

Access to Transnational Information and Consultation

Section 25d

Joint Provisions

(1) *The right of employees of European Community-scale (hereafter "Community-scale") employers (undertakings) to transnational information and consultation shall be effected by an agreed procedure for supranational information and consultation or through their European works councils. A European works council will be set up when this is agreed by a special negotiating body of the employees and their employer's central management or under section 25j. At his own expense, a community-scale employer shall create the conditions necessary for the establishment and proper activity of a special negotiating body or a European works council or some other agreed procedure, and in particular cover the cost of organizing meetings, interpreting, travel and accommodation of members (of such a special negotiating body or European works council) relating to their proper activity and expenses per one expert, unless the settlement of other expenses is agreed with the employer's central management.*

(2) *The obligation to provide supranational information and consultation shall apply to:*

- (a) *a Community-scale employer or a Community-scale group of employers (undertakings) with a seat in the Czech Republic;*
 - (b) *establishments (i.e. organizational components; in Czech “organizační jednotky”) which a Community-scale employer or a Community-scale group of employers has in the Czech Republic (Note 30b);*
 - (c) *representatives of a Community-scale employer or a Community-scale group of employers under subsection (7), if they have seat in the Czech Republic.*
- (3) *For the purposes of this Code, a Member State means any member country of the European Communities.*
- (4) *For the purposes of this Code, “a Community-scale employer” (or “a Community-scale undertaking”; in Czech “zaměstnavatel s působností na území Evropských společenství”) shall mean any employer (undertaking) with at least 1,000 employees in the Member States and at least 150 employees in each of at least two Member States.*
- (5) *For the purposes of this Code, “a Community-scale group of employers” (or “a Community-scale group of undertakings”; in Czech “skupina zaměstnavatelů s působností na území Evropských společenství”) shall mean a group of employers associated (interrelated) through one and the same controlling employer (the controlling undertaking), if such group of employers has the following characteristics:*
- (a) *at least 1,000 employees in all the Member States; and*
 - (b) *at least two of the employers in such group have seats in different Member States; and*
 - (c) *at least one of the employers in such group employs at least 150 employees in one Member State and at least one other employer in the group employs at least 150 employees in another Member State.*
- (6) *For the purposes of this Code, “a controlling employer” (or “a controlling undertaking”; in Czech “řídící zaměstnavatel”) shall mean an employer which can control, directly or indirectly, another employer or other employers within one group (“a controlled employer” or “a controlled undertaking”; in Czech “řízený zaměstnavatel”). An employer shall be regarded as a controlling employer if, in relation to another employer (of the same group), directly or indirectly, this employer:*
- (a) *can appoint more than half of the members of another employer's administrative, management or supervisory organ (body); or*
 - (b) *controls a majority of the shareholders' votes in such other employer; or it*
 - (c) *owns a majority of such employer's registered (subscribed) capital;*
- unless it is proven that another employer in such group of employers has a stronger influence. If in a Community-scale group of employers there are more employers meeting the above criteria, the controlling employer shall be determined according to the criteria in the order stated in the second sentence. For this purpose, the controlling employer's rights relating to voting and appointment shall also include the rights of any controlled employer and those of any person or organ (body) acting in the controlling employer's name or in the name of any controlled employer (i.e. any employer controlled by the controlling employer). However, an employer who in relation to another employer has an interest under Article 3(5)(a) or (c) of the (EEC) Council Regulation No. 4064/89 of 21 December 1989 on the control of concentrations between undertakings shall not be deemed to be a controlling employer (a controlling undertaking).*
- (7) *For the purposes of this Code, “central management” (in Czech “ústředí”) shall mean the central management of a Community-scale employer or, in the case of a Community-scale group of employers, of the controlling employer. If such central management is not in a Member State, a representative appointed by the central management shall be regarded as the central management for the purposes of this Code. If this representative has not been appointed, the employer employing the highest number of employees in Member States shall be regarded as the central management.*
- (8) *The provisions on information and consultation shall only apply to employers with their seats in Member States, unless a wider scope is agreed.*

(9) *For the purposes of this Code, the number of employees shall be determined as the average number in the two years preceding submission of a request or preceding the commencement of negotiations by the central management under section 25e(2). The central management is obliged to provide employees or their representatives with information on the total number of employees and their structure (composition) in order to establish whether a European works council or some other procedure for transnational information and consultation may be set up. Employees or their representatives can ask their employer for such information, and he is obliged to obtain this information from the central management.*

(10) *Section 25c(3) shall apply to members of a special negotiating body (committee) or European works council and to employees' representatives (according to another agreed procedure), as well as to employers.*

Section 25e

Special Negotiating Body

(1) *A special negotiating body (also referred to as “a negotiating committee”; in Czech “vyjednávací výbor”) is set up in order to negotiate with the central management the establishment of a European works council or a procedure to be used for providing transnational information and consultation.*

(2) *Negotiations concerning the setting-up of a special negotiating body shall be opened by the central management acting either on its own initiative or at the written request of a minimum of 100 employees of at least two employers (undertakings) in two different Member States or at the written request of such employees' representatives.*

(3) *Such special negotiating body shall have a minimum of three and a maximum of 17 members. Its members shall be employees of one Community-scale employer (undertaking) or one Community-scale group of employers (undertakings). Employees employed on the territory of each Member State where their Community-scale employer or group of employers has an establishment shall be represented by at least one member. A supplementary (i.e. further) member shall represent employees for each Member State where they constitute at least 25% of all such employer's employees, while two supplementary members shall represent employees for a Member State where they constitute at least 50% of such employer's employees, and three supplementary members shall represent employees for a Member State where they constitute at least 75% of all such employer's employees.*

(4) *One or more members of the special negotiating body shall be appointed from among employees in the Czech Republic by such employees' representatives at a joint meeting. If no employees' representatives are appointed, or if such representatives fail to function, the employees may elect representatives who will participate in the joint meeting on their behalf and in their name for the purpose of electing one or more members of the special negotiating body. The number of votes which each representative has at the joint meeting shall be allocated according to the number of employees represented by such representative.*

(5) *The central management shall convene a constituent (founding) meeting of the special negotiating body forthwith after it receives information that the members of the special negotiating body have been appointed. The members shall elect a chairman at such constituent (founding) meeting of the special negotiating body. This special negotiating body shall have the right to meet separately before each negotiation with the central management. If necessary, the special negotiating body may invite experts to its meeting.*

(6) *Unless it is further provided for otherwise, the special negotiating body shall adopt resolutions (i.e. take decisions) by a majority of votes of all its members.*

(7) *Negotiations between the central management and the special negotiating body, the European work council and any other organ (body) concerned with another procedure for providing transnational information and consultation must be conducted in a spirit of co-operation.*

(8) *The venues and dates for joint negotiations shall be agreed between the special negotiating body and the central management. The cost of the special negotiating body's work shall be covered by the employer.*

Section 25f

Resolution to Terminate Negotiations

The special negotiating body may adopt a resolution by at least a two-thirds majority of all its members that negotiations will not be opened or that negotiations already opened will be terminated. Such a decision shall be minuted and signed by all members of the special negotiating body. A copy of the minute shall be sent to the central management, and the latter shall inform both employers and employees or their representatives of such decision. A new request under section 25e(2) may be submitted no earlier than two years after the adoption of such resolution (decision), unless the central management and the special negotiating body agree a shorter period.

Section 25g

- (1) *The central management and the special negotiating body may agree to establish a European works council or another procedure for providing transnational information and consultation. They shall not be thereby bound by the provisions of sections 25j to 25l.***
- (2) *A European works council may be enlarged by including representatives of the employer's employees from States which are not members of the European Communities, if this is agreed by the central management and the special negotiating body.***

Section 25h

European Works Council by Agreement

An agreement to establish a European works council must be in writing and include in particular the following:

- (a) *a determination of all the employers to whom it relates;***
- (b) *the manner of establishing and the composition of such council, the number of its members and substitutes and its term of office;***
- (c) *the venue, frequency and duration of its deliberations;***
- (d) *the tasks, powers and obligations of such council, the central management and employers when employees exercise their right to information and consultation;***
- (e) *the method of convening meetings;***
- (f) *the method of financing work of such council;***
- (g) *the procedure to be followed in the case of organizational changes;***
- (h) *the period of effectiveness of the agreement to establish a European works council, and the possibility of renegotiating the agreement, including transitory provisions.***

Section 25i

Agreement on Another Procedure for Providing Transnational Information and Consultation

An agreement on another procedure for providing transnational information and consultation must be in writing and include in particular the following:

- (a) *the subject of the information and consultation, especially its transnational nature, as this relates to important interests of the employees;***
- (b) *the method of facilitating joint discussion by employees' representatives of information provided by the central management;***

- (c) *the method of facilitating consultation with the central management or another appropriate level of management.*

Section 25j

European Works Councils Established under this Code

- (1) *A European works council shall be established under this Code if:*
- (a) *this is jointly agreed by the central management and the special negotiating body; or*
 - (b) *the central management refuses to open negotiations within six months of the filing of an employees' request under section 25e(2) for the setting-up of a European works council or another procedure for providing transnational information and consultation; or*
 - (c) *within three years of the filing of a request under section 25e(2), no procedural agreement has been reached between the central management and the special negotiating body, and the special negotiating body has not adopted a resolution under section 25f to terminate negotiations.*
- (2) *Members of the European works council shall be appointed from among employees at a joint meeting of employees' representatives. If employees' representatives have not been appointed, or they fail to function, at an employer's undertaking (enterprise) or its part, the employees of such employer shall elect a representative to take part on their behalf in the joint meeting. The allocation of votes at such meeting shall be determined in proportion to the number of employees represented.*
- (3) *A European works council shall have a minimum of three and maximum of 30 members. Employees of an employer in each Member State shall be represented by one member. If a Community-scale employer or Community-scale group of employers has less than 10,000 employees in Member States, in each Member State where such employees constitute at least 20% of all the employer's employees, they shall be represented by a supplementary member. Employees in each Member State where they constitute at least 30% of such employer's employees shall be represented by two supplementary members, and in a Member State where they constitute at least 40% of the employer's employees, they shall be represented by three supplementary members, whereas in a Member State where they constitute at least 50% of the employer's employees, they shall be represented by four supplementary members. Employees in a Member State where they constitute at least 60% of the employer's employees shall be represented by five supplementary members, while employees in a Member State where they constitute no less than 70% of the employer's employees shall be represented by six supplementary members, and if at least 80% of such employer's employees are in one Member State, they shall be represented by seven supplementary members.*
- (4) *If a Community-scale employer or a Community-scale group of employers has at least 10,000 employees in Member States, in each Member State where such employer's employees constitute at least 20% of all the employer's employees, they shall be represented by a supplementary member. In a Member State where the employer's employees constitute at least 30% of all such employer's employees, they shall be represented by three supplementary members, and if they constitute at least 40% of all the employer's employees, they shall be represented by five supplementary members, while if they constitute at least 50% of all the employer's employees, they shall be represented by seven supplementary members. If there are at least 60% of all the employer's employees in one Member State, they shall be represented by nine supplementary members and if there are at least 70% of all the employer's employees in one Member State, they shall be represented by 11 supplementary members while if they constitute at least 80% of all the employer's employees, they shall be represented by 13 supplementary members.*
- (5) *Members of a European works council in the Czech Republic shall be appointed from among local employees at a joint meeting of employees' representatives. If employees' representatives are not appointed or they fail to function at the employer's enterprise (undertaking), the employees shall appoint a representative who will take part in the joint meeting on their behalf. The allocation of votes at such a joint meeting shall be proportionate to the number of employees represented.*

(6) *The European works council shall communicate the names of its members and their addresses forthwith to the central management, which shall pass on such information to the employers and the employees' representatives, or to the employees.*

(7) *The term of office of members of a European works council shall be four years. After the expiry of four years from the constituent (founding) meeting, the European works council concerned shall vote on a resolution about whether it will negotiate with the central management under section 25e, or whether another (successor) European works council will be established under this section. Such resolution shall be adopted by a two-thirds majority of all the members appointed to the council. Section 25e shall apply to negotiations (with the central management).*

(8) *At least once every calendar year the central management shall consult the European works council in particular about the following:*

(a) *the organizational structure of the employer's undertaking (enterprise) and its economic and financial situation;*

(b) *likely trends in its (business) activities, production (output), sales and employment;*

(c) *investments and substantial changes in work organization and technologies;*

(d) *any transfer of the employer's undertaking or a part of such undertaking (business activities), the reasons for any such transfer, its major consequences (implications) and measures affecting employees;*

(e) *large-scale dismissals, the reasons for them, the numbers involved, their structure, the criteria to be used when determining which employees are to have their employment relationship terminated, and the benefits to which such employees will be entitled in addition to the benefits ensuing from the statutory provisions (regulations).*

(9) *Should extraordinary circumstances occur which substantially affect the employees' interests, the central management shall inform forthwith the European works council of such circumstances and, at its request, consult it about the necessary measures. If a committee under section 25k(2) has been established, the central management may consult this committee. However, the central management must enable those members of the European works council who were elected or appointed at the undertaking to which such measures relate to take part in such consultation. Extraordinary circumstances shall in particular mean:*

(a) *the winding-up, dissolution or transfer of the employer's undertaking (business) or a part of it;*

(b) *large-scale dismissals.*

(10) *The central management shall inform the European works council in writing and consult it on the matters under subsections (8) and (9), if they involve at least two undertakings (businesses) in two different Member States; the powers of the European works council apply only to matters which relate to Member States.*

Section 25k

(1) *The central management shall forthwith convene the constituent meeting of a European works council. At such meeting the members of the council shall elect a chairman and a deputy chairman.*

(2) *The chairman of such European works council, and in his absence his deputy, shall represent the council in its outside dealings and direct its ordinary activity. If such council considers it necessary, it shall appoint a three-member committee consisting of the chairman and two other members. The members of such committee must be from at least two different Member States. The committee shall direct the ordinary activity (of the council).*

(3) *A European works council has the right to meet without the presence of the competent managerial staff to discuss information passed on to the council by the central management. The venue and date of such meeting shall be agreed with the central management. The deliberations of a European works council shall not be open to the public. It can invite experts to its meeting if this is necessary for fulfilment of its tasks. It can also invite managerial staff to its meeting to provide supplementary information and explanations.*

(4) Unless it is provided for otherwise, a European works council may adopt resolutions (i.e. take decisions) if more than one half of its members are present; a resolution shall be adopted by a simple majority of the votes of those members attending the meeting.

(5) A European works council may determine its own procedural rules, which must be in writing and approved by a majority of all members of the council.

Section 25l

If the central management and the special negotiating body have agreed that the European works council will be enlarged to include representatives from countries which are not Member States of the European Communities, unless the agreement between the central management and the special negotiating body stipulates otherwise, members of such council for employees of an employer (undertaking) seated in the Czech Republic shall be appointed from among such employees by the employees' representatives at a joint meeting. If such employees' representatives are not appointed or if they do not function in (part of) the employer's enterprise, the employees there may elect a representative for the joint meeting. The votes at such meeting shall be allocated in proportion to the number of employees represented. Section 25c shall similarly apply.