

of 8 June 2011

Amending Act No 262/2006, the Labour Code, as subsequently amended

Parliament has passed the following Act of the Czech Republic:

Article 1

Act No 262/2006, the Labour Code, as amended by Act No 585/2006, Act No 181/2007, Act No 261/2007, Act No 296/2007, Act No 362/2007, Constitutional Court Judgment No 116/2008, Act No 121/2008, Act No 126/2008, Act No 294/2008, Act No 305/2008, Act No 306/2008, Act No 382/2008, Act No 286/2009, Act No 320/2009, Act No 326/2009, Act No 347/2010, Act No 427/2010 and Act No 73/2011, is hereby amended as follows:

1. In Section 1(c), the second sentence of Section 2(1), the third sentence of Section 158(4), Section 293(2) and the first sentence of Section 363(1) the words "European Community" shall be replaced by the words "European Union".
2. At the end of footnote 1, the following sentence shall be added: "Directive 2009/28/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (recast).".
3. At the beginning of Section 62(2), in Section 62(4), in the first, third and fourth sentences of Section 62(5), in Section 101(4)(b), in the first sentence of Section 105(1), at the beginning of Section 108(2), at the beginning of Section 108(3), in Section 108(4) and (5) and at the beginning of Section 339(1) the word "or" shall be replaced by the word "and".
4. In Section 62(3) the words "organisation or" shall be replaced by the words "organisation and".
5. The following sentences shall be added to the end of Section 276(1): "If the undertaking has more than one employees' representative, the undertaking shall be obliged to comply with the requirements under this Act with regard to all employees' representatives if they cannot agree between themselves and with the undertaking on a different cooperation procedure. Informing employees and consulting with them shall be appropriate to the subject of negotiation, taking account of the employees' representatives' authorisation and scope and the management level.".
6. In the first sentence of Section 276(3) the words "or harm the legitimate interests of the undertaking or employee" shall be added after the word "undertaking".
7. The fourth sentence of Section 276(3) shall be replaced by the sentence "Members of the competent trade union organisation, the works council or the representatives concerned with the protection of health and safety in the work place shall be obliged to withhold any information having been provided to them in confidence.".
8. The last sentence of Section 276(3) shall be replaced by the sentence "This requirement shall remain in place after they have ceased performing their duties.".
9. In Section 276, the following new paragraph (5) shall be inserted after paragraph (4):
"(5) If the undertaking requires that any information provided as confidential be withheld, employees' representatives shall be entitled to seek a ruling that the information was designated confidential without reasonable justification. If the undertaking does not provide information, employees' representatives may seek a ruling that the undertaking is obliged to provide information."
The previous paragraphs (5) and (6) thus become (6) and (7).
10. The following paragraph 8 shall be added to Section 276:
"(8) For the purposes of the proceedings referred to in paragraph 5 and for the enforcement of the obligations under Part 12, the works council shall have the capacity to participate in civil proceedings. The chairman or

authorised member of the works council shall speak on its behalf."

11. In Section 279(1)(i) and in Section 1(f) the words "Section 294" shall be replaced by the words "Section 297(5)".

12. In Section 281(1) the first sentence shall be replaced by the following sentence: "In an undertaking it shall be possible to appoint a works council and a representative concerned with the protection of health and safety in the workplace."

13. Section 282(1) and (2) shall read as follows:

"(1) The works council and the functions of a representative concerned with the protection of health and safety in the workplace shall terminate on the date on which their term in office expires, unless otherwise stated in this Act.

(2) The works council shall be terminated when the number of members thereof has dropped below three."

14. In Section 282 the words "paragraph (1)" shall be followed by the words "and (2)".

15. The following paragraph (1) shall be added to Section 288:

"(1) For the purposes of this Act, transnational information and consultation shall mean the process of informing and consulting in relation to undertakings or groups of undertakings active in the Member States of the EU and the European Economic Area as a whole or at least two undertakings or organisational units of undertakings or groups of undertakings located in at least two Member States. Account shall be taken, when assessing whether transnational information and consultation applies, of the scale of any impact and the level of management and representation of employees."

The previous paragraphs (1) to (5) shall become paragraphs (2) to (6).

16. In the first and third sentences of Section 288(2), Section 288(3)(c), Section 288(5), the first sentence of Section 289(2), Section 290(5) and Section 297(2), the words "European Union" shall be deleted.

17. The following sentence shall be added after the first sentence of Section 288(2): "The procedure pursuant to the first sentence must be defined and implemented in such a way as to ensure its effectiveness and enable effective decision-making by undertakings or groups of undertakings."

18. In Section 288(2) the word "activity" shall be followed by the words "essential training".

19. In Section 288(3)(a) the words "EU-scale undertaking with its seat" shall be replaced by the words "EU-scale undertaking with its seat or place of business".

20. *[Change in the original Czech not affecting the English translation.]*

21. In Section 288(3)(c) the word "seat" shall be followed by the words "or place of business".

22. Section 288(4) shall be deleted.

The previous paragraphs (5) and (6) shall thus become (4) and (5).

23. Section 288(5) shall read:

"(5) For the purposes of this Act, EU-scale group of undertakings shall mean two or more undertakings subject to one controlling undertaking meeting the following characteristics:

- a) at least 1 000 employees within the Member States;
- b) at least two undertakings from the EU-scale group of undertakings have their seat, place of business or organisational unit in two different Member States, and
- c) at least one undertaking from the EU-scale group of undertakings employs at least 150 employees in one Member State and one other undertaking from the EU-scale group of undertakings employs at least 150 employees in another Member State."

24. In the second sentence of Section 289(1) the words "Member State under which the EU-scale undertaking has been established" shall be replaced by the words "Member State to which the EU-scale undertaking is subject".

25. In Section 289(1) the third sentence shall be replaced with the following sentence: "Where an EU-scale undertaking has not been established under the legislation of any Member State, the matter of whether an undertaking is a controlling undertaking shall be determined according to the legislation of the Member State in which the representative of that undertaking has its seat, place of business or is located; if such a representative has not been appointed, it shall be determined according to the legislation of the Member State in which the seat or central management of the undertaking employing most employees is located.".

26. In the fifth sentence of Section 289(1), the word "second" shall be replaced by the word "third".

27. In the second sentence of Section 289(2) the word "seat" shall be followed by the words "or if not located".

28. In Section 289(4) the second sentence shall be replaced with the following sentence: "The central management shall provide employees or their representatives with information in order to ascertain whether a European works council may be set up or whether to opt for a different procedure for transnational information and consultation, in particular information regarding the number of employees and their composition and the organisational structure of the undertaking or group of undertakings.".

29. Section 289(4) shall be deleted.

30. Section 289(5) shall read:

"(5) Unless an agreement on a European works council or on another transnational information and consultation procedure or the legislation of the Member State in which the central management has its seat lays down more favourable terms, the provisions of Section 276 and Section 278(2) to (4) shall, for the purposes of the collective representation of employees, apply *mutatis mutandis* to members of the special negotiating body, the European works council or employees' representatives pursuant to another agreed procedure as well as to the undertakings concerned. The provisions of Section 276(8) shall apply even where the central management does not have its seat, or is not located, in the Czech Republic. Section 276(4) shall apply to interpreters, translators, experts and consultants."

31. In Section 290(2) the word "undertakings" shall be followed by the words "or the undertakings' organisational units".

32. Section 290(3) shall read:

"(3) The members of the special negotiating body shall be employees of the EU-scale undertaking or group of undertakings. Employees of undertakings from every Member State in which an EU-scale undertaking has its seat or in which its organisational unit is located shall be represented by one member for every 10 % of the total number of employees in all Member States.".

33. The fourth and fifth sentences of Section 290 shall be replaced by the following sentence: "Where two or more employees' representatives operate within an undertaking, they shall represent all of the undertaking's employees together, unless otherwise agreed between the parties.".

34. The following sentence shall be added after the second sentence of Section 291(1): "The central management shall inform the competent European workers' and undertakings' organisations with which the European Commission discusses matters pursuant to Article 154 of the Treaty on the Functioning of the European Union regarding the composition of the special negotiating body and the start of negotiations.".

35. In Section 291(1) the words "central management" shall be followed by the words "and after the negotiations".

36. The following sentence shall be inserted at the end of Section 291(1): "These experts and representatives of recognised European workers' and undertakings' organisations may, at the request of the special negotiating body, take part in the negotiations as consultants.".

37. In Section 291(2) the words "by a majority of votes of all of its members" shall be replaced by the words "by an absolute majority of all of its members".

38. In the second sentence of Section 292, the words "all members of the special negotiating body" shall be replaced by the words "the members of the special negotiating body who adopted such resolutions".

39. Section 294(b) shall read:

"(b) the manner of establishing the European works council and its composition, the number of members and the term of office; account shall be taken of the representation of employees according to their activities and gender,".

40. The following words shall be added to the end of Section 294(d): "where applicable, the body's composition, conditions of appointment, tasks and rules of procedure.".

41. In Section 294, a new subparagraph (g) shall be added after subparagraph (f), and shall read:

"(g) procedures for connecting the procedures for informing and consulting employees' representatives pursuant to national law; this shall be without prejudice to provisions concerning the information and consultation of employees pursuant to Section 279, 280 and 287,".

The previous subparagraphs (g) and (h) shall become subparagraphs (h) and (i).

42. Section 294(i) shall read:

"(i) the duration of the agreement concerning the European works council, the possibility of dismissal, the possibility of amending the agreement, including transitory provisions, and the procedure for negotiating a new agreement.".

43. In Section 295(a) the words "in particular" shall be deleted.

44. At the end of Section 295(c) the full stop shall be replaced by a comma and the following subparagraphs (d) and (e) added:

"(d) procedures for connecting the procedures for informing and consulting employees' representatives pursuant to national law; this shall be without prejudice to provisions concerning the information and consultation of employees pursuant to Section 279, 280 and 287:

(e) procedure in the event of substantial organisational changes.".

45. The following Section 295a shall be added after Section 295:

"Section 295a

Where an agreement pursuant to Sections 294 and 295 does not set out the methods for connecting the procedures for informing and consulting with employees' representatives pursuant to national law, the central management and the undertaking shall ensure transnational information and consultation on any measures being drawn up that could entail substantial changes to the organisation of work or in contract relations at all partner levels depending to the subject matter of the negotiations.".

46. Section 296(3) shall read:

"(3) Employees of undertakings from every Member State in which an EU-scale undertaking has its seat or in which its organisational unit is located shall be represented by one member for every 10 % of the total number of employees in all Member States.".

47. Section 296(4) shall be deleted.

48. In the first sentence of Section 297(1), the word "representative" shall be replaced by the word "representatives".

49. The fifth sentence of Section 297(1) shall be deleted.

50. Section 297(5) shall read:

"(5) At least once every calendar year the central management shall, on the basis of a report it has drawn up,

a) inform the European works council of:

1. the organisational structure of the undertaking and its economic and financial status;

2. likely trends in its activities, production and sales;
3. matters on which it is required to consult the European works council;

b) consult the European works council on:

1. likely developments in employment and investment, and substantial changes to the organisation of work and technology;
2. the closure or dissolution of the undertaking, any transfer of the undertaking or part of its business, the grounds for this, its impact and any measures relating to the employees;
3. collective redundancies, the grounds for these, the number, structure and criteria for selecting the employees with whom the employment relationship is to be terminated and the payments to be made to employees made redundant in addition to payments under the law.

The central management shall also send the report to the undertakings."

51. In the first sentence of Section 297(6), the word "which" shall be replaced by the words "or decisions need to be taken which".

52. Section 297(7) shall be deleted.

53. The heading above Section 298 shall be deleted.

54. The second sentence of Section 298(2) shall be replaced by the following sentence: "To manage its activities the European works council shall set up a committee of no more than five members, comprising the chairman plus the other members."

55. The last sentence of Section 298(2) shall be deleted.

56. In Section 298(5) the words "may lay down" shall be replaced by the words "shall lay down".

57. The following Section 298a and its heading shall be added after Section 298:

"Section 298a

Procedure in the event of organisational changes

(1) In the event of substantial organisational changes to the structure of EU-scale undertakings or groups of undertakings, and where there is no agreement on a European works council or on a different procedure for transnational information and consultation, or where the provisions for such agreements are at variance with each other, the procedure shall be that laid down in Section 290(2).

(2) Where the procedure laid down in Section 29(2) is followed, every European works council already appointed or a further three members of any other appointed employees' representatives shall be appointed to the negotiating body.

(3) The European works councils and employees' representatives appointed pursuant to a different agreed procedure shall not conclude their own activities. Should this become necessary, they shall ensure its operation by means of an agreement with the central management. The work of the appointed European works council and the different procedure for transnational information and consultation shall finish with the conclusion of a new agreement with the central management on the appointment of the European works council or a different procedure. At that point, previously concluded agreements shall lapse."

58. In Section 299 the word "298" shall be replaced by the word "298a".

59. In Part 13, in the title of Chapter XIX, the words "European Community" shall be replaced by the words "European Union".

60. In Section 363(1) the words "first sentence of Section 276(1) and paragraphs (2) to (5)" shall be replaced by the words "first sentence of Section 276(1) and paragraphs (2) to (6) and (8)".

Article II

Transitional provisions

Access to transnational information pursuant to Sections 288 to 299 of Act No 262/2006, in the version in force prior to the date on which the Act entered into force, shall apply to an undertaking and group of undertakings

active in the territory of a Member State and having its seat in the Czech Republic and to its organisational units located in the Czech Republic, where

a) between 5 June 2009 and 5 June 2011 an agreement pursuant to Sections 288 to 295, in the version in force prior to the date on which the Act entered into force, was concluded or amended;

b) the agreement pursuant to a) above was amended, added to or extended during the period of its validity, before the expiry of the agreement. The provisions of Section 298a of Act No 262/2006 in the version effective from the date on which this Act entered into force shall also apply.

Article III

Entry into force

This Act shall enter into force on the date of its publication.

[signed]

Němcová

Klaus Nečas