Innovative trade union strategies in the railway sector

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The main aim of the project is **to familiarize trade unions with EU policy** and law on employee involvement and to promote the exchange of information and good practice among workers' representatives in railway unions, as well as promoting innovative strategies among railway unions to adapt to the current labour market requirements. Fostering transnational cooperation between the trade union network with the participation of old and new EU countries. Increase the impact of trade unions in defending workers. Promote integration in the labour market.

Expected results achieved during implementation of the project:

- Improved possibilities for railway trade unions to exercise their rights and duties as regards employee involvement;
- Strengthened cooperation between trade unions in respect to EU laws and policies of employee involvement;
- Improved knowledge on EU laws and policies on employee involvement being implemented in partner countries (Poland, Bulgaria, Romania and Portugal);
- Trade unions become aware of innovative methods to adjust their activities to contemporary market challenges and employee needs;
- Improved knowledge of trade union representatives on how better to involve employees in activities and decision-making;
- Improved knowledge of trade union members on communication with other actors;
- Promotion on inclusive labour markets – in the frame of the project matters concerning vulnerable groups – people with disabilities, equality topics and youth involvement will be elaborated; in the context of employee involvement and the role of trade unions in supporting inclusive labour markets;

Each Partner has developed an analysis of the national situation according to the following structure:

1. Employee participation: forms that occur in each country in railway sector (ranked from smallest to largest impact of employees on decision-making at the enterprise level)
2. Participatory competence of trade unions
3. Participatory competence of non-unions representative offices of employees:
   a. Works councils – how was Directive 2002/14 / EC implemented?
   b. European Works Councils
   c. Other forms of the participation of employees, characteristic of the given country in railway sector
4. Summary

Związek Zawodowy Maszynistów Kolejowych w Polsce (ZZM)

Before 1989, planned economy in Poland secured employees' rights by employment and salary guarantees. In that period, no enterprises were shut down and funds for payments for employees were always secured. The systemic transformation and the passage to competition-based market economy caused many factories to collapse, with new companies being established in their place. State-owned enterprises were converted into companies with external shareholders. Those changes always took their toll on the workforce. Cascading lay-offs and skyrocketing unemployment severely affected Polish society and deteriorated the situation of employees and their families. This in turn brought about social conflicts, protects and strikes. The root causes of such actions were always connected to the social security net for employees. The dominance of free market and ruthless competition moved employees' needs and the protection of their rights to the very end of the priority list. Such a system could not have allowed for a stable, conflict-free transformation of enterprises and the protection of employee rights.

The development of industrial society without any state intervention probably would have ended in escalating protests and the stagnation of changes initiated at that time. The protection of employees' rights was a necessity. Building on international and European experiences, Polish government and social partners set out to develop laws that would contain such guarantees. In consequence, two acts of law were adopted: the Trade Unions Act of 23 May 1991 and the Employee Benefits Guarantee Fund Act of 1993, which introduced mechanisms protecting employees against the consequences of numerous bankruptcies by ensuring the payment of salaries. The issues discussed in this paper are vast and very complex. This is why I have focused on key issues in the area of employees' rights and interest protection in the railway sector which have their source in the EU and national law.

Employee participation as an element of democratisation of enterprises and the actual participation of employees in management in the railway sector varies from company to company. At the level of management boards, employees have their representative sitting on the board in one company only - PKP CARGO. In other companies, there are no staff representatives among board members. This is a consequence of the privatisation process at PKP Cargo and the Employee Guarantees Pack negotiated in that period. The Pact is an agreement that gave employees the right to nominate their candidate as a member of the highest authorities of the company. It has a great importance when it comes to the processes taking place in the company that has impact on the situation of the employees in the future. Unfortunately, the Trade Unions Act introduces specific restrictions as to the fields of trade union activities, which are limited to:

- Labour law,
- Right to remuneration,
- Social conditions, and
- Trade union freedoms.

Co-participation in company management, strategy development, technology implementation or finance control is not on the list. The staff representative has legal guarantees concerning various forms of exerting pressure and influence, and can provide employees with information and ensure consultation already at the stage of planning and decision making. This form of employee participation provides employees with the actual sense of independence and knowledge on the conditions and trends within the enterprise. However, in other companies in the railway sector – and now in Poland we have as many as over one hundred of them – no staff representatives sit on management boards. In consequence, conflicts with employees are fairly frequent. The lack of knowledge on the company's financial standing, low salaries as compared to the old EU states – all these factors generate claims that companies are often unable to meet. To prevent such events, many railway companies have introduced another model of employee participation. The law allows the entire staff to appoint one Supervisory Board member. In the railway sector it has been a rule that employees have from one to three representatives. However, this number is often insufficient to block unfavourable decisions made by Supervisory Boards. Nevertheless, an important advantage is the possibility to exercise financial control and obtain necessary knowledge on the directions and strategy of company's operations.

Oftentimes, the scale of employee participation in company management depends on the form of ownership, and technological or service processes applied. This in turn has impact on the number of employees which is a key factor when it comes to the participative competences of trade unions, focusing on four basic elements:
a. information,
b. consultation,
c. influence on decisions and finance.

In his book „Zbiorowe prawo pracy" (Collective Labour Law) Krzysztof Wojciech Baran presents yet another specification of employee participation. In industrialised societies, the form of employees' impact on decisions made by employers differ significantly as to their nature. They are either informative-consultative or controlling-determining. The first category comprises the competences in the field of information, consultation, presenting postulates and complaints. Meanwhile, the second category involves managing, co-managing (co-determining), controlling and supervisory competences. To simplify the foregoing based on the level of influence employees' representatives may exert on the employer, we should distinguish between "soft" (non-determining) and "hard" (co-determining) competence. The former is characterised by a low level of interference of employees' representatives in employer's decisions. This is why employee participation should aspire to the latter – the co-participation of employees in company management.

One should also add that **non-union representations of employees have no participative competences** in railway companies. Changes taking place at the turn of the 20th and 21st centuries in Poland left trade union membership at the level of ca. 14%. What is more, mandate contracts and other employment forms that do not allow workers to join trade unions are widespread. Fortunately, in the companies from the railway sector trade union membership ranges from 90 to 95%, and in consequence there are no areas where non-union employee participation would be required. In consequence, if there is a non-union participation

initiative against unions' will, it typically withers out or is so insignificant that it plays no actual role.

Works Councils

On 07 April 2006 the Parliament of the Republic of Poland adopted the Employee Information and Consultation Act The act implemented the directive 2002/14/CE of the European Parliament and the Council of 11 March 2002 aimed at reinforcing the dialogue between employers and employees.

In Poland the directive was being implemented in collaboration between the employers, trade unions and the government. On many issues the opinions were divergent and no agreement was reached. The situation resulted in delays and the postponement of the implementation of the directive to Polish law. Trade unions demanded that Works Councils be established in companies employing at least 5 people. Meanwhile, the employers wanted WC to be created only in companies with 100 employees or more. Trade unions were in favour of a model where Works Councils are created only where no trade unions are present. On the other hand, employers supported the Hungarian model, where trade unions and Works Councils operate in a parallel manner. Yet another disagreement concerned the competence to nominate the candidates to the Works Councils – trade unions expected it to be their right, whereas employers wanted the Works Council members to be appointed by all employees. It was also important to determine the scope of the Act, the entities it would apply to. What is more, the unions wanted to have clear provisions on the costs of the operations of the Works Councils and the period of protection of its members – during the term or beyond. Finally, partners discussed whether Poland should take advantage of the interim period, meaning that for a certain period the Act would be applicable to companies employing many employees only. Having settled our doubts it was agreed that Works Councils should be created by employers who run business activity and employ at least 50 people, with reservation that in the interim period until 23 March 2008 this obligation applied only to employers employing at least 100 people. The size of the Council depends on the number of employees.

Pursuant to the Act, the Council consists of:
- 3 employees – in the case of employers employing from 50 to 250 people;
- 5 employees – in the case of employers employing from 251 to 500 people;
- 7 employees – in the case of employers employing more than 500 people.

The Works Council may agree on another number of its members than specified in the Act, yet not lower than 3 members. Every trade union operating in a company may appoint at least one member of the Council. If the number of trade unions is higher than the number of members of the Council, the number of members of the Council must be increased to match the number of trade unions, and every trade union appoints exactly one member of the Council.

The obligation to establish Councils does not apply to public employers, such as:
- State-owned enterprises which have a staff self-governing body
- Offices, schools, courts, etc.
- State film institutions
- Mixed enterprises employing up to 150 employees

Furthermore, employers covered by the scope of the Act could evade the duty to establish the Works Council if, before the Act came into force, the concluded an agreement that guarantees employees' rights to information and consultation at the level at least equal to the one guaranteed by the Act. Trade unions in the railway sector have used this option and have signed agreements, as below.

POROZUMIENIE

w sprawie informowania pracowników
i przeprowadzania z nimi konsultacji

zawarte w dniu **24 maja 2006 roku** w Bydgoszczy pomiędzy:

„PKP Przewozy Regionalne" Sp. z o.o Kujawsko Pomorski Zakład Przewozów Regionalnych w Bydgoszczy, reprezentowany przez:
mgr Mieczysława Cichosz – Dyrektora Zakładu
zwanego dalej "Pracodawcą",

a

1. Międzyzakładowym Niezależnym Samorządnym Związkiem Zawodowym Kolejarzy reprezentowanym przez:
   Adama Biały - Przewodniczącego,
2. Niezależnym Samorządnym Związkiem Zawodowym „Solidarność" reprezentowanym przez:
   Waldemara Bogatkowskiego - Przewodniczącego,
3. Niezależnym Samorządnym Związkiem Zawodowym Drużyn Konduktorskich w RP reprezentowanym przez:
   Andrzeja Janowskiego - Przewodniczącego

zwanymi dalej "Organizacjami związkowymi"

Działając w oparciu o artykuł 24 Ustawy z dnia 7 kwietnia 2006 roku o informowaniu pracowników i przeprowadzaniu z nimi konsultacji, Strony porozumienia (zwane dalej Stronami) postanawiają, że:

§ 1

1. Pracodawca przekazuje organizacjom związkowym informacje dotyczące:
   1) działalności i sytuacji ekonomicznej pracodawcy oraz przewidywanych w tym zakresie zmian,
   2) stanu struktury i przewidywanych zmian zatrudnienia oraz działań mających na celu utrzymanie poziomu zatrudnienia;
   3) działań, które mogą powodować istotne zmiany w organizacji pracy lub podstawach zatrudnienia.
2. Pracodawca przekazuje informacje w razie przewidywanych zmian lub zamierzonych działań oraz na pisemny wniosek organizacji związkowych.
3. Pracodawca przekazuje informacje w terminie, formie i zakresie umożliwiającym organizacjom związkowym zapoznanie się ze sprawą, przeanalizowanie tych informacji, a w sprawach, o których mowa w ust. 1 pkt.2 i 3 przygotowanie się do konsultacji.
4. W sprawach, o których mowa w ust. 1, organizacje związkowe

1

Agreement
on information and consultations with employees

entered into on 24 May 2006 in Bydgoszcz by and between:

„PKP Przewozy Regionalne" Sp. z o.o, Kujawsko Pomorski Zakład Przewozów Regionalnych w Bydgoszczy [Regional Railway Company domiciled in Bydgoszcz], represented by: Mieczysława Cichosz, Director, hereinafter referred to as the "Employer"

and

1. Independent Autonomous Intercompany Railway Workers Trade Union represented by: Adam Biały – President,
2. Independent Autonomous "Solidarity" Trade Union represented by: Waldemar Bogatkowski - President
3. Independent Autonomous Trade Union of Conductors Teams, represented by: Andrzej Janowski – President, hereinafter "Trade Unions"

Acting under Article 24 of the Act on Informing and Consulting Employees of 7 April 2006, parties hereto (hereinafter the "Parties") agree as it follows:

§1

1. The Employer shall provide the trade unions with information on:
   1) activity and financial standing of the employer and any changes expected in this respect,
   2) structure and expected changes to employment and measures taken in order to maintain the employment level;
   3) actions which may cause significant changes to labour organisation or employment bases.
2. The Employer provides information in anticipation of changes or intentional measures and at written request of trade unions.
3. The Employer provides information on dates, in the form and scope enabling trade unions to gain knowledge of the matter, analyse information and prepare for consultation in matters referred to in Article 1.2 and 1.3
4. In matters referred to in Article 1.1, trade unions present their opinion to the Employer.

przedstawiają pracodawcy swoją (władz statutowych związku) opinię.
5. Każda z organizacji związkowych może przedstawić pracodawcy zdanie odrębne.

§ 2

1. Pracodawca prowadzi konsultacje z organizacjami związkowymi, w sprawach o których mowa w § 1 ust.1 pkt. 2 i 3.
2. Konsultacje powinny być prowadzone:
   1) w terminie, formie i zakresie umożliwiającym pracodawcy podjęcie działań w sprawach objętych konsultacjami,
   2) w zależności od przedmiotu dyskusji, na odpowiednim poziomie kierowniczym,
   3) na podstawie informacji przekazanej przez pracodawcę oraz opinii przedstawionej przez związki zawodowe,
   4) w sposób umożliwiający organizacjom związkowym odbycie spotkania z pracodawcą w celu uzyskania jego stanowiska wraz z uzasadnieniem odnoszącym się do ich opinii,
   5) w celu umożliwienia osiągnięcia porozumienia pomiędzy organizacjami związkowymi a pracodawcą.
3. Organizacje związkowe oraz pracodawca prowadzą konsultacje w dobrej wierze oraz z poszanowaniem interesów Stron.

§ 3

1. Przy wykonywaniu zadań organizacje związkowe mogą korzystać z pomocy osób posiadających specjalistyczną wiedzę.
2. Każda ze Stron porozumienia pokrywa koszty jakie poniosła w związku z realizacją porozumienia, w tym również koszty zleconej przez siebie ekspertyzy.

§ 4

1. Sprawy sporne rozstrzygają wspólnie przedstawiciel Związków Zawodowych oraz Pracodawca.
2. W związku z zawarciem niniejszego porozumienia strony postanawiają nie powoływać rady pracowników.

§ 5

1. Organizacje związkowe oraz osoby, o których mowa w § 3, są obowiązane do nie ujawniania uzyskanych w związku z pełnioną funkcją informacji stanowiących tajemnicę przedsiębiorstwa, co do których pracodawca zastrzegł obowiązek zachowania ich poufności. Nie ujawnianie uzyskanych informacji obowiązuje po zaprzestaniu pełnienia funkcji, lecz nie dłużej niż przez okres 3 lat.

2

5. Every trade union may present a separate opinion to the Employer.

§2

1. The Employer must consult the trade unions in matters referred to in Article 1.1.2 and 1.1.3.
2. Consultation shall be held:
   1) on dates, in the form and with scope enabling the Employer to take actions covered by consultations,
   2) depending on the discussed subject – at the appropriate level of management,
   3) on the basis of information provided by the Employer and the opinions presented by trade unions,
   4) in a way enabling trade unions to meet with the Employer in order to become familiar with its position and response to their opinions with rationale,
   5) to enable an agreement between trade unions and the employer.
3. Trade unions and the employer run consultations in good faith, respectfully of each others' interests.

§3

1. When performing their tasks, trade unions may use the assistance of people with specialist expertise.
2. Each of the Parties covers their own costs related to the performance of the agreement, including the costs of commissioned expert opinions.

§4

1. Disputes are settled together by the representative of the Trade Unions and the Employer.
2. In connection with the conclusion of this agreement, the parties decide not to establish a works council.

§5

1. Trade unions and persons referred to in paragraph 3 cannot disclose information constituting business secret obtained in connection with their function if such information was designated as confidential by the employer. The obligation of confidentiality with respect to the obtained information continues after a person ceased to perform their function, yet in any case not longer than for 3 years.

2. Pracodawca, w szczególnie uzasadnionych przypadkach, może nie udostępnić organizacjom związkowym informacji, których ujawnienie mogłoby, według obiektywnych kryteriów, poważnie zakłócić działalność przedsiębiorstwa, albo narazić je na znaczną szkodę.
3. W przypadku uznania, że zastrzeżenie poufności informacji lub ich nie udostępnienie jest niezgodne z przepisami ust. l lub 2, organizacje związkowe mogą wystąpić do sądu rejonowego-sądu gospodarczego z wnioskiem o zwolnienie z obowiązku zachowania poufności informacji lub o nakazanie udostępnienia informacji lub przeprowadzenia konsultacji.
4. W sprawach, o których mowa w ust. 3, stosuje się odpowiednio przepisy ustawy z dnia 17 listopada 1964 roku -Kodeks postępowania cywilnego (Dz. U. Nr 43, po; późn. zm.) o rozpoznaniu spraw z zakresu przepisów o przedsiębiorstwach państwowych, o samorządzie załogi przedsiębiorstwa państwowego, z wyłączeniem art. 691^1 § 2 i art.691^7 . Zdolność sądową w tych sprawach mają organizacje związkowe oraz pracodawca.
5. Sąd na wniosek pracodawcy lub z urzędu, może, w drodze postanowienia w niezbędnym zakresie ograniczyć prawo wglądu do materiału dowodowego załączonego przez pracodawcę do akt sprawy w toku postępowania sądowego, jeżeli udostępnienie tego materiału groziłoby ujawnieniem tajemnicy przedsiębiorstwa lub innych tajemnic podlegających ochronie na podstawie odrębnych przepisów. Na postanowienie sądu ograniczające prawo wglądu do materiału dowodowego zażalenie nie przysługuje.
6. Postanowienia ust. 1-5 nie naruszają przepisów o ochronie tajemnicy określone w odrębnych przepisach.

§ 6

Kto wbrew postanowieniom porozumienia:
1) nie informuje organizacji związkowych lub nie przeprowadza z nimi konsultacji w sprawach określonych w niniejszym porozumieniu lub utrudnia przeprowadzenie konsultacji,
2) dyskryminuje członków organizacji związkowych w związku z wykonywaniem przez nich czynności związanych z informowaniem i przeprowadzeniem konsultacji

- podlega przepisom karnym wynikającym z art. 19 Ustawy z dnia 7 kwietnia 2006 roku o informowaniu pracowników i przeprowadzaniu z nimi konsultacji.

§ 7

W sprawach nie objętych niniejszym porozumieniem stosowane będą postanowienia Porozumienia w sprawach wzajemnych zobowiązań stron Zakładowego Układu Zbiorowego Pracy dla Pracowników „PKP Przewozy Regionalne" spółka z o.o. zawarte 5 kwietnia 2005r. oraz inne przepisy prawa.

2.In particularly justified case, the Employer may refuse to provide trade unions with information which, when disclosed – pursuant to objective criteria – could significantly disturb company's operations or put the company at risk of a major damage.
3. If the reservation of confidentiality or the refusal to provide information is in breach of items 1 or 2, trade unions can request the District Court, Business Division, to exempt them from the obligation to maintain confidentiality or to order the Employer to disclose information or run consultations.
4. To the cases referred to in item 3 are governed by the provisions on state-owned enterprises, employee self-government in state-owned enterprises of the Code of Civil procedure of 17 November 1964 (Journal of Laws 1964.43 as amended), except for Article 6911(2) and Article 6917. In the foregoing matters, trade unions and the employer have the right to sue and be sued.
5. At the request of the employer of ex officio, the court may restrict, to the necessary extent, the right to view the evidence material enclosed by the employer to the files of the case in litigation, if the disclosure of the material would generate the risk of disclosing company's business secret or other secrets protected under separate laws. The court's decision restricting the right to view evidence material cannot be appealed against.
6. The provisions of items 1-5 do not infringe the rights on the protection of secrets granted by other laws.

§ 6

Whoever, in breach of this agreement
1) fails to inform the trade unions or fails to consult them in matters specified in this agreement or hinders consultations
2) discriminates members of trade unions in connection with the performance of activities related to information and consultation

- is liable to criminal sanctions under Article 19 of the Act on informing and consulting employees of 7 April 2006.

§7

Matters not provided for herein are governed by the Agreement on mutual obligations of the Company Collective Agreement at PKP Przewozy Regionalne sp. z o.o. of 5 April 2005 and other laws.

§ 8

1. Niniejsze „Porozumienie" zostaje zawarte na czas nieokreślony i wchodzi w życie z dniem 25 maja 2006r.
2. Każda ze Stron porozumienia może je wypowiedzieć z zachowaniem 3 (trzy) miesięcznego okresu wypowiedzenia.

Strony porozumienia:

Pracodawca:

Dyrektor
mgr Mieczysław Cichosz

Przedstawiciele Organizacji Związkowych:

MIĘDZYZAKŁADOWY ZWIĄZEK ZAWODOWY „KOLEJARZY" przy Kujawsko-Pomorskim
1) Zakładzie Przewozów Regionalnych
w Bydgoszczy

NIEZALEŻNY SAMORZĄDNY ZWIĄZEK ZAWODOWY "SOLIDARNOŚĆ" ZAKŁAD PRZEWOZÓW REGIONALNYCH w Bydgoszczy
85-082 Bydgoszcz, ul. Zygmunta Augusta 7
tel. 11-10 kolejowy, fax kolej. (800) 3629
fax miejski (0-52) 32 73 529
2) Związek Zawodowy
Drużyn Konduktorskich w RP
przy ZPP Bydgoszcz
Rada Zakładowa

Przewodniczący KZ NSZZ Waldemar Borakowski

Terenowy Związek Zawodowy Drużyn Konduktorskich w RP
3) z siedzibą w Toruniu

Andrzej Janowski

§8

1. This Agreement has been concluded for an unlimited period of time and comes into force on 25 May 2006.
2. Each of the Parties may terminate this Agreement at 3 (three) months' notice.

Parties to the Agreement:

Employer

Representatives of Trade Unions

European Works Councils. In Poland, European Works Councils are created on the basis of the European Works Councils Act of 5 April 2002 (Journal of Laws 2002.62.566 as amended). This Act lays down the rules of establishing EWC and their functioning, the manner of informing employees and consulting them in undertakings and groups of transnational EU undertakings, to protect employees' rights. When it comes to transnational matters, it does not affect rights to information and consultation set forth in other laws.

The obligation to apply the European Works Councils Acts of 5 April 2002 applies to:
1) translational EU undertakings and groups of undertakings with centre of administration in Poland,
2) transnational EU undertakings and groups of undertakings with centre of administration outside Poland, if the administration appointed their representative in Poland,
3) translational EU undertakings and groups of undertakings with centre of administration outside Poland and no representative of the administration in Poland, if an establishment that makes part of the undertaking or an undertaking that makes part of the group employing the highest number of employees in the EU in an undertaking or group of undertakings respectively is located in Poland.

The duties and obligations imposed by the Act on the Centre of administration must be met, accordingly, on the appointed representative or on the management of the establishment or the undertaking referred to in items 2 and 3.

The term of the European Works Council last 4 years and on its expiry new elections are held. Like in the case of national Works Councils, the competencies of the council include obtaining information and consultations on:
1) structure of the undertaking or a group of undertakings of community outreach,
2) economic and financial standing and possible developments in company operations, including production, sales and investments,
3) situation in the area of employment and possible changes in this respect,
4) implementation of major organisational changes,
5) introduction of new work methods or new productions processes,
6) changes to the location of the undertaking or an establishment or a significant part of the undertaking or the establishment or the transfer of production to another establishment or undertaking,
7) merger and division of undertakings or establishments,
8) restricting the size or discontinuing operations of an undertaking or establishment or a significant part of an undertaking or an establishment,
9) group redundancies.

The scope of competencies defined in this way offers a chance of participation and co-management, preventing conflicts at the company level.

Other forms of employee participation include the function of Social Labour Inspectors. The institution of Social Labour Inspectors – trade union bodies – introduced more than a half century ago, enables control of certain entities in a specified scope, on behalf of all employees employed by a particular employer.

The role of social labour inspectors is governed by the Social Labour Inspection Act of 24 June 1983. Other important legislative acts include the Regulation of the Council of Ministers of 28 July 1998 on the determination of circumstances and causes and on the documentation of accidents at work. What is more, the Labour Code of 26 June 1974 also contains some provisions on the Social Labour Inspection. The amendment to the Labour Code of 2 June 1996 significantly strengthened the importance and position of social supervision of work conditions.

Social labour inspection consists of:
1. Company social labour inspections
2. Sectoral (departmental) labour inspector
3. Group social labour inspectors.

Elections to appoint social labour inspectors are organised by trade unions exclusively. Trade unions have the duty to develop and adopt relevant regulations for the selection of inspectors. Inspectors are elected for a 4-year term. The elections of a social labour inspection are not subject to any external control (administrative or judicial), as specified by the Supreme Court on 9 November 1995, P.O. 16/95, OSN 1996.12.176. In consequence, the inspector may be revoked only when he or she fails to meet inspector's duties.

The key tasks of social labour inspection include:
- Controlling the conditions of buildings, machines, technical and sanitary devices, as well as technological processes from the perspective of occupational health and safety.
- Controlling the compliance with labour law, including collective labour agreements and work regulations, in particular in the scope of occupational health and safety, protection of women, young and disabled workers.
- Holiday leave and work time, benefits payable due to accidents at work at work-related illnesses.
- Participation in work condition reviews and company OHS commission.
- Participation in the audit of compliance with environmental provisions.
- Participation in actions aimed to determine the causes of accidents at work and in analysing root causes of accidents, work-related illnesses and other ailments caused by work conditions.
- Taking steps to ensure active participation of employees in creating appropriate OHS conditions and compliance with OHS provisions and rules.

The Social Labour Inspection Act grants vast competences, but it must be emphasized that a social labour inspector is always linked to the trade union operations.

Another form of employee participation is offered by the Act on Employees' Self-Governing Bodies in State Undertakings" adopted on 25 September 1981. The Act lays down:
1. Authorities of the self-governing body
Article 1. 1. The staff participates in the management of the state undertaking on

terms and conditions laid down in the act.

2. Self-governing body has the right to express its opinions, take initiative and submit motions and control company operations.
3. Self-governing body and its authorities perform the tasks referred to in item 2 independently from state administrative bodies, social organisations, trade unions and political organisations. Art. 2.Self-governing body has the following authorities:
   1) general meeting of employees of the undertaking, general meeting of employees of particular establishment and organisational units that make part of the undertaking,
   2) employees' council of the undertaking, also referred to as the workers' council,
   3) employees' council in an undertaking with multiple establishments.
4. The staff may express their view in important matters concerning the undertaking in the form of a referendum.
5. Employees' council represents the self-governing body.

No self-governing body exists or have been appointed in any company in the railway sector.

Conclusion

Employees' rights, especially the rights of trade unions guaranteed by the Trade Unions Act, the Labour Code and other legislation give trade unions the tools to defend and represent employees. The legislation discussed above requires partners to cooperate and search for solutions by social dialogue and mutual understanding.

Exercising its rights, a trade union should influence the legal norms that govern work conditions. In particular, it should deal with matters concerning collective employee interests and rights, including control of provisions in force at a company. Another important role is employee representations in individual cases arising of the employment relationship. This role is a consequence of employee's declaration expressed by joining the union, and – in the case of employees who are not union members – a relevant request. In this way, trade unions may directly influence internal rules and internal legislation in force at a specific company. Outside collective labour agreements, employee's rights may be protected by work rules, remuneration rules, rules on the company social benefits funds as well as regulations concerning bonuses and awards. In this way the employer becomes bound by various agreements resulting from common arrangements or a compromise achieved by way of bilateral obligations.

A vast scale of rights, starting from the adoption of regulations, to its performance, control and employee protection, gives a number of privileges to the unions, even if these privileges are not always used.

On the one hand, low levels of union membership and the lack of comprehensive knowledge in this respect results in failure to enforce all obligations. On the other, employers are resistant and try to evade law despite clear statutory provisions.

In consequence, it is necessary to continue the search for new solutions concerning collective labour relationships, involving trade unions and Works Councils. Failure to comply with law involves the risk of sanctions. Everyone who, in connection with their role or function hinders or discriminates or fails to meet their obligations under labour law is liable for penalty. As a result, theoretically trade unions and Works Councils cannot be bypassed whenever internal company rules and employees' rights come into play.

Joint actions and cooperation allow for avoiding conflicts which occur whenever employees' expectations are not met. The path forward involves broadly construed social dialogue. However, it cannot be based on the EU law and the European Works Councils Directive only. In the context of extensive transformation in Poland after 1990, the role of trade unions in bridging the gap between employees and employers cannot be overstated. Fortunately, Polish law sees the trade unions as the main player in shaping employment-related policies and work quality improvements.

Union of Locomotive Drivers in Bulgaria (ULDB)

The term "innovation" is of Latin origin and denotes new ideas. In our opinion innovation means not only new ideas, but ideas proven in practice. The word "strategy" is of Greek origin and denotes warfare, hence is a military term. "Strategy" is construed as sustainability of an organisation. The modern world is developing so rapidly that trade unions must be in constant readiness for war and should continuously pursue new ideas to face the challenges of our times.

As regards the forms of employee participation in railway transport in Republic of Bulgaria, our Railway Engine Drivers' Union [translator's note: the business function associated in this trade union is referred to as railway engine operators] may provide information only about participation in the activity of Bulgarian State Railways LLC, because we are represented only in this national enterprise and only among railway engine operators in engine sheds. Employee representatives at the enterprise level (BSC LLC) have been elected in accordance with the Employee Information and Consultation Act. There are also Working Conditions Committees, whose members are elected pursuant to parity principles (equal number of representatives of employees and the employer).

At the workplace level the most effective dialogue is held within the Council of the Parties to the Collective Labour Agreement [CPCLA] between representatives of trade unions and the employer.

Trade unions best demonstrate their strength and competences in solving social and professional issues and in deciding on working conditions. The Central Council of the Parties to the Collective Labour Agreement has been re-established in our enterprise; the Council is actually an effective body, if only because its works are participated by the best employer's experts and unionists exhibiting vast knowledge and experience gained during numerous CLA bargaining. Actually, during CCPCLA sessions the trade unions may – and do so under CLAs – improve and extend the gains of its members without waiting for the bargain on the new CLA to begin. In practice the CCPCLA is the venue for global decisions concerning the entire company, later applicable to all employees.
Furthermore, there is the Industry Council at the Minister for Transport; although it covers all types of transport, it is not as influential.

The participation of organisations other than trade unions in railway transport is regulated by the law, but is formal in practice. The practice demonstrates that for such participation to be effective the union activists shall be elected to represent the employees.

As regards workers' councils, it is practised in Bulgarian State Railways that representatives of employee councils hold meetings together with the parties to the CLAs; therefore, representatives of unions naturally come first.
A general assembly of employees is important during the discussion on a draft CLA when there is more than one draft and a choice has to be made.

As regards the European Works Councils (EWCs), we possess almost no information, therefore we provide the results of a study carried out by the Confederation of Independent Trade Unions of Bulgaria (CITUB): "Of the general number of 32 representatives in the EWC, 17 are from CITUB, 4 from "Podkrepa" Work Confederation, whereas 11 are not members of trade unions, originating primarily from plants without union structures. Employers interfere with the election of the EWC representatives, chiefly due to the opportunity to present oneself and demonstrate one's influence to the Management Board."

In 1997 Bulgaria passed the Occupational Safety Act (OSA). Working conditions committees are to be established in enterprises employing more than 50 employees. Representatives of the committees have the right to access current information concerning working conditions in the enterprise, which is necessary to analyse the overall activity in the area of health protection, ensuring safety of employees and notify measures to improve the safety, as well as perform other duties vested in them under the said Act.

To date trade unions have been the most important organisations protecting employees. It is trade unions that, with able and trained personnel, are capable of protecting their members, hence all employees. Apart from having highly skilled and experienced employees among their ranks, trade unions lead and active life inside organisations, aiming at consolidating the crews, thus to build the standing of union leaders. It is much easier for trade unions to exert pressure on the employer through mass meetings, protests and strikes, if necessary.

Sindicato Nacional dos Maquinistas dos Caminhos de Ferro Portugueses (SMAQ)

Below SMAQ is developing on the above issues from the perspective of an autonomous trade union and a union movement operating in Portugal in the 21st century.

The structure of the publication - innovative strategies of trade unions in the railway sector.

1. Participation of employees of the Portuguese railway sector - at present and in the context of the 21st century - is the result and the outcome of political and social changes introduced on 25 April 1974 together with the new political system that brought radical qualitative and quantitative changes in terms of organisation and representation of the then Portuguese union movement in the railway sector.

2. Currently, employees are associated and represented by their own structures operating within a number of companies from the public and the private sector. There are eight companies within the organisational structure of the enterprise Portuguese Railways plus an entity that manages the infrastructure (PI - Portuguese Infrastructure). In 2015, it replaced the company Refer managing the railway network and its current activities include management of the national road network (EP - Roads and Motorways of Portugal).

3. In terms of the organisational model adopted in Portugal for the railway transport, the entity regulating these issues as well as issues relating to other land transport modes is the Institute for Mobility and Transport (IP) whose tasks include supervision as well as licensing and provision of certificates to all stakeholders, including railways. The Institute is also accountable for professional training of train drivers and identification of required qualifications and psychosomatic pre-requisites which are essential in this profession. It issues certificates and provides licensing to training companies and institutions, whereas there are public and private training programmes implemented in this area in Portugal.

4. Such organisational framework for the railway sector embraces various forms and entities entitled to ensure as trade union representation for workers from the sector. The interests of train drivers are represented by SMAQ – the Union of Train Drivers authorised to conduct negotiations and conclude collective bargaining agreements. SMAQ gained a foothold not only in traditional companies from the railway sector, but also at operators of the underground network in Lisbon/Almada and Porto.

5. It should be also stressed that in consideration of various occupational categories and a diversity of railway companies as well as companies specialising in repairs and maintenance, Portugal **is home to approximately twenty one trade unions** representing employees from the sector in collective bargaining and within the framework of proportional representation, in relations with various bodies accountable for occupational health and safety or other social and occupational or environment-related issues. A large majority of these trade unions are associated within two Portuguese trade union confederations -CGTP-IN (The General Confederation of Portuguese Workers – Intersindical Nacional) and UGT (The General Union of Workers).

6. Being an autonomous body, The Union of Train Drivers - SMAQ s competent to hold negotiations and has its own articles of association (CA - Company-level Agreement) to represent the train driver and traction vehicles unit. It has approximately 1,500 members with the following percentage share in individual companies:
   – CP EPE 98% - A passenger service company – Public sector;
   – CP Carga (MEDRAIL) 97% - A transport company – Private sector;
   – Fertagus 55% - A passenger service company - Private sector;
   – Takargo 100% - A transport company - Private sector
   – MTS 60% - A passenger service company (subway) - Private sector;
   – Prometro 90% - A passenger service company (subway) - Private sector;
   – Fernave 100%) – A railway training company - Public sector.

7. Alongside trade union structures that represent employees and deal exclusively with interventions and negotiation of collective agreements with employers in order to ensure protection and safeguard the interest of unionists by means of litigation, protection and safeguarding the interests of unionists by other means as well as implementation of various training programmes, **there are other forms** of direct employee representation at the workplace, including trade union commissions, trade union delegates, general assemblies of the enterprise and workers' committees as well as appointment of employee's representatives at enterprises from the public sector and to the making of occupational health and safety commissions, whereas voting in such elections is direct and involves a secret ballot.

8. Acting on their own and/or via trade unions, employee commissions and/or special committees appointed to deal with a given case, employees exercise their right to **contribute to labour law-related efforts and/or** public consultations which are mandatory by the virtue of law, whereas it is prohibited to adopt any labour law-related act without prior consultations with bodies representing the employees during discussions on the forum of the Assembly of the Republic, meetings of the government, the Legislative Assembly and sessions of governments of the autonomous regions of Madeira and the Azores.

9. Competencies of trade unions include all matters relating to occupational health and safety, working time, negotiations of various regulations resulting from agreements made with an enterprise/ collective agreements as well as regulations specifying seniority, promotions, professional appraisal and social welfare within the enterprise's corporate social responsibility schemes.

10. As it has already been stated, a collective agreement is made by the trade union with an enterprise or an employer's association. In the first case it is applied exclusively within a given enterprise to employees being members of the trade union which is a party to such agreement, and in the latter case, negotiators taking part in preparation of the agreement represent different trade unions and various employers' associations, hence a given agreement covers different companies from the same sector.

11. The Act on Trade Unions and Collective Agreements is an integral part of the Labour Code whose provisions contain all labour law regulations, exclusive of provisions laid down by the Constitution of the Portuguese Republic, such as fundamental rights, the freedom of trade unions, the freedom of association, the prohibition of discrimination of trade union leaders and workers' representatives, the right to strike as means of protecting the interests and safeguarding workers' claims and the prohibition of lock-out.

12. XII. Depending on the enterprise and agreements in place, various practices are applied to employees being non-union members, whereas two most frequent case scenarios include:
    - Enterprises from the public sector apply provisions of agreements negotiated with SMAQ in relation to all train drivers and traction vehicle operators, treating them like any other employees working within a given working hours;
    - Private companies apply provisions of various company-level agreements, depending on trade unions which signed them and actual employees' representation, whereas SMAQ stands by the principle of autonomous agreements.

13. It should be also stressed that an employee who is not a member of a trade union has the right to be covered by one out of many collective regulation measures applied within a given enterprise, for instance, principles defining terms and conditions of labour, remuneration, holiday leaves, working time, rest time, promotions and occupational categories, etc. In order to apply these measures in relation to all employees it is possible to design and implement **extending regulations** enforced by an official institution, such as the Ministry of Labour, what could effectively ensure equal working conditions and equal pay.

14. Some enterprises from sectors with low unionisation rate, whose employers are reluctant to enter into collective agreements or outwardly undermine the rights vested in trade unions which are codified by the Constitution of the Portuguese Republic, apply individual employment contract, what questions the legitimacy of work and exposes employees to inferior working conditions, leads to hostile attitude towards trade union representation and prompts employers to defy collective agreements.

15. The Collective Agreement made by SMAQ and Fertagus S.A. initiated a negotiating process that has been considered a case study in its own right due to its duration - the process was launched on 2 April 2007 what means that it has been continued for nine years. SMAQ proposed to Fertagus - Travessia do Tejo, Transportes, S.A. signature of the first Company-Level Agreement. From the outset, the company refused to engage itself in direct negotiations with the trade union. This led to the **conciliation and mediation** process overseen by respective units of the Ministry. The next stage of the proceeding met with fierce reluctance of the company Fertagus, what prompted SMAQ to apply for the mandatory arbitration proceeding.

On 14 September 2009 the Minister of Labour and Social Solidarity issued Regulation in which he recognised the justified need for the existence of the Collective Labour Regulation Measure - an arbitration ruling applicable to train drivers and traction vehicle operators associated within SMAQ and working for Fertagus.

While refusing again to introduce the Collective Labour Regulation Measure, Fertagus launched an attack at the Minister's Regulation and neutered operations of the Arbitration Court as it submitted FIVE applications for precautionary measures and filed THREE applications for instigation of a special administrative proceeding. In recent years, Fertagus lost - without a single exception - all litigations to secure its claims and all administrative proceedings at various instances, including the Supreme Administrative Court. The only legal avenue that is left was an appeal to the Constitutional Tribunal which it also lost.

Thus, eight years after the launch of negotiations with SMAQ and more than six years after the opening of case 1/2009 by the Economic and Social Council, Fertagus once again refused to initiate the mandatory arbitration proceeding by inspiring an air of suspicion around the justice who was representing employees at the Arbitration Court. As a result there are two cases which are still pending: the case relating to mandatory arbitration proceeding and the case relating to suspicions, whereas the first case awaits the resolution of the latter one (by the President of the Court of Second Instance in Lisbon).

Eight years of continued conflict added more credits to SMAQ; while Fertagus is playing to get more time; as a result of actions put in place by train drivers represented by SMAQ, the persistent refusal of the employer resonated with the community of most arbitrators of the Court who were unable or were reluctant to hamper the orchestrated, recurring measures undertaken of Fertagus which were targeted at administrative courts whose operations were effectively and visibly paralysed despite the fact that most claims made by Fertagus were eventually dismissed. While the Case 7/2009 continued for a long time, the Arbitration Court was able to prevent Fertagus from rolling out its persistent plans to achieve its goals; it was sufficient, and this in fact something the Court was competent to do, not to get involved in unnecessary disputes which led to the standstill of the court which was forced to issue consecutive decisions that adjourned ("suspended") the proceeding or precautionary measures. Fertagus tactics were effective, but a party who has always been losing in administrative courts should pay the consequences as its practices brought administrative courts to a standstill, what is not only incomprehensible but also highly disturbing.

This situation is intriguing at least and regrettably, it reflects the reality haunted on the one hand by the slowness of legislative measures relating to labour law and on the other, by the overall impaired efficiency of the legislative process and bodies accountable for Collective Agreements being the fundamental right of workers laid down by the Basic Law, which is the Constitution of the Portuguese Republic. A strong recent case of inefficiency and obstruction of the Collective Agreement process conducted in line with the law in force and in the spirit of legal regulations is the refusal to hand over a copy of the minutes from the Mandatory Arbitration Proceeding held on 3 June 2016 (this document has been enclosed hereto). The content of the refusal fails to provide any conclusions as to application of the Company-Level Agreement reached as a result of the Mandatory Arbitration Proceeding joined by the concerned parties and in line with provisions of the labour law:

- Arbitration Court/ Economic and Social Council (Presiding Arbitration Judge);
- SMAQ – the Union of Train Drivers (The Arbitration Judge of the Concerned Party);
- Fertagus - Travessia do Tejo S.A. (The Arbitration Judge of the Concerned Party).

16. In terms of implementation of Directive 2002/14/EC in the railway sector, its transposition into the Portuguese labour law was facilitated by revision of the Labour Code, approved and enforced by act no 7/2009 of 12 February.

Basic legal regulations previously contained provisions the current directive strives to protect, especially in terms of Articles 4,6 and 7 as well as Article 5, mainly by means of collective agreements relating to employees, or relating to protection of working conditions to the best interest of employees and their social and trade union organisations, for which the Labour Code provides minimum conditions, not subject to regulations and without identifying the specific labour market in the railway industry, especially in terms of work of train drivers and traction vehicle operators.

Operations of works council from the railway sector are not based on these principles; as we have already mentioned their SMAQ - the Union of Train Drivers, trade union and inter-union commissions are accountable for their external organisation. They strive to ensure more effective organisation of collective bargaining with enterprises and more efficient protection of the interests of employees they represent. Their internal structures are split into employees' commissions and subcommissions whose goal is to ensure the right to information and consultation as well as the right to control the management by drafting reports and reviews relating, in particular, to the quality, restructuring of the enterprise and continuous development of employees as well as enhancement of working conditions in terms of occupational health and safety. In the public sector, employees who contribute to the restructuring processes are appointed to become members of their social bodies.

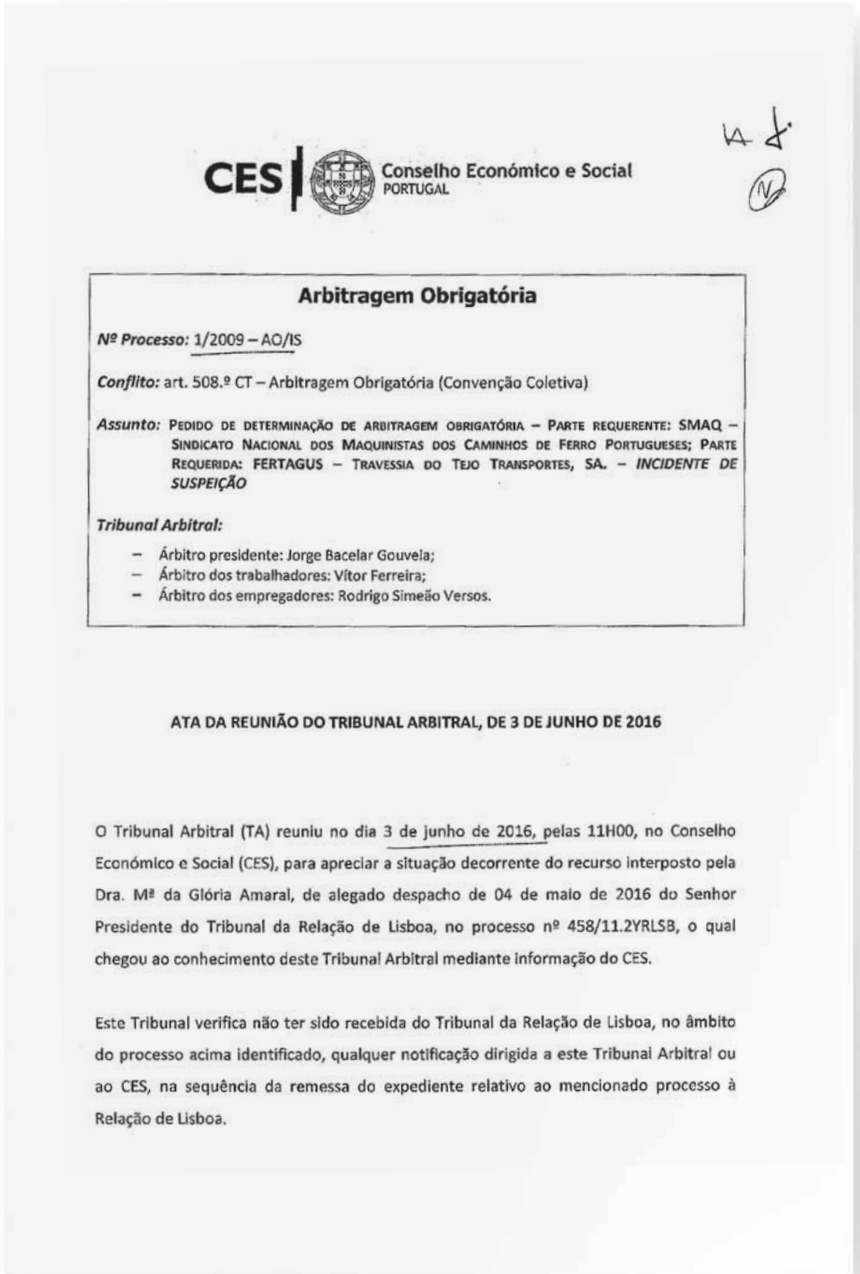
17. In terms of European Works Councils, the internal legal system has been transposed by Act 96/2009 of 3 September, but its application is extremely ineffective due to challenges and its complexity in terms of organisation within enterprises or European Union-wide groups of enterprises. The situation is additionally aggravated by the fact that employers are clearly undermining modern trust-based relations at the workplace level, especially by denying employees their right to information and consulting.

18. Alongside trade union representation and employee protection provided by various organisations, social and public institutions, what is provided under the labour law, employees may also receive support from inspection, prevention and security bodies of various organisations which also assist them in protecting the terms and conditions of work. These are:
    - The National Inspection of Working Conditions (inspection);
    - Insurance against accidents at work, health and occupational disease insurance (employee protection);
    - The Ministry of Public Affairs (employee protection);
    - Labour Courts/ Second Instance Courts/ Supreme Court/ Constitutional Court (labour law and constitutional disputes).

19. Portugal has no workers' self-government structures at public enterprises; there are no employees' representatives present in supervisory boards or management boards of public and/or privatized companies. There are only examples of self-government structures in the service sector and/or social or social responsibility enterprises which are home to trade union representations and/or representatives appointed by employees who work alongside employer's representatives.

20. Finally, from 2010 until now, in the times of economic, financial and social crisis that brought limitations or abolition of collective agreements in the public sector and, to a lesser extent, in the private sector, it is essential to exercise pressure and prompt negotiations to protect working conditions specified by collective agreements, do our best not to deteriorate the living conditions or undermine the professional dignity of train drivers and traction vehicle operators represented by SMAQ; in justified cases we should exercise the right to industrial action, if all avenues for collective bargaining and related social dialogue are exhausted; we should stand by criteria that support early retirement, help maintain and create new jobs whilst fostering motivation and the spirit of enterprise.

The biggest concerns related to intervention measures undertaken by SMAQ - the Union of Train Driver, are delays in the examination of court cases. Meanwhile, SMAQ is continuously fighting for law-based and effective rulings of courts. All our measures should contribute to the efficiency and effectiveness of the negotiating process across all its stages, commencing with the Social Conciliation Council **to signature and application of Company-Level Agreements negotiated and signed in line with rigorous terms and conditions provided under the Labour Law that make references to workers' rights and their right to association guaranteed by the Constitution of the Portuguese Republic.**



CES | Conselho Económico e Social PORTUGAL

Arbitragem Obrigatória

Nº Processo: 1/2009 – AO/IS

Conflito: art. 508.º CT – Arbitragem Obrigatória (Convenção Coletiva)

Assunto: PEDIDO DE DETERMINAÇÃO DE ARBITRAGEM OBRIGATÓRIA – PARTE REQUERENTE: SMAQ – SINDICATO NACIONAL DOS MAQUINISTAS DOS CAMINHOS DE FERRO PORTUGUESES; PARTE REQUERIDA: FERTAGUS – TRAVESSIA DO TEJO TRANSPORTES, SA. – ***INCIDENTE DE SUSPEIÇÃO***

Tribunal Arbitral:

- Árbitro presidente: Jorge Bacelar Gouvela;
- Árbitro dos trabalhadores: Vítor Ferreira;
- Árbitro dos empregadores: Rodrigo Simeão Versos.

ATA DA REUNIÃO DO TRIBUNAL ARBITRAL, DE 3 DE JUNHO DE 2016

O Tribunal Arbitral (TA) reuniu no dia 3 de junho de 2016, pelas 11H00, no Conselho Económico e Social (CES), para apreciar a situação decorrente do recurso interposto pela Dra. Mª da Glória Amaral, de alegado despacho de 04 de maio de 2016 do Senhor Presidente do Tribunal da Relação de Lisboa, no processo nº 458/11.2YRLSB, o qual chegou ao conhecimento deste Tribunal Arbitral mediante informação do CES.

Este Tribunal verifica não ter sido recebida do Tribunal da Relação de Lisboa, no âmbito do processo acima identificado, qualquer notificação dirigida a este Tribunal Arbitral ou ao CES, na sequência da remessa do expediente relativo ao mencionado processo à Relação de Lisboa.

CES
Conselho Económico e Social
Economic and Social Council of Portugal

Mandatory arbitration proceeding

File reference number: 1/2009 - AO/IS

Conflict: Art. 508 of PR – Mandatory arbitration proceeding (Collective Agreement)

Case: Application for mandatory arbitration proceeding - The plaintiff: SMAQ – the Union of Train Drivers; The Defendant: FERTAGUS - Travessia do Tejo Transportes, SA. – NOTIFICATION OF SUSPECTED OFFENCE

Arbitration Court:
– Presiding Judge: Jorge Bacelar Gouveia;
– Judge representing the interests of employees: Vítor Ferreira;
– Judge representing the interests of the employer: Rodrigo Símeão Versos,

THE MINUTES FROM THE SESSION OF THE ARTBITRATION COURT OF 3 JUNE 2016

The Arbitration Court (AC) during its session on 3 June 2016 at 11:00 held at the seat of the Economic and Social Council (ESC) examined the appeal submitted by attorney Ms Maria Gloria Amaral, being a complaint against the decision of the President of the Court of Second Instance in Lisbon dated 4 May 2014, case reference number 458/11.2YRLSB, whose content has been communicated to the Arbitration Court by the ESC.

At the same time, the Arbitration Court has concluded that it received no notification in the above-specified case from the Court of the Second Instance in Lisbon as well as no notification from the ESC in relation to transmission of the case file.

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Por outro lado, a confirmar-se o despacho do Presidente do Tribunal da Relação de Lisboa mencionado no recurso da Dra. Mª Glória Amaral, verifica-se que este despacho determina a remessa do processo a este Tribunal Arbitral.

Assim, este Tribunal Arbitral delibera não tomar qualquer medida e aguardar a notificação pelo Tribunal da Relação de Lisboa do que vier a ser decidido, ou do que tenha sido decidido nesse mesmo Tribunal.

Nada mais havendo a tratar, deu-se por encerrada a reunião, pelas 12H30, de que se lavrou a presente ata, que vai ser assinada pelos árbitros presentes.

Lisboa, 3 de junho de 2016

Árbitro Presidente _____
(Jorge Bacelar Gouveia)

Árbitro de Parte Trabalhadora _____
(Vítor Ferreira)

Árbitro de Parte Empregadora _____
(Rodrigo Simeão Versos)

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On the other hand, if the decision of the Court of Second Instance in Lisbon specified in the complaint submitted by attorney Maria Gloria Amaral is upheld, the case will be referred for resolution to the Arbitration Court.

Therefore, the Arbitration Court has decided to take no decision while waiting for the notification from the Court of the Second Instance in Lisbon regarding the ruling announced or to be announced by this Court.

Having exhausted the agenda, the session was adjourned at 12:30. Minutes from the session were signed by members of the bench.

Lisbon, 3 June 2016.

Federatia Mecanicilor de Locomotiva din România (FML)

Legal framework of Social Dialogue

Nowadays the legal framework regulating the field of social dialogue consists of the following legal norms:

- Law no. 53/2003 – Labor Code, with its ulterior amendments and additions;
- Law no. 62/2011 – Law of social dialogue with its ulterior amendments and additions;
- Law no. 467/2006 – Law regarding the general framework of employee information and consultation;
- Law no. 217/2005 – Law of European Works Councils;
- Law no. 248/2013 – Law of organization and functioning of the Economic and Social Council;
- Law no. 319/2006 – Law of labor health and security;
- HG no. 1425/2006 – For the approval of methodological norms for the application of the Labour health and security provisions Law no. 319/2006;
- HG no. 187/2007 regarding the information and consultation of employees in European companies;
- HG no. 188/2007 regarding the information and consultation of employees of European cooperative companies;
- H.G. no. 1260/2011 regarding the fields of activity established according to Law no. 62/2011;
- OUG no. 28/2009 regarding the regulation of social protection measures (industry committees);
- ILO Convention no. 87/1948 regarding the freedom of association and protection of the right to organize;
- ILO Convention no. 154/1981 regarding the promotion of collective bargaining;
- ILO Convention no. 98/1949 right to organize and to collective bargaining;
- ILO Convention no. 135/1971 regarding the protection of workers' representatives in enterprises and their tasks.

There must be mentioned that the main legal norm of the social dialogue in Romania is Law no. 62/2011 – Law of social dialogue, with its ulterior amendments and additions, by which it is regulated: the creation, organization and functioning of trade union organizations and employers' associations and the criteria for receiving their representation ability: the institutions for social dialogue (Tripartite National Council for Social Dialogue, social dialogue commissions); bargaining of collective labor agreements; manners of solving the labor conflicts.

Forms of institutionalized social dialogue in Romania
Tripartite social dialogue

To the tripartite social dialogue attend as social partners the trade union organizations, employers' associations and representatives of the central or local administration, as the case may be.

The trade union organizations are legally created according to the provisions of Law no. 62/2011, Law of social dialogue. According to law, a trade union organization consists of at least 15 persons from the same unit.

The employers' associations are legally created according to the provisions of the same law, the Law of social dialogue. In order to constitute an employers' association there are necessary at least 2 legal bodies from the same field of activity.

The tripartite social dialogue is developed on three pillars:

- At national level;
- At field level;
- At territorial level.

The tripartite social dialogue at national level

To the Social Dialogue at national level attend as social partners: Employers' confederations representative at national level, trade union confederations representative at national level, the Government of Romania.

The employers' confederations, representative at national level, gain this quality according to the provisions of Law no. 62/2011, Law of social dialogue. The representation criteria stipulated by law are: the organizational and patrimonial independence cover at least half of the number of districts, including Bucharest municipality and comprises at least 7% from all the employees from the national economy

In Romania there are registered 6 representative employers' confederations at national level, as follows:

- Employers' Confederation from the Romanian Industry C.O.N.P.I.R.O.M.
- National Confederation of Employers P.N.R.
- General Confederation of the Romanian Industrial Employers U.G.I.R.
- National Confederation of Romanian Employers C.N.P.R.
- National Council of Small and Medium Sized enterprises from Romania
- Employers' Confederation Concordia

The trade union confederations represented at national level gain this quality also according with the provisions of Law no. 62/2011, Law of social dialogue. The representation criteria for the trade unions stipulated by law are: they have legal statute of trade union confederation; they have organizational and patrimonial independence; they have in their constitution their own trade union structures in at least half of the number of districts, including Bucharest; comprise at least 5% from the employees from the national economy.

In Romania there are 5 representative trade union confederations at national level, as follows:

- National Confederation of Free Romanian Trade Unions – Frăția
- National Trade Union Confederation „Cartel Alfa"
- National Trade Union Block
- National Trade Union Confederation „Meridian"
- Confederation of the Romanian Democratic Trade Union.

Institutions of tripartite social dialogue at national level:

- The Tripartite National Council for social dialogue
- Economic and Social Committee- permanent structure
- Committee for Monitoring the Social Agreement – sui-generis structure with continuous activity during the entire period of the agreement
- National Crisis Committee–ad-hoc structure, created for the issuance of the anti-crisis measurements plan.

The Tripartite National Council for social dialogue, constituted by the Law of social dialogue, is a tripartite organism, created at the highest level in order to promote good practices for the tripartite social dialogue. According to Law, the National Tripartite Council consists of the following: presidents of representative trade union confederations; representatives of the Government, from each ministry and also other structures of the state, according to those agreed with the social partners, designated by the Prime Minister's decision, at least at state secretary's level; president of the Economic and Social Council and other members agreed with social partners.

The main attributions of the Tripartite National Council are:
- Assuring the advisory framework in order to establish the minimum guaranteed salary;
- Debate and analysis of drafts of programs and strategies issued at governmental level;
- Issuance and support of strategies, programs, methodologies and standards implementations in the field of social dialogue;
- Solving through tripartite dialogue different social and economic differences;
- Negotiation and lease of social agreements and also of other understandings at national level and the monitor of their application;
- Analysis and, as the case may be, the approval of requests for extending the application of collective labor agreements for that sector, for all units in that field of activity;
- Other attributions agreed between the parties.

At the Tripartite National Council's meetings may be invited representatives of state's authorities or experts, according to those agreed by the parties.

The Economic and Social Council is a tripartite, autonomous public institution of national interest created for starting tripartite dialogue at national level between employers' organizations, trade unions and representatives of the organized civil society. The qualification fields of the Social and Economic Council:
- Economic policies;
- Financial and tax policies;
- Labor relations, social protection and wage policies;
- Policies in the health field;
- Education, investigation and culture.

The Economic and Social Council may take the matter referred to or may be notified by any public authority or by employers' organizations and/or representative trade unions at national level and also by the representatives of the civil society regarding certain facts, evolutions or social- economic events of national interest.

Attributions of the Economic and Social Council:
- Certifies the regulations from fields of action;
- Issues, at the Government, Parliament's request or of its own initiative, analysis and studies regarding economic and social realities;
- Notifies to the Government or the Parliament the apparition of economic and social phenomena which need the issuance of new regulations;
- Follows the fulfillment of the obligations coming from the Convention no. 144/1976 of the International Labor Organization regarding the tripartite consultations aiming at promoting the application of international labor regulations, adopted on June 2nd 1976 in Geneva, ratified by Romania by Law no. 96/1992.

Monitoring Committee of the Social Agreement is a specific structure which is created at national level, in order to follow the manner of accomplishment of the objective established by common agreement. This monitoring committee meets every time a social agreement is concluded, and is made of the representatives of the signing parties.

Ad-hoc constituted structures. An example of such structure is **the Tripartite National Committee for Crisis**, founded in January 2009, for the elaboration of the social and economic measures plan for fighting the effects of the economic crisis in Romania. The proposals of the social partners, approved and undertaken by the Government, have been included in the National program of anti-crisis measures and benefited from budgetary coverage through the Law of State's Budget.

Development of social dialogue

The usual forms of development of social dialogue are:
- Information
- Consultation
- Negotiation
- Agreement

The information and consultation are procedures regulated by Law no. 467/2006 regarding the creation of the general framework of information and consultation of employees. In this law there are defined:
- The information as being the transmission of data by the employer to the representatives of the employees, in order to allow them to get to know the issue of the debate and analyze it knowingly;
- The consultation as being the exchange of opinions within the social dialogue between employer and the representatives of the employees.

The negotiation and the Agreement – through negotiation at national level, in 2001, 2002 and 2004 have been concluded Social Agreements by which the partners agreed a series of common interest objectives in the economic and social field, whose accomplishment was afterwards followed by the previously mentioned Monitoring Committees. These agreements or national social agreements reflected both the availability of social partners regarding the culture of social dialogue and its importance in the process of social agreement.

Sectoral tripartite social dialogue

The sectoral tripartite social dialogue is regulated by Law no. 62/2011, Law of social dialogue, where there are mentioned the constitution and functioning of Social Dialogue Commissions. In law there are defined the parties attending to sectoral social dialogue, especially within the Social Dialogue Commissions created at the level of

ministries and specified authorities. Within these commissions, the main social partners at national level, and also trade unions and employers' associations, designate their representatives for debating the regulations, programs and strategies initiated at the level of each ministry. The partners' points of view, expressed in the debate of the regulations are registered into a document of opinion accompanying the regulation during the certification process, including at the Economic and Social Council.

Tripartite administration councils.

For an efficient management, the social funds created in the field of pensions, health and unemployment are administered in a tripartite manner. Thus, there are created tripartite administration councils at: the National House of Pensions and other Rights of Social Insurances, the National House of Health Insurances.

Tripartite dialogue within the territory

Within the territory, the Law no. 62/2011 states the manner of creation and functioning of the District Social Dialogue Commissions. The social partners which are represented at national level designate the representatives from their own territorial structures for this commission. The administration is represented at the management level of the commission by 2 co-presidents: the prefect and the president of the district council. The justification of the existence of co-presidency lies in the different character of the nature of authority of the two co-presidents, the prefect representing the government in the territory, thus, the structures of the public administration, while the president of the district council dictates the administration of funds in the territory. Within the territorial social dialogue the social partners are interested in collaborating with both representatives of the authorities, because the character of the social dialogue at this level usually has forms of partnerships in the interest of local development.

There are also members in the commission, the representatives of de-concentrated structures of central public administration and also a representative of the Territorial Labor Inspectorate, sent by the Ministry of Labor, Family and Social Protection.

Due to the need for developing the social dialogue locally, the Social Dialogue Commission, created at district level may decide the implementation of social dialogue subcommissions in certain locations of the district. These sub-commissions allow the social partners to get involved in an efficient manner in solving the specific local problems.

Bipartite social dialogue

Within the bipartite social dialogue we are dealing with social partners, the employer or employers' organizations and trade union associations and/or representatives of the employees, as the case may be.

Manner of development

The usual form of bipartite social dialogue in Romania is the bargaining of collective labor agreements. The representation criteria of the parties, bargaining procedure, conclusion and enforcement of collective labor agreement are regulated by Law no. 62/2011, law of social dialogue.

Levels of handling social dialogue

The bipartite social dialogue takes place at the following levels:

- sector;
- group of units;
- units.

At sector level

The sectors of the national economy are established by H.G. no. 1260/2011, regarding the sectors of activity stipulated by Law no. 62/2011.

The social partners within social dialogue at sector level are:

- Trade union federations which are representative at sector level, according to Law no. 62/2011. **Criteria:** have legal statute of trade union federation; have organizational and patrimonial independence; have a number of members of at least 7% from all the employees in that sector.
- Employers' Federations representative at sector level, according to Law 62/2011 **Criteria:** have organizational and patrimonial independence; comprise at least 10% from the number of employees in that sector.

The main objectives followed by social partners at sector level are the conclusion of collective labor agreements and issuance of sectoral strategies. The collective labor agreement negotiated at sector level will be registered as such only when, both the employers' organization and the trade union represent each more than half of the total number of employees from that sector, according to the data of the National Institute of Statistics. If the above mentioned condition is not fulfilled, the contract is registered as a contract at the level of group of units. In the same time, if a collective labor agreement is registered at sector level, the signing parties may request to the Tripartite National Council for social dialogue the extension of its enforcement at the level of the entire sector. The Council may approve the request to extend the contract's enforcement, this being done by an order issued by the Minister of Labor, Family and Social Protection. If the extension of the enforcement is not required or the request is rejected, the contract is binding for all employees from the units of the sector of activity for which the collective labor agreement was concluded and which are part of the signing employers' organizations.

A major impediment in negotiation and concluding collective labor agreements at sector level is represented by the manner in which the activity sectors have been established by HG no. 1260/2011. The sectors defined in this regulation are superdimensioned, which generated and still generate difficulties in fulfilling the conditions required by law for the conclusion of a collective labor agreement at this level. The situation is aggravated also by the fact that there is no correspondence between the fields covered by trade unions and employers' organizations established at this level. We believe that for adjusting the existent situation there are necessary consultations with the social partners directly interested in bargaining at that level, respectively with the structures of the social partners created for each federation in order to revise the government's decision for increasing the number of sectors in order to assure the specificity of the activity of each sector.

According to Romanian legislation, the collective labor agreements are not binding at sector level. After passing the Law 62/2011, the collective labor agreements at sector level disappeared.

Sector level structures

For a sectoral social dialogue there are functioning various partnerships. Among these, we mention:

structures created by law
Sectoral committees, as social dialogue institutions of public utility, regulated by OUG 28/2009

structures created on the basis of a bipartite agreement (CCM)

At group of units level

The groups of units can be made of two or various units with the same object of activity according to NACE code. The groups of units represent the most flexible form of organization in order to negotiate collective labor agreements because the law does not impose legal conditions of registration of the group. In the same time, the group of units, as organizational form in order to negotiate a collective labor agreement reflects with a great accuracy the parties' specific collective interests. The collective labor agreement concluded at group of units' level is binding for all employees from the units of that group. The national companies, state companies or public authorities may create groups of units, if they consist in, have subordinated or coordinated other employing legal bodies.

According to Romanian legislation, the collective labor agreements are not compulsory at the level of group of units.

Units level

Law no. 62/2011 stipulates the obligation to negotiate the collective labor agreement at unit level for all units with more than 21 employees. The collective labor agreements may contain clauses establishing rights at an inferior level to that established by the applicable collective labor agreement concluded at superior level or rights stipulated by most favorable regulations.

For the conclusion of the contract at unit level, the law stipulates the application of the majority principle for the representation of the employees. Thus, the representation criterion for a trade union at unit level is of at least 50% +1 from the number of the unit's employees. If this condition is not fulfilled, to the negotiations attend also the representatives of the employees, chosen according to law. We state that the law does not foresee a certain procedure for choosing the employees' representatives (individual vote, lists voting system, electronic, etc.) but only the condition for the employees' representatives to be chosen by at least half from the total number of employees (including the temporary ones), no matter if they are or not members of the union. The specific situations in which trade unions and/or the representatives of the employees attend to the negotiation of the collective labor agreement are stipulated by Law no. 62/2011 for each particular case.

Partnership structures at unit level

- Created by CCM – Advisory Commissions
- Created according to law **Labor Health and Security Committees**, for the units with more than 50 employees.
- Created according to European law (transposition EU directive) Law of European Works Councils. **European Works Councils** for units of community dimension. The Romanian Trade Unions which have members in trans-national units (Carrefour, Metro, etc) have members in their European Works Committees, even in board of directors of trans-national companies. In the railway sector there is a trans-national operator operating in Romania (DB Schenker) where there are no Romanian representatives at the European Works Committee.

A news brought by Law no. 62/2011 in the field of collective bargaining is represented by the introduction of the principle of mutual recognition of the social partners, in which basis any legally created trade union may conclude with an employer or with an employer's organization any kind of written agreements, conventions or understandings, which represent the parties' law and whose provisions are only applicable to the members of the signing organizations. This provision assures a form of flexibility in the field of collective bargaining, not involving representation conditions and giving the possibility to the parties to represent specific interests of employees and/or employers, with a restraint field of applicability. For example: the interests of a certain category/ categories of employees, exceptional or occasional situations, an exclusive interest of the trade union members, etc.

Innovative trade union strategies in the railway sector

With financial support from the European Union