 of the Labour Code).

⁵⁰ Transposes Annex, Part 1, (b) of the Directive

7. Rules applicable to SCEs established exclusively by natural person or single legal entity and natural person (Article 8)

Article 8 of the Directive is correctly transposed into the Slovak law via its almost verbatim translation under Article 36 of the Act on SCE. Article 36 (1) to (4) of the Act on SCE establishes that:

(1) In the case of an SCE established exclusively by natural persons or by natural persons and a single legal entity, which together employ at least 50 employees in at least two Member States, the provisions of Articles 27 to 35 shall apply⁵¹.

(2) If an SCE, concerned subsidiary and/or concerned establishment were established exclusively by natural persons or by natural persons and a single legal entity, which together employ fewer than 50 employees, or employ minimally 50 employees in only one Member State, employee involvement in the SCE itself shall be governed by the provisions of the Member State of the SCE's registered office and employee involvement in its subsidiaries and establishments shall be governed by the provisions of the Member State where they are situated.

(3) In the case of transfer from one Member State to another of the registered office of an SCE governed by participation, the level of employee participation rights which shall apply may not be lower than it was prior to transfer of the registered office.

(4) Right of involvement of the SCE's employees shall arise if (i) after the registration of an SCE referred to in paragraph (2) above, at least one third of the total number of employees of the SCE, its subsidiaries and establishments in at least two different Member States requests their right of involvement, or if (ii) the total number of employees is at least 50 employees in at least two Member States. The provisions of Articles 27 to 35 shall be applied *mutatis mutandis*.

8. Participation in the General Meeting or sectoral meeting (Article 9)

Provisions of Article 9 of the Directive shall not be effective under, and is not transposed to, the Slovak law due to the fact that pre-condition of Article 59 (4) of the Regulation is not met, i.e. Slovak law does not enable to establish possibility of employees' participation in the General Meeting under the Bylaws of the SCE.

In case of the SCE established in a Member State, which's law enables employees' participation in the General Meeting, Slovak law does not provide explicit provisions regulating election and/or appointment of employees' representatives from Slovakia to the General Meeting of the SCE. If the election and/or appointment of employees'

⁵¹ Articles 27 to 35 of the Act transposes Articles 1 to 7 of the Directive.

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

representatives from Slovakia to the General Meeting shall not be agreed under the respective agreement on manner and extent of the SCE's employees' involvement, than it is probable that these elections and/or appointments shall be governed by law of the respective Member State (under Article 36 (2) of the Act on SCE: employee involvement in the SCE itself shall be governed by the provisions of the Member State of the SCE's registered office) or the legal analogy shall be used and these representatives in the General Meeting shall be elected and/or appointed in the same way as members in Administration or Supervisory Board. According to available information, the Slovak practice has not been confronted with this question as far as now. Definitely, clear amendment of the Act on SCE could be helpful in respect to rules and conditions governing election and/or appointment of employees' representatives from Slovakia to the General Meeting of the SCE in case of the SCE established in a Member State, which's law enables employees' participation in the General Meeting.

9. Legal Procedures/Sanctions for Non-Compliance

Under the Slovak law, there are two procedures, which should guarantee compliance of practice with the Act on SCE. One of them is administrative, and another judicial.

Pursuant to Act no. 125/2006 Coll. on Labour Inspection⁵² (same as under repealed Act no. 95/2000 Coll. on Labour Inspection), Labour Inspection is authorized to perform random controls/monitoring of labour law provisions adherence. If the Labour Inspection would reveal any breach of labour law provisions (e.g. breach of the Act on SCE in its part transposing the Directive), it can penalize an employer breaching this provision (the SCE, its subsidiaries or establishments or participating legal entities or concerned subsidiaries or establishments) up to EUR 33,194. Also employees or their representatives may contact the Labour Inspection and object the breach of labour law. Inspection should review such a motion and decide on appropriate sanctions.

Employees as well as employers may seek their right before (general) civil courts. Labour law lawsuits are considered to be (general) civil lawsuits. The result of such a lawsuit can be especially obligation of employer (or employee) to do something or cease to do something. Also compensation for loss or damage (if it was caused by the breach of law) can be provided by the courts decision.

10. Conclusions

Deadline for the Directive transposition was not met by the Slovak Republic. The main reason for late transposition was pre-matured/early election, which took place on spring 2006. New government wished to reassess and redraft the draft of the Act on European Cooperative Society transposing the Directive prepared by previous government as well as to consult it with social partners due to the fact that draft of former government was not consulted with social partners.

⁵² Act no. 125/2006 Coll., on Labour Inspection repealed, since 1 July 2006, Act no. 95/2000 Coll., on Labour Inspection.

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

Finally, on 16 October 2006 the Draft of the Act on European Cooperative Society transposing the Directive was (after consultations with social partners) approved by Slovak government and on 23 October 2006 submitted to the parliament. The parliament passed the Act on the SCE on 6 February 2007 under Act no. 91/2007 Coll. on European Cooperative Society (the “Act on SCE”). The Act on SCE became effective on 1 April 2007.

Slovak legislator decided, similar as in case of the European Company, to adopt new act transposing the Directive and governing relevant issues not covered under the Regulation. The Act on SCE is very similar to Act no. 562/2004 Coll. on European Company (similarly as Directive 2001/86/EC is similar to Directive 2003/72/EC). However, these Slovak Acts (the Act on SE as well as the Act on SCE) are similar also in some drawbacks of its transpositions.

With regard to confidentiality, Slovak law (in case of SE as well as SCE, but also of national employees’ representatives) is too general in respect of specification and determination of information that might be hold back by the management organs or provided in confidence. This may lead to holding back of information by the management organs that should be provided to employees. Possibility to petition the court to reassess reasons of the relevant organ of the SCE not to provide information or provide them in confidence is not very useful as courts in Slovakia are under the big burden of lawsuits and it is very probable that it would take few years to get a court’s decision.

Transposition of Article 12 is also not perfect. Restrictive interpretation of Slovak law could lead to the conclusion that employees’ representatives are protected only in course of the SCE forming and not during the SCE existence due to the fact that wording “*who are employees of the SCE*” is missing under Slovak law. However, general purpose and principles of the Act on SCE as well as the fact that members of representative body are protected, makes acceptance of this restrictive interpretation unlikely. In spite of that, the amendment of the Act on the SCE should be entered into in this respect.

Using term “*Board of Directors or Administrative Board of the participating legal entities*” under Slovak law instead of “*management or administrative (competent) organs of the participating legal entities*” used under the Directive is not an appropriate solution due to the fact that participating legal entities may have different bodies/organs with management or administrative functions (these are not in each case Board of Directors or Administrative Board).

Under the Act on SCE, there are missing provisions that (i) “*the method used to nominate, appoint or elect employee representatives should seek to promote gender balance*” (see Article 3 (2) (b) last sentence and Part 1 (b) last sentence of the Annex of the Directive); (ii) *also the local management must be informed about and in respect of regular reports drawn up by the competent organ* (as laid down under Part 2 (b) last sentence of first paragraph of the Directive); and (iii) *also the select committee shall be entitled to meet without the representatives of the competent organ being present* (see Part 2 (d) of the Annex).

Transposition of Article 11 of the Directive is only partial and indirect. Under Article 31 (1) of the Act on SCE: “*managing or administrative organ of the SCE commence negotiations with the SNB with aim to reach agreement on arrangements for the SCE’s employees involvement*” and under provisions binding competent body of the SCE and the representative body to consult together in an appropriate time, comprehensible way and in

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

adequate content (expressed in definitions of “information” and “consultation” under Article 28 of the Act on SCE).

Possibility to transpose voluntary provisions of the Directive (Article 4 (5), Article 10 (3)) was not used under Slovak law, as well as Article 9 of the Directive (Participation in the general meeting or section or sectoral meeting) shall not be effective under, and is not transposed to, the Slovak law due to the fact that pre-condition of Article 59 (4) of the Regulation is not met, i.e. Slovak law does not enable Bylaws of the SCE to entitle employees to participate in the General Meeting. Clear rules and conditions governing election and/or appointment of employees’ representatives from Slovakia to the General Meeting of the SCE in case of the SCE established in a Member State, which’s law enables employees’ participation in the General Meeting, are not provided for under Slovak law.

However, in general, transposition of the Directive’s main aims and purposes is reached by the Act on SCE. Mentioned drawbacks of the Act on SCE have no crucial effect on right of the SCE employees to be involved in affairs of the SCE as provided for under the Directive (save for potential, however low, risk of restrictive interpretation of Article 48 of the Act on SCE transposing Article 12 of the Directive on protection of employees’ representatives mentioned above).

Bibliography

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- Draft of the Act on a European Cooperative Society prepared and approved by the Slovak Government on 16 October 2006, submitted to the parliament on 23 October 2006
- Explanatory Memorandum issued by Slovak Government to Draft of the Act on a European Cooperative Society
- Table of Congruence prepared by Slovak Government to Draft of the Act on a European Cooperative Society
- Act no. 311/2001 Coll. of 2 July 2001, the Labour Code, as later amended
- Act no. 513/1991 Coll., the Commercial Code, as later amended
- Act no. 125/2006 Coll., on Labour Inspection
- Act no. 95/2000 Coll., on Labour Inspection, as later amended

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

National glossary of terms

Concerned establishments mean establishments of the cooperative societies, that are proposed to become establishments of the SCE. (Article 29 (1) of the Act on SCE)

Concerned subsidiaries mean companies that are proposed to become subsidiaries of the SCE. (Article 29 (1) of the Act on SCE)

Consultation means dialogue and exchange of views between the special negotiating body, representative body, employees' representatives or employees themselves and the Board of Directors or Administrative Board at the appropriate time, comprehensible way and with appropriate content, which allows the special negotiating body, representative body, employees' representatives or employees themselves to express (on the basis of information provided) an opinion on measures envisaged by the Board of Directors or Administrative Board, which may be taken into account in the decision-making process within the SCE. (Article 28 (7) of the Act on SCE)

Cooperative society (Slovak cooperative society) means a community of unclosed number of persons/entities established for the purposes of entrepreneurial activities or procurement of economy, social or other needs of its members. It is a legal entity. (Article 221 of Act No. 513/1991 Coll. Commercial Code)

Employees' representatives means relevant trade union, employees'/work council or employees'/work trustee." (Article 11a (1) of the Labour Code)

"In a cooperative, in which members ("shareholders") of the cooperative are also employees of the cooperative, also special body of the cooperative elected by the general meeting is deemed to be the employees' representative." (Article 11a (2) of the Labour Code)

Establishment means organisational part of the enterprise (company) recognised under the law. It has no legal capacity. (Article 7 of Act No. 513/1991 Coll. Commercial Code)

Information means provision of information to the special negotiating body, representative body, employees' representatives or employees themselves by Board of Directors or Administrative Board on questions, which concerns the SCE itself, 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, in a manner and with a content, which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with Board of Directors or of Administrative Board. Information must be provided and consulted at the appropriate time that the special negotiating body, representative body, employees' representatives or employees themselves may (in a manner and procedure agreed under Article 34 (2) of the Act) assess provided information and express its standpoint before projected measures are taken. (Article 28 (6) of the Act on SCE)

Involvement of employees of the SCE means a mechanism, including right to information, consultation and participation in managing/administration, through which employees' representatives may exercise their influence on decisions to be taken. (Article 28 (1) of the Act on SCE)

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

Labour Inspection is a state body in the competence of the Ministry of Labour, Social Affairs and Family of the SR. It is authorised to control adherence to the labour law provisions. Its administrative (controlling) procedures are quite swift (in comparison with the courts). It is authorised to penalise employer for the breach of labour law up to EUR 33,194 as well as to order employer to do something or cease to do something. Labour Inspection has its offices in each regional town. Central office of the Labour Inspection - National Labour Inspectorate is located in Košice. (Act no. 125/2006 Coll. on the Labour Inspection)

Participating legal entities means legal entities directly participating in the establishment of the SCE.

Participation in managing/administration of the SCE means mechanism under which representative body or employees' representatives or SCE's employees (if body representative is not established) may influence decision-making of the SCE's bodies through right to elect or appoint some of the members of the supervisory commission or administrative board or the right to recommend and/or oppose the appointment of some or all of the members of the supervisory commission or administrative board. (Article 28 (8) of the Act on SCE)

Representative body means body, which represents employees and is established upon agreement on manner and extent of the involvement of the SCE's employees⁵³ for the purposes of informing them and consulting with them in relationship with the Board of Directors or Administrative Board in established extent, and where it is applicable also for purposes of participation rights in relation to the SCE. (Article 28 (4) of the Act on SCE)

Special negotiating body means body established in accordance with Article 29 of this Act for the purposes of negotiations with the competent bodies of the participating legal entities about manner and extent of the involvement of the SCE's employees in managing/administration of the SCE. (Article 28 (5) of the Act on SCE)

Subsidiary means a company, in which other entity (company) has a majority of votes due to the fact that this entity holds shares of the company to which the majority of votes is attached, or due to the fact that it can - based on agreement with other entities - perform majority of voting rights in this company. (Article 66a of the Commercial Code)

Subsidiary of a participating legal entity or of an SCE means a company, over which the participating legal entity or the SCE exercises a dominant influence due to the fact that it either directly or indirectly holds a majority of registered capital/shares of the company, or holds the majority of votes attached to the shares ownership, or due to the fact that it can nominate more than half of all members of the Board of Directors, Supervisory Board or Administration Board of the company. (Article 28 (3) of the Act on SCE)

⁵³ Please note that in accordance with Article 27 (1) of the Act, the term/definition “employees of the SCE”/“SCE's employees” covers employees of the SCE, which has its registered seat in the territory of the Slovak Republic, employees of the subsidiary companies of the SCE and employees of establishments of the SCE.

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

Annex: Correspondence table

Transposition into national legal framework through Act no. 91/2007 Coll., on European Cooperative Society

Content	Articles in the Directive 2003/72/EC	National implementing provisions – Act no. 91/2007
Objective	1	§ 27 of Act on the SCE
Definitions	2	§ 1 (1), § 28, § 29 (1) of Act on the SCE and § 11a of the Labour Code
Creation of a special negotiating body	3.1	§ 29 (2) of Act on the SCE
	3(2)	§ 29 a § 30 of Act on the SCE
	3(2) (a) (i)	§ 29 (1) and § 30 (1) of Act on the SCE
	3 (2) (a) (ii)	§ 30 (3,4) of Act on the SCE
	3(2) b	§ 30 (2, 5 - 11) of Act on the SCE
	3(3)	§ 31 (1) of Act on the SCE
	3(4)	§ 32 (1,2) of Act on the SCE
	3(5)	§ 31 (2,4) of Act on the SCE
	3(6)	§ 33 (1,2,3) of Act on the SCE
3(7)	§ 31 (2,3) of Act on the SCE	
Content of agreement	4	§ 31 (1) and § 34 of Act on the SCE
Duration of negotiations	5	§ 35 (1) of Act on the SCE
Legislation applicable to the negotiation procedure	6	§ 27 of the Act on SCE
Standard rules	7	§ 35 of the Act on SCE
	Annex part 1. a)	§ 38 (1) Act on SCE
	Annex part 1. b)	§ 37 (4) and § 38 (2) of Act on SCE
	Annex part 1. c)	§ 40 (2) of Act on SCE
	Annex part 1. d)	§ 40 (1) of Act on SCE
	Annex part 1. e)	§ 38 (3) of Act on SCE
	Annex part 1. f)	§ 38 (5) of Act on SCE
	Annex part 1. g)	§ 41 (2,3) of Act on SCE
	Annex part 2 a)	§ 41 (1) of Act on SCE
Annex part 2 b)	§ 43 (1,2) and § 44 (1) of Act on SCE	

NATIONAL IMPLEMENTATION REPORT – SLOVAKIA

Content	Articles in the Directive 2003/72/EC	National implementing provisions – Act no. 91/2007
	Annex part 2 c)	§ 43 (3) and § 44 (2,3,4) of Act on SCE
	Annex part 2 d)	§ 42 (2) of Act on SCE
	Annex part 2 e)	§ 43 (4) of Act on SCE
	Annex part 2 f)	§ 42 (2) second sentence of Act on SCE
	Annex part 2 g)	§ 42 (1) of Act on SCE
	Annex part 2 h)	§ 42 (3) and § 42 (2) last sentence of Act on SCE
	Annex part 3	§ 46 of Act on SCE
Rules applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons	8	§ 36 of the Act on SCE
Participation in the general meeting or section or sectorial meeting	9	not transposed
Reservation and confidentiality	10	§ 34 (2) and § 47 of the Act on SCE
Operation of the representative body and procedure for the information and consolation of employees	11	§ 28 (6), § 28 (7) and § 31 (1) of the Act on SCE
Protection of employees' representatives	12	§ 48 and § 34 (2) of the Act on SCE
Misuse of procedures	13	§ 27 of the Act on SCE and also simple fact of the Directive transposition
Compliance with this directive	14	Clause 9 of the Labour Code, Act no. 125/2006 Coll. on Labour Inspection and simple fact of the Directive transposition into national law by generally valid and binding Act on SCE
Link between this Directive and other provisions	15	§ 33 (1) of Act on SCE