Decree

I.
Correspondence
>> to complainant / applicant and/or legal representative
- Krüger5 (legal representative of complainant 1)

Per procuration the court points out that judgment in default in written preliminary proceedings cannot be issued because the complaint is not coherent.

A final judgment on the legality of the resolution of 14.12.2011 and/or the documentation of this resolution in the records of the meeting is not possible on the basis of the submitted documentation. It can however already be established that there are considerable doubts as to whether the records of the meeting are to be seen as invalid as a result of the date of the signatures and/or the manner in which signatures were given. The assumption that the date of the signatures of 16.11.2011 can be attributed to the falsification of the records is not evident, because this could also be attributed to a mere oversight. Furthermore, it can be deduced neither from the 'Memorandum of Association' nor from the 'Articles of Association', both of which have been submitted to the court file, that the furnishing of signatures by way of the insertion of electronic signatures is invalid. The fact that the signatures were not furnished by the signatories themselves, but rather by as secretary of the respondent, does not necessarily lead to the invalidity of the records and/or the resolutions documented therein, because it cannot be excluded that this took place on the instruction of and/or with the consent of the signatories.

Furthermore, there are also justified doubts with regard to whether and 'online resolution procedure' is necessarily to be qualified as a reversible violation of the 'Articles of Association' of the respondent. It is true to say that these do contain numerous regulations that indicate that resolutions are in principle to be passed in the presence of several members (including Art. 9 and also Art. 14 concerning voting with a show of hands). However, there are at the same time numerous regulations that stipulate that alternative methods of the passing of resolutions are permissible, in particular also in the absence of individual or several of the persons responsible for the making of decisions. For example, Art. 18 stipulates that resolutions passed by way of written procedure under certain circumstances have the same effectiveness as resolutions passed during the general meeting of shareholders. Moreover, Art. 19

stipulates that provisions for the passing of resolutions by way of letter may be put in place. At the same time it can be taken from Art. 5 in conjunction with Art. 3 (end) that the time and place of a general assembly can be freely determined. Taking all this into consideration, it can not at this time be established whether the 'online passing of resolutions' necessarily leads to the illegality of the agreed expulsion of the complainant. This applies in equal measure to the question as to whether quorum had been established for the resolution passed on 14.12.2011, because it cannot be established from the annexes submitted with the complainant's petition which quorum must be obtained according to the pertinent regulations in order to expel a member from the respondent.

As a precaution we point out that, in the event of the continuation of proceedings, it could be necessary to obtain an expert's report within the meaning of section 293 sentence 1 of the German Code of Civil Procedure *[Zivilprozeßordnung, ZPO]* on the prerequisites for expulsion from a Limited with regard to the aforementioned points and also with regard to the other points contained in the complainant's petition that allegedly lead to the illegality of the expulsion of the complainant. In this regard we point out that the court is not aware that the law governing a 'company limited by guarantee' corresponds in the decisive areas to German law on associations.

As a further precaution we point out that the position with regard to damages presented on page 8 and following of the complainant's petition is not presented coherently. If the complainant were to have a claim to compensation for damages against the respondent as a result of an illegal expulsion from the respondent, the complainant is responsible for coherently presenting a position with regard to damages leading to this claim. This has not been adequately presented up to now. There are significant doubts, in particular with regard to the reimbursability of the hours of work put in by Herr Gähler and Frau Wartberg. It can not be determined from the overview of the individually listed activities of Herr Gähler and Frau Wartberg submitted to the court file that these activities were necessarily brought about as a result of the expulsion from the respondent or were indeed necessary to prevent further damages being incurred. An example of this is items 104 to 106 of the overview, in which Frau Wartberg is listed as spending 15 hours amassing evidence in preparation for criminal proceedings. It can also not be comprehended how the complainant has quantified the individual working hours, for example the hours spent for telephone calls, preparation of files and travel, the preparation of drafts and for the obtaining of consents of the management board (for example items 1, 8, 9, 13,

14, 18, 33, 34, 100, 103, 104). Irrespective of this, there are also significant doubts with regard to the fundamental reimbursability of hours spent on work for the preparation of 'New Year's letters to DSG members concerning ESA" (items 19 and 20) and comparable activities. It is also not apparent that these activities, in addition to the commissioning of several lawyers for the purposes of mitigation of damages, were at all necessary, meaning that there are doubts as to the reimbursability of these expenses from the perspective of the principle of economic efficiency. In this regard we also point out as a precaution that, also in respect of the annexes to the written pleadings of 05.12.2013, it has not been adequately presented that and why all of the claimed legal costs are the result of necessary and expedient legal prosecution and are therefore in principle reimbursable. As an example we refer to the commissioning of the law firm Dr. Krüger, because it is currently not apparent to which extent it was necessary to restore the 'good reputation of the complainant' and hereby avoid future damages.

The court grants the opportunity to submit observations on this **within 4 weeks** of receipt of this correspondence.

II.

To be sent is

>> to defendant / respondent and/or legal representative
- European Suzuki Association (respondent 1) – by way of 'service abroad'

III.

Resubmission of the case: in 5 weeks

Bonn, 02.06.2014
15th Civil Chamber

[signed]
Dr. Koranyi
Judge