Employee representatives in an enlarged Europe

Volume 2
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Volume 2

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Volume 2 of the publication *Employee Representatives in an Enlarged Europe* covers the following countries: Latvia, Liechtenstein, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey, United Kingdom.

It also covers the role of the European Social Partners, as well as the European and International Institutions.

Volume 1 (ISBN: 978-92-79-08928-2) of the publication *Employee Representatives in an Enlarged Europe* provides a general overview of the basic characteristics of national systems of employee representation and participation in European undertakings within the framework of prevailing industrial relations in each country.

It covers the following countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland and Italy.
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After the collapse of the Soviet Union, Latvia regained its independence in 1991. In 1992 it signed the free trade agreement with the European Union and on 1 May, 2004 Latvia became a member of the European Union.

At the beginning of 1990s Latvia started the transition process from a centrally-planned economy to a market economy. The main goals of this ambitious programme included the stabilisation of deteriorated economic conditions, privatisation, deregulation, currency reform, private sector development and the creation of market institutions. The problems inherited from the Soviet period and those which have arisen during the transition process have had a significant impact on the development of the industrial relations system in Latvia.

High regional disparities exist in the country. Among Latvian regions, the Rīga region (the capital) has the highest gross domestic product (GDP) per capita (72% of the EU average). It is higher than in the Kurzeme region (36% of the EU average). In other regions, GDP per capita ranges from 21% (Latgale) to 27% (Pierīga). Accordingly industrial relations are more developed in the big cities where the most of large and medium-sized enterprises are established.

I. ECONOMIC AND SOCIAL FRAMEWORK

Economic situation and evolution in recent years
The reforms implemented in Latvia, and integration in the European Union, have positively impacted on the economic development of the country. Economic growth is the highest in the EU. Since 2000 the average annual growth of GDP has been 8.1%, in 2005, GDP increased even faster – by 10.2% - and rapid economic growth has continued in 2006. GDP in the first quarter of that year increased by 13.1% compared with the same period in 2005. The high growth rates have been achieved by the stable dynamics of domestic demand and increase in exports.

Economic growth is achieved through a stable macroeconomic environment. The Bank of Latvia implements a de facto policy of fixed national currency exchange rates. This reduces uncertainty, eliminates exposure to currency risk and gives entrepreneurs a stable base for planning and price determination. On May 2, 2005 Latvia joined the European Exchange Rate Mechanism with the exchange rate of lats against the euro, namely, 1 EUR = 0.702804 LVL. The target set by the government to join the EMU on January 1, 2008 has become practically unachievable due to high inflation. The situation is currently being assessed and a new date for joining the EMU will be set.

As regards the growth of investment and its share in GDP, Latvia has one of the highest indicators among the EU member states. Investment is promoted by several factors, among them the stable macroeconomic environment, foreign investment, low interest rates and strengthening of the banking sector. At the end of 2005, foreign investment amounted to LVL 2836 million or 40.4% of annual GDP.

Latvia’s strong economic performance continues to be accompanied by relatively high inflation. The level of inflation in Latvia decreased from hyperinflation in the early 1990’s to 1.9% in 2002. However in 2004 inflation more than doubled in comparison with 2003. High inflation remained in 2005 (7%). In the first six months of 2006 it increased at a more moderate pace than in same period the previous two years (6.3%). It is forecasted to decrease gradually over the next few years.

One of the main economic development risks is a relatively high current account deficit caused particularly by high domestic demand and steep increases in investment. In 2005 the current account deficit amounted to 12.4% of GDP and was 0.5 percentage points lower than in 2004. Strongly negative trade balance is the main reason for the current account deficit.
**Productive structure**

The structure of the Latvian economy has changed in favour of service sectors in recent years.

Almost 80% of the GDP increase in 2005 was as a result of the growth of service sectors, where the biggest contribution was made by the trade, transport and communication sectors. Transit services are of great importance for the national economy. They constitute approximately 15% of the revenues from Latvian exports of goods and services or about 5% of GDP. Even though transit services are growing by volume, their share in the national economy in general and in the transport and communications sector is diminishing. This can be explained by the fact that the domestic use of transport sector services has grown faster than their external use in recent years.

Two-thirds of the growth in the transport and communications sector depends on the domestic demand (development of communications, warehousing, parking services, tourism, etc.) and only one-third depends on the external demand (transit).

Manufacturing has contributed substantially to growth. In the period from 2001 to 2005, output in manufacturing has grown by 7.6% on average every year. The biggest contribution to industrial growth was made by the timber industry, machine building and metalwork production. Modernisation and reconstruction of production as well as the utilisation of EU funds increased productivity and the competitiveness of the sector, which is predicted to continue.

The growth in agriculture was 6.9% in 2005. Further development of agriculture will depend on adjustments of agricultural production facilities and products to EU standards and quality criteria, and on external demand.

The rapid rise in investment has had a favourable influence on the construction sector, which grew by 15.5% in 2005. Construction of streets and roads, residential and commercial buildings, hotels, industrial and other areas has been increasing. The construction sector is expected to continue to expand due to development of mortgage lending, increased economic activity and investment, as well as implementation of projects financed from EU funds.

**Labour market**

Rapid economic development in recent years has had a positive impact on the situation in the Latvian labour market. Although the population of working age (15-64 years) continues to diminish, the number of economically active people increases and the employment rate grows. In the last five years (2001-2005) the employment rate has increased by 6.1 percentage points. In 2000 the employment rate in Latvia was 4.9 percentage points lower than the EU average; while in 2005 it lagged behind by mere 0.5 percentage points. Currently, the economic activity of the population in Latvia (63.3% in 2005) is close to the EU average, while the economic activity of women (59.3% in 2005) has already exceeded the average indicators of the EU. The economic activity of men (67.6 % in 2005) still lags behind.

The employment rate of older people increased in 2005. It amounted to 49.5% in 2005 (55-64 age group), which is by 1.6 percentage points higher than in the preceding year. The employment level of older people has substantially increased among women (from 41.9% in 2004 to 45.3% in 2005), but has a decreased slightly among men (from 55.8% to 55.2%).

Employment rates in Latvian regions vary. In 2005 the employment rate was 69.3% in Riga, but a mere 53% in the Latgale region. Of all employed people in 2005, 70.4% were employed in cities and 29.6% were employed in the countryside. It has to be noted that the proportion of employed people in cities grows every year, but the proportion in the countryside decreases.

Latvia still has a relatively high rate of **undeclared employment** in such sectors as construction, manufacturing, agriculture and transport services. There has been no official assessment of the scale of undeclared work in Latvia. Estimates given in various unofficial reports vary, ranging from 15% to 45% of total employment.
Employment in service, industrial and agriculture sectors
Over the last five years, the number of employed people in the service sectors has increased, especially in trade and communications, while the number of employed persons in agriculture and industry has decreased.

Employment by National Economic Sector 2005 (%)

<table>
<thead>
<tr>
<th>Sector</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public services</td>
<td>20</td>
</tr>
<tr>
<td>Trade, hotels and restaurants</td>
<td>19</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>16</td>
</tr>
<tr>
<td>Other commercial services</td>
<td>13</td>
</tr>
<tr>
<td>Primary sectors</td>
<td>12</td>
</tr>
<tr>
<td>Construction</td>
<td>9</td>
</tr>
<tr>
<td>Transport and communications</td>
<td>9</td>
</tr>
<tr>
<td>Electricity, gas and water supply</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: Eurostat

Unemployment indicators have improved accordingly. Unemployment decreased particularly quickly in 2005 to 8.9% (it was 10.4% a year before). The share of long-term unemployment has also decreased to 4.1% in 2005.

Youth unemployment substantially decreased from 18.1% in 2004 to 13.6% in 2005 (in the 15-24 age group). The number of employed young people has increased, but the number of economically active young people has also gone down, because more and more young people are continuing their education. Differences between youth unemployment and the average unemployment rate in the country have also decreased substantially. The youth unemployment rate in 2004 was 7.7 percentage points higher than the average unemployment in the country, but in 2005 it was only 4.7 percentage points higher.

The highest unemployment rate still remains in the Latgale region. At the end of 2005 it exceeded 25% in three districts there: Ludza (28%), Rēzekne (27%) and Balvi (25%) districts. The high unemployment is caused by poorly developed business, little self-employment and insufficient traffic infrastructure.

The decrease in unemployment is not only due to the increased employment rate. After Latvia’s accession to the EU, outward migration to old EU member states, where labour markets are open to the citizens of the new EU member states has also occurred and there is now a shortage of labour in several sectors.

Educational attainment
The educational level of the employed population in Latvia is relatively high. Nearly a quarter (24.4%) have tertiary qualifications, 25.1% general education, 37.0% a mid-level professional or trade education, while 13.4% have only primary or a lower educational level. On average 21.6% of those employed in 2002 had higher education (24% in the EU), 64.3% had secondary education, including vocational education (46% in the EU). However, many employees lack the skills necessary for jobs in highest demand, such as information technologies, communications, marketing and entrepreneurship.

II. INDUSTRIAL AND LABOUR RELATIONS: KEY ELEMENTS OF THE CURRENT SITUATION

Until 1 June 2002, the 1972 Labour Code of Latvia regulated labour relations. The Labour Code that was amended various times only partly corresponded to the conditions and demands of a market economy and did not ensure full compliance of the regulation of labour relations by international and European law. Therefore in 1997 work started to reform the existing industrial relations system. The major part of this reform included the implementation of the rules stemming from international law, in particular European
Union law, as membership in the EU required the legislation to comply with the EU "acquis" upon accession. The new Labour Law that came into force on 1 June 2002 transposed most EU directives in the field of employment law.

Within the framework of the centrally-planned system, the Communist Party and government worked out the one best way for social action and then supervised the achievement of the established targets. Accordingly, neither trade unions nor employers could be identified as autonomous actors in the industrial relations system. A large proportion of the industrial relations reform in Latvia therefore concerned the establishment of a national consultation mechanism between social partners. The necessary legislation was adopted and the National Tripartite Co-operation Council was created to ensure and promote co-operation between the government, employers' organisations and trade unions at national level, giving the social partners increased responsibility. All legislative acts as regards national policy in the social sphere started to be prepared in close collaboration with the social partners.

1. Legal basis and key issues

Labour relations are regulated by the Satversme (Constitution) of the Republic of Latvia, international laws, the Labour Law and other legislative acts, as well as collective agreements and working procedures of undertakings.

The Constitution sets up a constitutional framework for the industrial relations system in Latvia. Article 102 provides that everyone has the right to form and join associations, political parties and other public organisations. Article 108 provides the freedom to conclude collective agreements, the right to strike and the freedom of trade unions.

The main legal act in the field of labour relations is the Labour Law\(^1\) (hereinafter – the LL\(^1\)), which applies to all employers irrespective of their legal status and on all workers if the mutual legal relationships between employer and worker are based on an employment contract. The labour relations of some categories of workers, such as civil servants, people performing mobile road transport activities and seafarers, are in addition regulated by specific legislative acts.

The important source in the field of labour legislation is a collective agreement. The parties to a collective agreement may agree on any issues related to employment legal relationships provided that the provisions of a collective agreement do not adversely affect the rights of employees (Article 6(2) of the LL\(^1\)).

2. Social partners

Trade Unions

Latvia has long trade union traditions, with the first unions emerging in 1905. Unions were repeatedly closed down by the state (in 1905, 1915, 1918 and 1934), but were always reconstituted. During the period when Latvia was part of the Soviet Union, trade unions were present in all undertakings and organisations. The unions performed social functions such as distribution of different benefits to employees.

The first years of transition were characterised by a significant decrease in membership and a democatisation process from a socialist to a free-market model. In 1990 the new Law on Trade Unions (hereinafter - the LTU) was adopted. In 1990, 24 branch trade union organisations constituted the Latvian Free Trade Union Confederation (LBAS), which currently has 165 000 members and unites 24 member organisations\(^2\). In December 1997 LBAS became a full-fledged member of the International Confederation of Free Trade Unions (ICFTU) and in March 2003 it became a full-fledged member of the ETUC.

The law provides that trade unions may be formed on the basis of professional, branch, territorial or other principles. Employers are also entitled to form trade unions (Article 2(2) of the LTU). The most widespread patterns in practice are the branch and undertaking trade unions.

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\(^1\) Latvijas Vēstnesis, 2001, No 105

\(^2\) www.lbas.lv
In Latvia the trade union movement is divided into entities that continue to operate as individual unions and those that have united in LBAS. Currently, there are 96 trade unions that have been registered in the Enterprise Register. The level of trade union membership in Latvia is relatively low. At the end of 2006, it was estimated to be 16%.

There are several reasons for this low interest in participation in trade unions:

- negative image of trade unions coming from the socialist past;
- employees have insufficient knowledge about their rights;
- employees are reluctant or afraid to represent interests of others; and
- in some cases, the negative attitude of the employers towards the establishment of employees’ representation structures in their undertakings.

Employers organisations

There was no tradition of employers’ organisations in the Soviet system. At the beginning of 1990s, independent business and professional associations began to emerge in Latvia. In 1993 the largest employers’ organisation - the Employers' Confederation of Latvia (LDDK), was established by merging the Central Union of Latvian Employers and the Association of Latvian Private Entrepreneurs. LDDK is only employers’ organisation that represents employers’ interests at national level.

In June 1994, LDDK became a member of the International Organisation of Employers. In 2005, LDDK became an associated member of BusinessEurope. Currently, LDDK unites 84 large enterprises and 33 sectoral associations. LDDK could be characterised as a highly centralised organisation with no territorial structures. One of the main problems of LDDK over the years has been attracting and keeping its members. Although several efforts have been made by the organisation to increase its membership it still covers only 25 % of the workforce.

The important step for ensuring uniformity of treatment in relation to the social partners in the legal sense was the adoption of the Law on Employers’ Organisations and their Associations (hereinafter – the LEO) in 1998. The Law determines the legal status and system of employers’ organisations as well as their rights and duties in relations with trade unions, and public and local government institutions.

At sectoral and regional level there are almost 100 organisations representing business interests. A high centralisation of economic activities mostly in Riga and other large cities has resulted in a concentration of regional employers’ organisations in the more economically-developed regions. Most sectoral organisations have developed as economic lobbies. Their priority interest is state policy in economic, fiscal and commercial areas. Social partnership has not always been among their priority objectives. Thirty three associations, which have joined the Latvian Employers’ Confederation, recognise themselves as employers’ organisations, although only few have officially declared it. These organisations respect the social partnership, and collective agreements in particular. However, it is important to recognise that their authority and their real capacity to act in this area generally remains limited.

There are several factors explaining the weaknesses of sectoral organisations: 1) the extreme diversity of enterprises within the same sectors, which makes it difficult to co-ordinate major economic, social and organisational differences that prevail between them, 2) the growth of private small enterprises, that refuse to join the employers’ organisations, and 3) the attitude of foreign enterprises that do not want to participate in joint activities with other enterprises within the sector.

3. Tripartite bodies

The first successful attempt to create a tripartite dialogue in Latvia was in 1993 when several tripartite councils were established (the Tripartite National Council of Employers, State and Trade Unions, the

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3 www.larsoft.lv
4 Data provided by the LBAS
5 Data provided by the LDDK

The tripartite agreement that was signed on 30 October 1998 by the President of the Cabinet of Ministers, President of Latvian Employers’ Confederation and President of Latvian Free Trade Union Confederation marked a new qualitative phase in the development of tripartite social dialogue. The new National Tripartite Co-operation Council (the NTCC) was established with the aim of promoting co-operation between the government, employers’ organisations and trade unions at national level in order to reach a consensus in solving socio-economic problems in the country. With the aim of conducting consultations and exchange of information at the preparatory stage of policy making, the four sub-councils were established within the institutional system of the NTCC: the Social Insurance Council (from December 1st, 2003 – Sub-council of Social Security), Sub-council on Vocational Education and Employment, Sub-council on Labour Affairs, and Sub-council on Health Care.

The new tripartite Agreement on social and economic partnership was signed on 1 October 2004. The parties agreed to extend co-operation by establishing tripartite consultation mechanisms in the following areas: transport, communications and information technologies; environmental protection, regional development and a unified wage system.

In 2005 the tripartite Agreement was amended and according to these amendments, as of 2006, the meetings of the NTCC started to be called and steered by the President of Ministers, and a secretariat of the NTCC became a structure within the State Chancellery.

The NTCC consists of the representatives of government (including Prime Minister), the LBAS and the LDDK. Each party nominates nine representatives. The main functions of the Council are promoting co-operation at sectoral and regional level, discussion and making proposals regarding government green papers, programmes, draft legal acts on social security, state budget guidelines, economic development and regional strategy, health promotion, development of general and professional education, employment and professional qualification, and other questions. The Rules of Procedure of the Cabinet of Ministers provides that the opinion of the National Tripartite Co-operation Council is required if the draft policy document or draft legal Act is related to the interests of employers and employees.6

An important function of the Council is to ensure conciliation in the case of collective disputes. Once every two years the Council approves the list of public mediators. Currently, 37 people have been approved as public mediators, and there are seven sub-councils within the institutional system of the NTCC:

- Vocational Education and Employment;
- Labour Affairs;
- Social Security;
- Health Care;
- Transport, Communications and Information Technologies;
- Environmental Protection; and
- Regional Development.

4. Collective bargaining

The Constitution of Latvia (Satversme) declares the right for employees to a collective agreement (Article 108). The Labour Law sets up the procedures to enter into collective agreements and to settle disputes regarding rights and interests which arise from collective agreements.

There are two types of collective agreements: at undertaking level; and sectoral or regional collective agreements. Parties to collective bargaining at company level are the employer, the employee trade union

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6 The Cabinet of Ministers Regulation Nr. 111 of 2002 on Rules of Procedure of the Cabinet of Ministers, Article 73.30.
or authorised employee representatives if the employees have not formed a trade union. Parties to a collective agreement in a sector or territory may be an employer, a group of employers, an organisation of employers or an association of organisations of employers, and an employee trade union or an association of employee trade unions (Article 18 of the LL).

The parties to a collective agreement may agree on any issues related to employment legal relationships provided that the provisions of a collective agreement do not affect the rights of employees set up by the law (Article 6(2) of the LL).

The entering into a collective agreement can be proposed either by the employee representatives or the employer. An employer cannot refuse to start negotiations regarding entering into a collective agreement. However, there is no obligation for employers to conclude a collective agreement. As the collective agreements are negotiated in the bipartite dialogue there are no legal responsibilities to enforce both sides to conclude an agreement.

The validity of a collective agreement is one year, unless otherwise stated in the agreement. Upon expiry of the term of a collective agreement, its provisions are valid until the time of coming into effect of a new collective agreement, unless agreed otherwise by the parties. During the validity period of a collective agreement, parties must refrain from any measures, which are directed at unilateral amendments to the collective agreement (Article 19 of the LL).

The undertaking collective agreement applies to all employees who are employed by the relevant employer, unless the parties have agreed otherwise in the collective agreement. It is legally binding. It is of no consequence whether employment legal relationships with the employee were established prior to or after the coming into effect of the collective work agreement. The employee and employer may derogate from the provisions of a collective agreement only if the relevant provisions of the employment contract are more favourable to the employee (Article 20 of the LL).

Sectoral or regional collective agreements apply to all members of the organisation or the association of organisations that have concluded the agreement. If members of an organisation of employers or an association of organisations of employers employ more than 50% of employees in a sector, a collective agreement (general agreement) entered into by such an organisation and trade union will be binding on all employers of the relevant sector and will apply to all employees employed by the employers. The agreement comes into effect on the day of its publication in the newspaper Latvijas Vēstnesis (the official newspaper of the Government of Latvia) unless the agreement specifies another time for it coming into effect (Article 18 (4) of the LL). In practice, there is no collective agreement in force yet that has been legally extended.

System of collective bargaining

So far the development of bipartite dialogue at regional and sectoral level in Latvia has not been successful due to the limited number of employers’ organisations and trade unions in the regions, or a lack of common interests in the sectors. At the end of 2006 there were 23 collective agreements concluded at sectoral level.

Dialogue at enterprise level is more common and better developed, especially in medium and large undertakings. At the beginning of 2006, the total number of collective agreements amounted to 2,405.

Concluded sectoral agreements are very general and in the majority of cases they only reproduce the opportunities offered by the law. Collective agreements concluded at enterprise level mainly cover areas including: remuneration, working time and holidays, training, working conditions, health and safety issues, terminating contracts, social guarantees and conflict resolution.

5. Strikes and lock-out

The Constitution of Latvia (Satversme) confers the right to strike. The Strike Law (hereinafter - the SL) is a legal Act governing the procedures for going on strike. The right to lockout was first introduced by the Law on Labour Disputes (hereinafter - the LLD).

7 Data provided by the LBAS
8 www.lbas.lv
According to the current legislation employees have the right to strike in order to protect their economic or professional interests. The right to strike can be exercised only as a last resort if no agreement and reconciliation has been reached in the collective ‘interest dispute’ (Article 3 of the SL). Employers have the right to lockout where employees use a strike as a mean for the settlement of the collective dispute. It can only be used as a response to a strike to protect the economic interests of the employer. The number of employees against who the lockout has been directed may not exceed the number of employees on strike (Article 21 of the LLD).

Strikes have been used rarely and mostly in the public sector, by teachers, doctors and nurses. The biggest strikes occurred in education sector in 1999. The main reason for these strikes was pay. Healthcare workers organised wide ranging protests at the end of 2004 and start of 2005. These resulted in wage increases for some categories of healthcare workers. In 2005, workers in other public sectors (workers in state museums, archives, libraries, judicial institutions and artists) made complaints about their low wages, but the protests were defused through negotiation.

Protests have not as yet begun in the private sector. According to trade unions the passivity of private sector workers is due to the fact that they are not organised and have poor knowledge of employment law and workers’ rights.

6. Industrial disputes and arbitration and mediation procedures

Labour disputes are an inseparable component of any system of industrial relations. In order to improve the mechanism for labour dispute resolution, the Law on Labour Disputes was adopted in 2002 and it became effective on 1 January 2003. The main purpose of the law was the provision of a speedy, fair and efficient resolution of labour disputes. It emphasises the role of mutual consultation of parties as the main instrument for the resolution of collective disputes.

The law provides for three procedures of peaceful conflict resolution: conciliation, mediation and voluntary arbitration. The different procedures are used depending on the nature of the collective dispute. Latvian legislation differentiates between ‘rights disputes’ and ‘interest disputes’. A collective ‘rights dispute’ is a difference of opinion between employees and employers that arise in concluding, altering, terminating or fulfilling an employment contract, as well as in applying or interpreting the provisions of regulatory enactment, provisions of a collective labour contract or working procedure regulations (Article 9 of the LLD). A collective ‘interest dispute’ is a difference of opinion between employees and employers that arise in relation to collective negotiation procedures determining new working conditions or employment provisions (Article 13 of the LLD). Employees have the right to call a strike only in the case of a collective ‘interest dispute’.

Both collective ‘rights disputes’ and collective ‘interest disputes’ can be settled in a conciliation commission, that is established by the parties, which authorise an equal number of their representatives. The conciliation commission takes a decision by mutual agreement. The decision of the commission is binding on both parties and has the validity of a collective agreement (Articles 11 and 15 of the LLD).

If the parties have agreed in writing, a collective ‘rights dispute’ may be settled in an arbitration court. If the parties reach a written agreement regarding execution of such adjudication, it has the validity of a collective labour contract. If a conciliation commission has not been established or the collective dispute has not been settled in the conciliation commission, any party to a collective ‘rights dispute’ may apply to the civil court Article 12 of the LLD).

Collective ‘interest disputes’ that are not settled in a conciliation commission can be resolved either in accordance with the procedures prescribed by the collective agreement or, if such procedures have not been prescribed, through mediation or arbitration. Mediation is a settlement of a collective ‘interest dispute’ by inviting a third person as an independent and impartial mediator who helps the parties to the collective ‘interest dispute’ to settle differences of opinion and reach agreement. The mediation method for settlement of a collective dispute can be used only with the mutual agreement of the parties (Article 16 of the LLD).
With mutual agreement a collective ‘interest dispute’ may be transferred to an arbitration court for settlement. The execution of an adjudication of the arbitration court is voluntary. If the parties reach a written agreement regarding execution of such adjudication, it has the validity of a collective labour contract (Article 20 of the LLD).

If a collective ‘interest dispute’ is not settled in a conciliation commission and parties do not agree on settlement of the collective dispute through mediation or arbitration, the parties of the collective dispute have the right to take collective action. Such rights also arise if a conciliation commission has not been established, or if settlement of the collective dispute has not been commenced in either an arbitration court, a conciliation commission, or through a mediation method; or if the adjudication of the arbitration court has not been executed (Article 15(5) of the LLD).

III. EMPLOYEE REPRESENTATION IN THE WORKPLACE

1. Legislative basis
   - The Labour Law (2001) establishes the basis for employee representation at the work place. The Law on Trade Unions (1990) (hereinafter – the LTU) determines the rights of trade unions.
   - The Labour Protection Law (2001) (hereinafter – the LPL) establishes the employees’ representation system in the field of health and safety at work.
   - The Law on Informing Employees of European Community-scale Commercial Companies and European Community-scale Groups of Commercial Companies and Consulting Such Employees (2001) establishes the employees’ representation system in community-scale undertakings and community-scale groups of undertakings.
   - The Law on European Companies (2005) establishes the employees’ representation system in European companies.
   - The Law on the Involvement of Employees in European Cooperative Society (2006) establishes the employees’ representation system in European cooperative societies.

The social partners, by means of social dialogue, may agree on more favourable provisions to employees than the provisions provided by the legislation (Article 6 (2) of the LL).

2. Types of representation

Latvian legislation makes provision for a dual system of representation of employees in undertakings:

   – trade unions representatives elected by trade union members; and
   – authorised employees’ representatives elected by all employees.

In addition, there could be the following forms of employee representation:

   – health and safety trusted representatives;
   – employee representation in an EWC;
   – employee representation in European companies; and
   – employee representation in European cooperative societies.

3. Exclusions

Trade unions may be established in any undertaking or organisation. There are no restrictions for civil servants. Previously trade union rights were denied to members of the Police, who were only allowed to form or join associations relating to sport and culture. From 1 January 2006 police staff have been entitled to establish and associate in trade unions.

Authorised employee representatives may be elected in any undertaking that employs five or more employees.
4. Union representation at workplace level
The Law provides that a trade union is registered if at least 50 members or not less than a quarter of employees employed in an undertaking are members (Article 3 of the LTU).

Trade union bodies in the undertaking or workplace
Trade unions are independent from an employer, through their elected bodies they represent union members in relations with the employer and protect their labour, professional and social rights and interests (Article 9 of the LTU). Trade union organisation in a company can be founded by three members. The internal working procedure of the organisation and the election procedure of the representatives of trade unions which are authorised to act on their behalf are established by the articles of association of the trade union.

Trade unions have the right to represent and protect their members in relations with the state authorities and other organisations in the areas of labour relations, compensation for damage to health, housing and other social and economic interests, in the adjudication of individual and collective disputes; as well as applications to a court for the protection of rights and interests of trade union members (Article 14 of the LTU).

According to the collective agreement, the elected representatives of trade unions may be granted the right to perform public duties in the interests of employees during working hours, as well as to participate in trade union training while receiving average earnings.

The trade unions have the right to: establish undertakings, institutions for culture, education, medical treatment, sports and other institutions, to participate in the foundation and activities of joint undertakings, as well as foreign undertakings and associations; to provide loans, organise lotteries and charity events, insure trade union members, and expand other economic and financial activities that correspond to trade union functions and objectives (Article 22 of the LTU).

Relations with the employees’ representation body
Under the Labour Law trade unions have certain advantages in comparison to authorised employees’ representatives. If there is both a trade union and an authorised employee representative in the same undertaking, the trade union has the right to conclude a collective agreement (Article 18 (1) of the LL). Additional protection is provided to members of trade unions. An employer is prohibited from terminating an employment contract with an employee who is a member of a trade union without prior consent of the relevant trade union. (Article 110 of the LL).

If there are several employee trade unions, they authorise their representatives for joint negotiations with an employer in proportion to the number of members of each trade union, but not less than one representative each. If representatives of several trade unions have been appointed for negotiations with an employer, they must express a united view (Article 10 (3) of the LL).

If there is one employee trade union or several such trade unions and authorised employees’ representatives, they authorise their representatives for joint negotiations with the employer in proportion to the number of employees represented, but not less than one representative each. If representatives of one employee trade union or representatives of several such trade unions and authorised employees’ representatives have been appointed for negotiations with an employer, they must express a united view (Article 10 (4) of the LL).

5. General bodies of representation at workplace level
In general, the functions of employees’ representatives at the workplace may be carried out by two bodies:
- trade unions
- authorised employees’ representatives (Article 10 (1) of the LL).

The institute of authorised employees’ representatives is a new concept in national legislation. Before the labour legislation reform and adoption of the new Labour Law, only trade unions were recognised as
representatives of employees. The main functions of the trade unions were representation and protection of labour, professional and social rights and interests of their members and collective bargaining. The employers did not have any duty to provide information and consult with trade unions.

Authorised employees’ representatives may be elected if an undertaking employs five or more employees (Article 10 (2) of the LL).

Under the Law the employer is not required to take any action for the establishment of an employees’ representation system. In general, employers consider that employees’ representatives shall be elected at the employees' own initiative and that they themselves are not required to take an active role. However in practice, there have been cases when employers have initiated a process of information and consultation in their undertakings, although there are no employees’ representatives. Usually such initiatives are limited and aimed only at providing information to employees, not commencing consultations.

6. Capacity for representation
The Law provides that in calculating the number of employees needed to elect authorised employees’ representatives in an undertaking, or establish institutions of representation, as well as calculating the number of employees represented, the employees with whom an employment contract has been entered into for a specified term are also taken into account (Article 10 (5) of the LL).

Trade unions have the right to represent and protect their members in relations with the state authorities and other organisations in the areas of labour relations, compensation for damage to health, housing and other social and economic interests, in the adjudication of individual and collective disputes; as well as applications to a court for the protection of rights and interests of trade union members (Article 14 of the LTU).

In principal, the authorised employee representatives may represent social, economic and occupational interests of employees only in relations with the employer.

7. System for election or appointment of members
The representatives of trade unions authorised to act on their behalf are elected according to the articles of association of the trade union.

The Law provides that authorised employees’ representatives shall be elected for a specified term of office by a simple majority vote at a meeting in which at least half the employees employed by an undertaking participate. The course of the meeting shall be recorded in minutes and decisions taken shall be entered in the minutes (Article 10 (2) of the LL).

8. Working procedure of the body and relations with employees
The Law does not contain any provisions regarding the working procedure of the employees’ representatives and instead the articles of association of the trade union determine its internal working procedure. The authorised employee representatives may themselves establish rules of their working procedure.

The Law does not provide any requirements for employees’ representatives to inform employees regularly.

Means
The financial resources of trade unions come from membership fees, the income of undertakings and bodies of the trade unions, as well as donations, gifts and other monetary means (Article 21 of the LTU).

The Law does not contain any provisions regarding financial means of the authorised employee representatives.

The Law does contain any provision regarding the rights of employees’ representatives to perform their duties during working time or to participate in training. It is up to employer and employees’ representatives to agree. If there is a collective agreement in the undertaking it is common that the rights of employees’ representatives are determined there. Article 16(3) of the LTU provide that in accordance
EMPLOYEE REPRESENTATIVES IN AN ENLARGED EUROPE

with the collective agreement, the elected representatives of trade unions may be granted the right to perform public duties in the interests of employees during working hours, as well as to participate in trade union training, while receiving average earnings.

Under the law the employer is not required to cover any expenses related to external assistance from experts that have been provided to the employees’ representatives.

In order to ensure that employees at the workplace are represented properly, the Law provides that employee representatives are entitled to:

- enter the undertaking and have access to workplaces;
- hold meetings of employees in the undertaking; and
- monitor how regulations, the collective agreement and working procedure regulations are observed in employment legal relationships (Article 11 (1) of the LL).

9. Protection granted to employee representatives

The law provides that performance of the duties of an employees’ representative may not serve as a basis for refusing to enter into an employment contract, terminating an employment contract, or otherwise restricting the rights of an employee (Article 11 (6) of the LL). Additional protection is provided to members of trade unions. An employer is prohibited from terminating an employment contract with an employee who is a member of a trade union without the prior consent of the relevant trade union. If the trade union does not agree, in order to terminate the employment contract the employer has to bring an action in court (Article 110 of the LL).

There are additional guarantees for elected representatives of trade unions: these guarantees are provided by the Law on Trade Unions:

- a disciplinary punishment may be imposed to elected representative of a trade union institution only after discussing this issue at a meeting of the administration and trade union;
- employees who have been elected to the position in the trade union organisation have the right after the expiration of their term of office to return to the previous job or, with their consent, another equivalent position. If this is not possible, they are granted guarantees and compensation, provided for by law (Article 16 of the LTU).

10. Confidential information

The employer must indicate in writing which information is to be regarded as a commercial secret. Employees’ representatives, and any experts who assist them, have the duty not to disclose information brought to their attention that is a commercial secret. This obligation continues to apply to employees’ representatives and any experts who assist them, after expiry of their terms of office (Article 11 (5) of the LL). The Law provides a general prohibition regarding disclosure of confidential information without specifying to whom such information shall not be disclosed.

The Law does not define any specific cases or conditions when the employer is not obliged to communicate information or undertake consultation. However, the Law provides that employees’ representatives shall exercise their rights without reducing the efficiency of the operations of the undertaking (Article 11 (4) of the LL).

11. Role and rights of the Representation Body

Right to Information

Employee representatives have rights to information in order to enable them to acquaint themselves with the subject matter and to examine it (Article 11 (2) of the LL). Employee representatives, when performing their duties, have the right to request and receive information from the employer regarding the economic and social situation of the undertaking, as well as probable developments (Article 11 (1) of the LL).
The Law provides that information to the employee representatives shall be provided in due time, as well as in an adequate manner and scope (Article 11 (2) of the LL). The Law, however, does not define what is meant by “appropriate information”.

**Right to be consulted**

When performing their duties, employee representatives have the right to consult with the employer before the employer takes decisions that may affect the interests of employees, in particular a decision which may substantially affect work remuneration, working conditions and employment in the undertaking (Article 11 (1) of the LL). ‘Consultation’ means the exchange of views and dialogue between employees’ representatives and the employer for the purpose of achieving agreement. The consultation should take place at the relevant level ensuring that the timing, method and content are appropriate for employees’ representatives to receive reasonable responses (Article 11 (3) of the LL).

**Right to participate**

Employee representatives have the right to participate in the determination and improvement of work remuneration provisions, working environment, working conditions and organisation of working time, as well as in protecting the safety and health of employees (Article 11 (1) of the LL).

There are no legal provisions about co-determintion rights.

**12. Protection of the rights of employee representatives**

The Law provides that disputes between an employee and an employer, if they have not been settled within an undertaking, shall be settled in the court (Article 30 of the LL). There are no labour dispute courts in Latvia. All disputes between employers and employees are settled in civil courts where the procedure can be very time consuming. In practice, the employee representatives may inform the State Labour Inspector if the employer breaks the law. The Inspector may intervene only if the breach is undisputable, for example, the employer refuses to disclose information to employees’ representatives. However, if there is a dispute about the scope of confidential information the employee representatives have to apply to the court.

According to the Article 41(1) of the Law on Administrative Penalties for breaches of labour legislation including provisions on information and consultation, the following administrative sanctions will be applied to the employer: warning and administrative fine up to 250 Lats (355 EUR) if an employer is a natural person; or administrative fine up to 500 Lats (710 EUR) if an employer is a legal person. For the breaches of labour legislation which have been committed repeatedly within a year the amount of the administrative fine shall be up to 500 Lats (710 EUR) if an employer is a natural person; or up to 1000 Lats (1420 EUR) if an employer is a legal person.

On 17 March 2005 the Law on Administrative Penalties was amended and the administrative fines for breach of the information and consultation rules in European Community-scale undertakings, a group of European Community-scale undertakings and in European Companies were introduced (Article 413). The amount of the fine for breaches of these rules are much higher, i.e., up to 5000 Lats (7115 EUR) for an employer, than in the case of breach of general information and consultation rules.

National legislation does not provide any sanctions to employee representatives, or to experts who assist them, for the unauthorised disclosure of confidential information. It is up to the court to decide on a case by case basis which remedies to apply.

However, as regards disclosure of information that has been acquired within the framework of European community-scale undertakings or European community-scale groups of undertakings and European companies a fine of between 100 Lats (142 EUR) and 250 Lats (355 EUR) may be applied.
13. Other bodies of representation in the undertaking

Health and safety representatives

Article 20 of the Labour Protection Law\(^{11}\) provides that in the undertaking in which five or more employees are employed one or more health and safety representatives shall be elected taking into account the number of employees, the nature of the work of the undertaking and the work environment risks. If there are at least two representatives, a principal representative shall be elected among them. If at least 10 representatives are elected, they shall establish a representative committee.

An employer shall ensure that representatives have the necessary means, and grant them the time during working hours, which is specified in the collective agreement or other written agreement between the employer and employees, for the performance of their duties, in order that they may exercise their rights and duties in the field of labour protection. The employer shall pay the representative average earnings for this time.

If an employer on his own initiative wishes to terminate the employment of a health and safety representatives, he has to firstly obtain the consent of the State Labour Inspector.

European Works Council

By adopting the Law on Informing Employees of European Community-scale Commercial Companies and European Community-scale Groups of Commercial Companies and Consulting Such Employees\(^{12}\) the legal framework for information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings has been established. No Latvian-based company is yet known to have established a European Works Council. Current practice concerns only the participation of Latvian employees’ representatives in the activities of a European Works Council established in other EU Member States. According to the information provided by Free Trade Union Confederation of Latvia there are five companies that have elected employees’ representatives. They are: AS Rautakesko, SIA Scandinavian tobacco, Hotel Radisson SAS, SIA Swedwood – Latvija, and SIA Cemex. However there is no information about undertakings that do not have trade unions but have elected employee representatives. It should be mentioned that foreign-owned undertakings in Latvia do not usually have trade union representation. Accordingly, it is difficult to estimate the exact number of employee representatives that have been elected so far.

IV. EMPLOYEES’ PARTICIPATION IN CORPORATE BODIES

Latvian legislation does not require employee representation in the corporate supervisory board.

By adopting the Law on European Companies\(^{13}\) and the Law on the Involvement of Employees in the European Cooperative Society\(^{14}\) the legal framework for involvement of employees in the affairs of the European companies and European Cooperative Societies has been established. As no European company or Cooperative Society has been established in Latvia these laws have not yet had any practical effect.

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\(^{11}\) Latvijas Vēstnesis, 2001, No 105
\(^{12}\) Latvijas Vēstnesis, 2001, No 60
\(^{13}\) Latvijas Vēstnesis, 2005, No 49
\(^{14}\) Latvijas Vēstnesis, 2006, No 183
V. INVOLVEMENT AND EMPLOYEES’ PARTICIPATION IN DECISIONS THAT AFFECT THEM IN THE UNDERTAKING

Information, consultation and participation relating to operations affecting shareholders

The law provides that a transferor and acquirer of an undertaking and the acquirer, not later than one month before the transfer of the undertaking starts to directly affect the working conditions and employment provisions of the employees, have a duty to inform their employee representatives or employees (if there are no employee representatives) of the date or expected date of transfer of the undertaking, the reasons for the transfer, the legal, economic and social consequences, and the measures which will be taken with respect to employees.

The transferor or acquirer of an undertaking, who in connection with the transfer intends to take organisational, technological or social measures in the undertaking with respect to employees, has a duty, not later than three weeks in advance, to commence consultations with employee representatives in order to reach agreement on such measures and their procedures (Article 120 of the Law).

If an undertaking or a part of it retains its independence after transfer, the status and functions of employee representatives affected by such transfer shall be retained with the same provisions that were applicable up to the moment of transfer. Such provisions shall not apply if the preconditions required for the re-election of employee representatives, or for the reestablishment of representation of employees have been satisfied (Article 121 of the Law).
LIECHTENSTEIN

Liechtenstein joined the European Economic Area (EEA) in May 1995, despite the absence of Switzerland, with which it forms a customs union. Consequently, Liechtenstein is one of the members of the EEA, along with Norway and Iceland, which although not members of the European Union, are covered by the directives on information and consultation of workers and European works councils.

Liechtenstein is a principality with 35,000 inhabitants, and is surrounded by the Swiss Confederation and Austria. According to the Constitution of the Principality of Liechtenstein dated 5 October 1921, which is still in force, the Principality is a “constitutional, hereditary monarchy on a democratic and parliamentary basis”. It has a total of eleven municipalities, which are autonomous in some areas. Nevertheless, a large part of Liechtenstein policy is determined by the Parliament (Landtag). Economic and social policy in particular is determined to a large extent by the Parliament and Government.

I. ECONOMIC AND SOCIAL CONTEXT

Some basic economic data
Over the last 50 years Liechtenstein has changed from an agriculturally-oriented state to a modern service and industry-driven society. The change can be attributed on the one hand to the development of the financial centre, but industry has also developed to a very high degree. Liechtenstein is now one of the most industrialised countries in the world (employing approximately 44% of the total working population). Liechtenstein has 30,170 jobs for 34,905 inhabitants, with approximately half the jobs filled by cross-border commuters.

The nominal gross domestic product (BIP) increased by around 19% during the years from 1998 to 2004. The average annual gross domestic product was 2.9% during these years. Inflation has been at a constant low over the last few years. The gross domestic product for 2004 was generated by 4,841 businesses, organisations, and institutions under public law. Forty percent of it comes from industry and manufacturing (47% of employment), 26% from general services (employing 36%), another 26% from financial services (employing 14%) and the last 7% deriving from agriculture, forestry and households (employing only 2%). Nominal labour productivity increased by 2.6% from 2003 to 2004.

Labour market
Liechtenstein has practically the same amount of jobs as inhabitants. Consequently, Liechtenstein has a high number of cross-border commuters. The Liechtenstein economy employed 18,477 males and 11,693 females at 31.12.2005. Those aged between 21 and 30 make up 20.8% of the workforce, 29.2% are aged between 31 and 40, and 25.4% are aged between 41 and 50. Employees older than 51 constitute 19.1% of all those employed and 64% of them are male. Around half the Liechtenstein resident population aged 15 and over has a secondary school certificate and around 10% have a tertiary stage certificate (national census 2000).

Employment is distributed as follows over three economic sectors: Agriculture: 1.3%; Industry: 43.9%; Services: 54.8%. At 31.12.2005, around 80% of all employees in Liechtenstein had a full-time job, and 20% were employed on a part-time basis. Statistics on the unemployment ratio, by age, sex and length are currently being compiled in Liechtenstein.

II. INDUSTRIAL RELATIONS

In Liechtenstein, economic life is determined by its limited size and market and by industrial peace.
1. Social partners
The Principality has three social partners.

Employees’ organisation

The Liechtenstein Association of Employees (Liechtensteinischer ArbeitnehmerInnenverband, LANV): all employees – both male and female – in all professions, industrial branches, nationalities and religions can become members, whether they are native citizens or cross-border commuters.

LANV currently has around 1,200 members, 20% of whom are women. The members can be divided up into the individual sectors as follows: 35% from the industrial sector, 55% from the business and business service sector, and 10% from the financial service sector. Ninety per cent of all members are native citizens – only 10% of members are cross-border commuters. The degree of organisation is very low (around 4%; 1,200 members out of a potential 30,000).

LANV is a party-politically independent umbrella trade union, which represents all industrial branches and professions in Liechtenstein. The work of LANV is based on basic fundamental order, Christian social ethics and a cooperative social partnership, with the aim of maintaining and reinforcing social peace. As a result of exerting its political influence, LANV helped to enact the General Applicability of Collective Agreements (GAV). This law should partly guarantee that “outsider” (unorganised) employers must also comply with the relevant Collective Agreements (GAV) in cases of “wage dumping”. It has also been involved in the founding of works committees in various different firms. LANV has also joined and is involved in various different state and administration committees and working groups (Steering Committee for the Economy, OUNL Commission, Working Group on Health, Statistic[s] Commission, Office of Mediation, and Asylum Seekers Commission for example).

Employers’ organisations

The Liechtenstein Chamber of Commerce and Industry (LCCI) was founded as the Liechtenstein Chamber of Industry in 1947 and changed to the Liechtenstein Chamber of Commerce and Industry in 1980. The LCCI is a private association with voluntary membership. At the end of 2006, it represented 37 Liechtenstein companies. Most of the larger industrial companies, the three major banks and various service companies in Liechtenstein are represented as members in the LCCI. Many LCCI industrial companies do business in highly specialised niche markets. Several are among the world leaders in their fields.

The member banks operate internationally in private banking, but also regionally in the commercial field. The LCCI service companies are active in various fields. The LCCI is the employer representative for all member companies, except for the Liechtensteinische Kraftwerke (power plants) and the banks. At the end of 2005, the general employment contract of the metal industry (machine, apparatus and equipment manufacturing) covered 18 companies with 5,417 employees and the general employment contract of the non-metal sector 15 companies with 2,510 employees.

The organisation representing trade is called the Liechtenstein Chamber of Trade and Commerce (Wirtschaftskammer Liechtenstein für Gewerbe, Handel und Dienstleistungen). It advocates favourable location provisions, modern infrastructures and contractual legal framework conditions. The area of responsibility of the sections consists of support for the section(s), individual support for members, representation of sections in relation to political authorities, associations, and organisations etc., fostering and maintaining steady conditions between employees and employers, shaping and supporting apprenticeships, proffering opinions and creating financially responsible competitive conditions.

2. Collective bargaining

Legal basis and key issues

The Liechtenstein Law dated 14 March 2007 concerning the General Applicability of Collective Agreements (Gesetz über die Allgemeinverbindlicherklärung von Gesamtarbeitsverträgen (AVEG) came into force on 9 May 2007 and provides for collective agreements to be legally and contractually regulated. It applies to business, all employees, regardless of whether they are union members.

“Representativity to negotiate” is stipulated in the collective agreement. Wage and protocol negotiations take place every year in the case of trades and businesses, but no wage negotiations take place in industrial companies, since in most cases this is the remit of works committees under the law on worker participation (MWG). Negotiations on minimum wages, however, do take place in the industrial sector every two years.
Main features
There are 23 collective agreements in the business sector (core construction industry, associated building trades, commerce, car trade, information technology services, transport, graphic design/printing, hairdressers, building cleaning, and textile cleaning etc.), two in export-oriented industry (metal and non-metal) and one for public transport. There are none in financial services, clerical business, security services, public services, and butchers.

Bilateral contracts (collective agreements) have been agreed between LANV and the Chamber of Trade and Commerce, between LANV and LCCI, and between LANV and the civil engineering authority (LBA). Thirty per cent of businesses and employees are covered by agreements. If all contracts were deemed to be collective bargaining agreements, the figure would be 45%. There are no agreements in the third sector (that is financial services, banks, trust companies, and insurance companies). The main areas collective agreements cover are minimum wages, maximum weekly working hours, bonuses, holidays, further training, employee representation, and non-working days.

3. Collective disputes
In Liechtenstein there is a cooperative social partnership. Conflicts are solved as a rule by negotiations. There is a tripartite (state, employer representative and employee representative) office of mediation [Einigungsamt], which, since the existence of the social partnership, first convened first as a result of an application from LANV.

Strikes
The right to strike is neither enshrined in the constitution nor legally sanctioned. LANV has no financial resources (strike fund for loss of wages or legal proceedings) to call a strike or support it. In Liechtenstein there have not been any strikes.

III. EMPLOYEES’ REPRESENTATION IN THE UNDERTAKING

1. General issues
Freedom of association is guaranteed in Art. 41 of the Constitution of the Principality of Liechtenstein, that provides that freedom of assembly and association within the legal limits is guaranteed. Furthermore, Art. 19 (1) of the Constitution provides that the state protects the right to work and the fitness for work, particularly female workers employed in business and industry and minors.

2. Legal basis and scope
The Liechtenstein Law of 23 October 1997 concerning information and consultation of employees in the workplace (Mitwirkungsgesetz, MWG) forms the legal basis of worker participation (Art. 1 [1] MWG). Directive 2002/14/EC has been implemented in MWG. The most important terms in the Directive taken into account during implementation in the MWG include information and consultation of workers in operations with at least 50 employees and in operations with at least 20 employees, the increasing demands for employers to be obliged to pass on information, and the potential for employees to express opinions on certain subject matters.

Both full-time and part-time workers and those on fixed-term and permanent contracts are covered by the law (Art. 1 [2] MWG).

3. Composition
The size of employee representation is stipulated jointly by employers and workers. The size and characteristic features of the operation must be taken into account (Art. 5 [1] MWG). Employee representation consists of at least three people (Art. 5 [2] MWG).

A vote by secret ballot must take place within six months of reaching the threshold limit (Art. 3(1) MWG) for the appointment of an employee representative. If the majority of voters approves of employee
representation, an election must then be carried out (Art. 4 [1] MWG). If the majority of voters rejects employee representation, a fifth of the workers can demand another vote by secret ballot one year after the first, and any further rejection, to determine whether the majority of voters are in favour of employee representation (Art. 4 [2] MWG). Secret ballots and elections are carried out jointly by employers and workers. The employee representatives are appointed in accordance with the principles of a free, secret, written and general election (Art. 4 [3] MWG).

4. Protection granted to the members
Employers must not prevent employee representatives from properly fulfilling their task (Art. 10 [1] MWG). Employee representatives must not be disadvantaged in terms of carrying out this activity, either during the mandate or after its conclusion. This is also applicable to those who put themselves forward for election (Art. 10 [2] MWG).

5. Working of the body and decision-making
Employee representatives looks after the common interests of workers in relation to the employer (Art. 6 [1] MWG). Employees should regularly inform the employee representatives about their activities (Art. 6 [2] MWG).

Means
The employer and employee representatives should work together in good faith (Art. 9 [1] MWG). The employee representatives should be supported by the employer during their work to the extent necessary in order to fulfil their functions, for example, by the provision of premises, aid and administrative services (Art. 9 [2] MWG). They can carry out their activities during working hours, if this is required to fulfil their functions, and their professional work permits this (Art. 9 [3] MWG).

6. Role and rights

Information and consultation
The Liechtenstein Employment Contracts Act [Arbeitsvertragsrecht] (§1173a Art. 1 et seq. ABGB) and the MWG essentially form the legal foundations for employee participation in decisions that affect them. Employers must instruct employee representatives concerning all matters they need to be aware of as a prerequisite for carrying out their functions properly. At least once a year they must be informed about the financial situation of the operation and its anticipated further development. They must also be informed about the employment situation and its anticipated further development, as well as, if need be, the planned anticipated strategy, particularly if employment is under threat.

Employee representative participation includes the right to information (passed from employer to employee representative) and consultation (Art. 6a [1] MWG and Art. 6a [2] MWG). Consultation is the setting up of a dialogue and exchange of opinions between employer and employee representation. Within the framework of the consultation the employee representatives notably have the right to introduce opinions, which must be accordingly acknowledged by the employer (Art. 6a [3] MWG). The employer must arrange the time, form and content of the information in such a way that the employee representatives can check the information appropriately and, if need be, can prepare for consultation (Art. 6a [4] MWG).

Employers must give employee representatives information concerning all matters they need to be aware of as a prerequisite for carrying out their functions properly. At least once a year they must be informed about the financial situation of the operation and its anticipated further development. They must also be informed about the employment situation and its anticipated further development, as well as, if need be, the planned anticipated strategy, particularly if employment is under threat; and concerning fundamental changes in the organisation of work, particularly where there are changes in existing employment contracts (Art. 7 [1] MWG). The employee representatives have the right to consultation (Art. 7 [2] MWG) in the cases set out in Art. 7 [1] c and d MWG.
In justified cases the employer can refrain from passing on information to and setting up dialogue (pursuant to Art. 7 [1] and 2 MWG) with employee representatives or employees (Art. 7a [1] MWG). Justified cases, according to Art. 7a [1] MWG, are deemed to exist if according to objective criteria, the information or consultation could substantially restrict the activity of the operation or damage the operation; or when operational changes being undertaken by the employer can be attributed to an order given by an inspection body or supervisory authority (Art. 7a [2] MWG).

The employee representatives are entitled to the following legal participation rights pursuant to Art. 8 MWG:

a) In the case of transitional operations (for example: transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a legal transfer or merger) under §1173a paragraph 43a of the Liechtenstein General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB);

b) In the case of mass redundancies under §1173a paragraphs 59a to 59c of the General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB).

7. Other representation bodies at workplace, company or group level.
Under Art. 8 MWG, employee representatives are entitled to participation rights in health and safety matters (also under Art. 60 of the law governing contractual accident insurance, and Art. 6 and 45 of labour law).

8. Protection of rights
The Court of Justice passes judgement on disputes which result from this law, or from a contractual participation arrangement, subject to contractual arbitration situations. §1173a paragraph 71 sections 1 to 3 of the General Civil Code correspondingly applies (Art. 12 [1] MWG). Those entitled to make a claim or application are employees, employees’ representatives, employers, and the LANV. This last claim is deemed to be only upon discovery or observation (Art. 12 [2] MWG).

IV. EMPLOYEES’ REPRESENTATION IN CORPORATE BODIES

Participatory management of employees in the corporate supervisory board or administrative body has so far only been acknowledged in the Liechtenstein Law dated 25 November 2005 concerning the participation of employees in the European Company (SE-Beteiligungsgesetz; SEBG), LGBl. 2006 No. 27. The law is applicable to:

- European Companies which are founded or operated after the SE enactment, have their legal domicile within the country; and,

- irrespective of the legal domicile of the SE, to their workers who are employed within the country, and to holding companies, affiliated companies and affected operations with a legal domicile within the country (Art. 2 SEBG).

The provisions of this law rely extensively on Council Directive 2001/86/EC with regard to worker participation (abbreviated to “SE Directive”), but contains very few important innovations for national companies. Notable provisions are worker participation on Special Negotiation Committees (Art. 6 et seq. SEBG) and in the legal representation body (Art. 26 et seq. SEBG), and legally effective participatory management (Art. 44 et seq. SEBG). In Liechtenstein there is currently only one SE (founded in 2006).
After the Soviet Union established its military might in the Baltic region, Lithuania was forced to proclaim itself a republic of the Soviet Union in 1940. The hegemony of the ruling communist party in society was reflected in the area of labour by the monopoly of state-controlled trade unions. As a result, the exclusive right of employee representation was vested in the state trade unions and almost all employees belonged to them. Collective bargaining took place exclusively at enterprise level but it was not used as a tool to reconcile the interests of employees and management, but rather to redistribute social benefits and adapt the statutory regulations on work organisation. Collective action was inconceivable with state and community ownership of the means of production. Since labour laws regulated almost all labour conditions in a strict authoritarian manner, there was practically no room left for individual agreements.

In 1990, Lithuania became the first Soviet republic to declare its independence. The legal system has been reformed to meet the demands of the social and economic changes brought about by return to democracy and the free-market economy system. The main aim of reform in the sphere of labour law has been to shift from centralised and all-embracing state-control regulation towards more liberal contract regulation, allowing the parties of individual labour relations, and especially the parties of collective labour relations, to determine working conditions between them by means of agreements. Today Lithuania is a single state with a three-tier administrative division. The country is divided into 10 counties (apskritis), which are further subdivided into 60 municipalities (savivaldybė).

I. ECONOMIC AND SOCIAL CONTEXT

Some basic economic data
Lithuania’s economy has been experiencing rapid growth since 2001, as a result of the second highest labour productivity growth rate in the EU. Over the period 2001-2004, real GDP growth averaged 7.9%. However, GDP per capita was only 48% of the EU average (2004). The overall economic growth has been mirrored by a gradual increase of both the legal minimum wage and the average wage.

The strongest economic activities in terms of productivity, turnover and employment are trade, manufacturing, construction, transport and communication. Activities associated with real estate and tourism are increasing due to a growing property demand and rising tourism. A large majority of employers are private (private and semi-public companies). The number of state owned and municipal enterprises and institutions remains stable; they employ approximately a third of all employees.

Main economic sectors and employment

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment in Services (% total employment)</td>
<td>54.7</td>
<td>55.8</td>
<td>54.8</td>
<td>54.2</td>
<td>56.1</td>
<td>57.0</td>
</tr>
<tr>
<td>Employment in Industry (% total employment)</td>
<td>26.7</td>
<td>27.0</td>
<td>27.4</td>
<td>28.0</td>
<td>28.1</td>
<td>29.0</td>
</tr>
<tr>
<td>Employment in Agriculture (% total employment)</td>
<td>18.6</td>
<td>17.2</td>
<td>17.8</td>
<td>17.8</td>
<td>15.8</td>
<td>14.0</td>
</tr>
</tbody>
</table>

Source: Employment in Europe2006

Labour market
Lithuania’s labour market is relatively active, highly-educated, services-oriented and slowly ageing, with no substantial gender segregation. The rapid development of the Lithuanian economy and the intense migration from Lithuania witnessed since joining the EU, has resulted in a falling population and a shrinking labour force. These factors have played a crucial role in reducing unemployment, which has fallen sharply across the country to 5.6% and continues to fall. Despite women’s relatively active participation in the labour market, their situation is considerably worse than men’s, with an income
EMPLOYEE REPRESENTATIVES IN AN ENLARGED EUROPE

gender gap of nearly 20% and women continuing to be under-represented in top management positions and politics for example.

Key employment indicators

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment rate (% population aged 15-64)</td>
<td>59.1</td>
<td>57.5</td>
<td>59.9</td>
<td>61.1</td>
<td>61.2</td>
<td>62.6</td>
</tr>
<tr>
<td>Self-employed (% total employment)</td>
<td>20.1</td>
<td>19.2</td>
<td>20.0</td>
<td>20.3</td>
<td>18.5</td>
<td>16.9</td>
</tr>
<tr>
<td>Part-time employment (% total employment)</td>
<td>10.2</td>
<td>9.9</td>
<td>10.8</td>
<td>9.6</td>
<td>8.4</td>
<td>7.1</td>
</tr>
<tr>
<td>Fixed term contracts (% total employment)</td>
<td>4.4</td>
<td>5.8</td>
<td>7.2</td>
<td>7.2</td>
<td>6.3</td>
<td>5.5</td>
</tr>
<tr>
<td>Activity rate (% population aged 15-64)</td>
<td>70.8</td>
<td>69.7</td>
<td>69.6</td>
<td>69.9</td>
<td>69.1</td>
<td>68.4</td>
</tr>
<tr>
<td>Activity rate (% of population aged 15-24)</td>
<td>36.9</td>
<td>33.1</td>
<td>30.9</td>
<td>30.0</td>
<td>26.2</td>
<td>25.1</td>
</tr>
<tr>
<td>Activity rate (% of population aged 55-64)</td>
<td>45.1</td>
<td>44.9</td>
<td>46.9</td>
<td>50.5</td>
<td>52.6</td>
<td>52.8</td>
</tr>
<tr>
<td>Total unemployment (000)</td>
<td>277</td>
<td>273</td>
<td>220</td>
<td>204</td>
<td>184</td>
<td>133</td>
</tr>
<tr>
<td>Unemployment rate (% labour force 15+)</td>
<td>16.4</td>
<td>16.5</td>
<td>13.5</td>
<td>12.4</td>
<td>11.4</td>
<td>8.3</td>
</tr>
<tr>
<td>Youth unemployment rate (% labour force 15-24)</td>
<td>30.6</td>
<td>30.9</td>
<td>22.5</td>
<td>25.1</td>
<td>22.7</td>
<td>15.7</td>
</tr>
<tr>
<td>Long term unemployment rate (% labour force)</td>
<td>8.0</td>
<td>9.3</td>
<td>7.2</td>
<td>6.0</td>
<td>5.8</td>
<td>4.3</td>
</tr>
<tr>
<td>Youth unemployment ratio (% population aged 15-24)</td>
<td>11.0</td>
<td>10.4</td>
<td>7.1</td>
<td>7.5</td>
<td>5.9</td>
<td>3.9</td>
</tr>
</tbody>
</table>

Source: Employment in Europe 2006

II. INDUSTRIAL RELATIONS

1. Legal basis and key issues

Article 50 of the Constitution of the Republic of Lithuania of 25 October 1992 and the Law on Trade Unions of 21 November 1991 (Profesiniu sajungu istatymas) guarantee the right to set up trade unions for the purpose of protecting employees’ labour, social and economic rights. The right of employers to establish their organisations is not consolidated in a specific law, although they are organised in the form of associations in line with the Law on Associations of 22 January 2004 (Asociaciju istatymas) which lays down the general rules for the formation and management of non-profit organisations. The legal basis for the national model of industrial relations is the Darbo kodeksas of 4 June 2002 (Labour Code – DK) which is a single Act that regulates all the fundamental aspects of collective and individual labour relations. According to Article 41 DK, both trade unions and their organisations, and employers and their organisations, are considered the social partners. In the case of tripartite social partnership, the government and municipal institutions participate on an equal basis with the social partners.

The Lithuanian industrial relations system is fundamentally geared towards enterprise level, where collective bargaining on wages and other issues, as well as information and consultation procedures, take place. Although social partnership at higher levels (for example, national, regional or sectoral) is specifically contemplated in the Darbo kodeksas of 2002 (in force since 1 January 2003) and there are legal rules governing the forms and procedures, the scope of application and even the extension of collective agreements to the third parties. In practice, regional and sectoral social cooperation has not gained much ground so far. There are only two sectoral collective agreements, in agriculture and media, registered in the Ministry of Social Security and Labour (Lietuvos Respublikos socialines apsaugos ir darbo ministerija). In some regions, dialogue is held between employer and employee organisations and agreements are even signed, but most of them are of a declarative-political nature, usually providing for closer cooperation between the parties, coordination of actions and so on.

2. Social partners

Unions

The purpose of trade unions is to defend the professional, economic and social rights and interests of employees. The freedom to establish a trade union and its right to function independently are declared in
Article 50 of the Constitution. The Law on trade unions of 21 November 1991 (Profesinių sąjungų įstatymas) consolidates the right to establish a trade union on the basis of profession, workplace, sectoral, territorial or other principles determined by the trade unions themselves. The Law sets the requirement that a trade union may only be established if it has more than 30 founders or more than one fifth of all the undertaking’s employees, but not less than three employees. In line with their socialist tradition, trade unions are primarily organised at enterprise level. The labour legislation confers employee representation powers to workplace trade unions, establishing their structural bodies (committee, council, etc.) in a particular undertaking. The majority of the legal guarantees are also linked to the workplace trade union’s structural unit. The majority of trade unions are the members of the sectoral and regional organisations affiliated to the national cross-sector organisations.

Since Lithuanian legislation does not require the obligatory registration or reporting of trade union membership, the exact number of represented employees is unknown. According to the data provided by the unions themselves, their combined membership is around 200,000 making up 14% of the entire workforce.

Generally speaking, the trade union movement is rather weak, despite some recent optimistic news about increasing membership in some sectors. The fragmented and weak union representation in enterprises has urged the government to seek new solutions to strengthen employee representation at workplace level, such as the fragile political compromise, consolidated in the Darbo kodeksas of 2003, which allowed elections of works councils (darbo taryba) in workplaces with no union representation. But after two years this compromise was modified through a new Works Councils Law dated 26 October 2004 (Darbo tarybu įstatymas) which established that if a local union is established in a company that already has a works council, that works council does not cease to exist (Czech model) but the two bodies must cooperate until the works council loses its representation rights when its term expires. The new works councils are entitled to bargain and to conclude collective agreements like trade unions, and to organise a strike, etc.

**Employers**

The density of employers’ organisations remains stable at around 20%, with expectations of a gradual increase. Employers’ long-lasting non-organisation and passivity can be explained by their lack of interest in negotiating collectively with trade unions above workplace level.

The following table sets out details of the main

<table>
<thead>
<tr>
<th>Union and employer organisations</th>
</tr>
</thead>
<tbody>
<tr>
<td>After the merger of two largest confederations in 2002, there are now three major competing national level inter-sectoral trade union organisations, each with their own history and development:</td>
</tr>
<tr>
<td>- <strong>LPSK Lietuvis profesinių sąjungų konfederacija</strong> (Lithuanian Trade Union Confederation) is the largest trade union organisation in Lithuania, claiming about 120,000 members (60% of employees). It is the result of a merger between two confederations in 2002, both springing from organisations that existed when Lithuania was part of the Soviet Union. The LPSK currently has 26 affiliate sectoral organisations. The LPSK has two representatives in the country's top-level tripartite body, the Tripartite Council of the Republic of Lithuania. The LPSK also cooperates with Nordic and other European trade unions and participates in the activities of the Trade Union Council of the Baltic States. It is a member of ICFTU and ETUC, and represented in EESC.</td>
</tr>
<tr>
<td>- ‘<strong>Solidarumas</strong>’ Lietuvos profesines sąjungų Solidarumas (former Lithuanian Workers’ Union) sprang from Lithuania’s independence movement. It is an alternative organisation (set up in 1989 with the support of the USA AFL-CIO) which has 12 affiliate sectoral organisations and 24 affiliate territorial organisations. It claims 52,000 members (26% of employees). It has one representative in the Tripartite Council of the Republic of Lithuania. And is a member of ICFTU and ETUC, and represented in EESC.</td>
</tr>
<tr>
<td>- <strong>LDF Lietuvos darbo federacija</strong> (Lithuanian Labour Federation) is the re-established Christian Trade Union confederation. It represents around 10% of unionised workers. LDF currently has around 20,000 members and 10 affiliated sectoral organisations. It has Christian-Democratic tendencies and is affiliated to the WCL. It is also a member of ETUC and represented in EESC.</td>
</tr>
</tbody>
</table>
3. Joint bodies
Social dialogue at national level is held at the Lietuvos Respublikos Trisalė taryba (Tripartite Council of the Republic of Lithuania), based on equal tripartite partnership for settling social, economic and labour issues. Involvement of the social partners in decision making at national level through the Tripartite Council is set out in the government’s Labour Regulations. The Darbo kodeksas also stipulates that the government, on recommendation of the Tripartite Council, establishes the minimum wage. Within the Tripartite Council, agreements between the government, trade unions and employers’ organisations on tripartite cooperation and the development of social partnership have long been signed, but no bilateral or trilateral collective bargaining agreements have been concluded.

Other bodies of tripartite social dialogue at national level are: Valstybinio socialinio draudimo fondo taryba (The State Council for the Social Insurance Fund), Trisalė komisija prie Lietuvos darbo biržos (The Tripartite Commission of the Lithuanian Labour Exchange), Garantinio fondo taryba (The Council for the Guarantee Fund), Lietuvos Respublikos darbo paramos komisija (The Commission for the Health and Safety of Workers), Ekspertų taryba prie Lietuvos darbo rinkos mokymo tarnybos (The Experts’ Council of the Lithuanian Labour Market Training Authority) and Lietuvos profesinio mokymo taryba (The Lithuanian Council for Vocational Training). These bodies basically act as information channels, given that major decisions are still taken unilaterally by the government or discussed in the Tripartite Council.

4. Collective bargaining

Legal basis and key issues
Lithuanian legislation allows the collective bargaining and conclusion of collective agreements at all levels of social partnership. The Darbo kodeksas defines a national, sectoral and territorial collective agreement as an agreement concluded in written form between trade union organisations (association, federation, centre, etc.) and employers’ organisations (association, federation, confederation, etc.) which lays down the socio-economic development trends of the sector, the conditions of labour organisation and work remuneration, the social guarantees of the employees (professional groups) as well as the conditions for dealing with certain labour and socio-economic problems that reflect regional peculiarities (Art. 50 (1) – 50 (2) DK).

Despite the fact that the Darbo kodeksas recognises counties and municipalities as appropriate levels for regional social dialogue (Art. 42 (1) p. 3), their weight in the social dialogue differs. Counties are not considered stakeholders, as they do not have much power. Municipalities do not have the power to legislate in the area of employment but they do have broad competence to make and implement decisions that affect the situation of the workers in a specific enterprise, institution or establishment, especially in the area of public healthcare, education, provision of public services, etc. However, social dialogue at municipality level is weak or non-existent. In some municipalities, tripartite bodies created as forums for exchanging views and information, although not to collaborate actively in decision making or to bargain.
collectively, have been institutionalised. The national legislator and central government continue to hold the key roles of shaping the economic, social and labour policies across the country. The tripartite social dialogue at national level remains the most significant.

The law does not establish the obligation to conclude a collective agreement, but it does establish the general obligation to bargain in good faith and without delay when another party presents itself with clearly formulated demands and proposals in writing (Art. 48 (1), Art. 48 (3) DK). It is generally accepted that collective agreements are legally binding on the parties. The obligatory nature of the agreements is apparent from the principles of Lithuanian labour law: responsibility of the parties to the collective agreement towards their obligations (Art.2 (1) DK); effective fulfilment of the social partners’ obligations (Art. 40 (2) DK). In accordance with Art.52 (1) DK, a national, sectoral or territorial collective agreement must be applied in enterprises where the employer was a member of the association of employers which signed the agreement or where the employer joined the employers’ association after signing the agreement. For the first time, the Darbo kodeksas introduced the legal basis for extending sectoral and territorial collective agreements erga omnes. According to Art.52 (2) DK, the Minister of Social Security and Labour may extend the scope of application of a sectoral or territorial collective agreement or separate provisions thereof through the administrative law channel, establishing that the agreement will be applied with respect to an entire sector, profession, sphere of services or a certain territory. However, only a few ‘extendable’ collective agreements have been registered since 2003, and the law has never been used so far.

Under the former Soviet regime, collective agreements were usually applicable to all employees of a specific enterprise, irrespective of their trade union membership. The Darbo kodeksas follows the same principle in relation to collective agreements at enterprise level - they are applicable to all employees at the enterprise (Art. 59 (2) DK). An enterprise-level collective agreement is concluded in all types of enterprises, agencies or organisations (Art. 59 (1) DK). The employees are represented by the trade union operating in the enterprise. When several trade unions operate in the same enterprise, the collective agreement is concluded through joint trade union representation, achieved by way of agreement. If the trade unions fail to reach an agreement on the structure of joint representation, the decision will be adopted in the meeting (conference) of the employees. If the enterprise has no acting trade union and the staff meeting has not delegated the functions of representation to the sectoral trade union, the works council can negotiate and conclude the collective agreement (Art. 60 DK).

Collective bargaining agreements cannot make the position of employees less favourable than that established in the Darbo kodeksas, laws and other regulations. Any such measure is considered null and void (Article 4 (4) DK). When several collective agreements are applicable in the same enterprise, the provisions providing for the most favourable conditions for employees will apply. The same rule applies to possible clashes between national, sectoral, territorial and enterprise agreements, as well as to clashes between two or more collective agreements of a single enterprise.

**Main features**

The Lithuanian industrial relations system can be described as decentralised, i.e. strongly enterprise-level oriented. Although collective bargaining at a higher level (national, territory, sectoral) enjoys legal priority and supremacy over enterprise-level collective bargaining (Art. 61 (1) DK), in practice, the former are absent. To date, only two sectoral collective agreements in the agricultural sector have been registered in the Ministry of Social Security and Labour.

Traditionally, collective bargaining has been more widespread at enterprise level. In the majority of enterprises where trade unions are active, collective bargaining and collective agreements are also present. There is no system for determining the exact number of valid enterprise-level collective agreements.

According to estimates by the European Industrial Relations Observatory, there could be between 1,000 and 1,500 enterprise-level collective agreements currently in force in Lithuania. The scope of these agreements is not wide. It is estimated that they may cover 10 to 15% of the total workforce. Social dialogue takes place and collective agreements are signed but basically only in large Lithuanian companies, while there is no tradition of social dialogue in small companies and collective bargaining is basically absent with no collective agreements being signed.
According to the *Darbo kodeksas* and the Law on Public Service of 8 July 1999 (*Valstybes tarnybos istatymas*) the government and municipal authorities are no longer considered party to any high-level collective agreement. Therefore collective bargaining does not enter the terrain of public institutions and cannot involve questions related to remuneration or other issues that would require additional spending of state or municipality budgets (Art. 5-1 Law on Public Service).

The *Darbo kodeksas* only gives a non-exhaustive list of matters that may be regulated in collective agreements (Art. 50 (4) DK and Art. 61 DK). The provisions laid down in the majority of valid collective agreements mostly refer to remuneration. Other sections of collective agreements mostly reiterate the provisions of the legal regulations in force and contain no specific obligations for the parties or provisions on improving the working conditions of employees. Sometimes, agreements take advantage of specific clauses in labour legislation which allow lower standards for employees, e.g., non-justification of conclusion of fixed-term employment contracts (Art. 109 DK), summary recording of working time (Art. 149 DK); permission for overtime work (Art. 151 p. 3 DK), cases of full responsibility of employees for damages (Art. 255 DK).

5. Collective disputes

If the employer or employer’s organisation refuses to meet particular demands, the parties may turn to the mediation officer or initiate a conciliation procedure. The mediation option was first introduced by the *Darbo kodeksas*, although the parties to collective disputes have been unable to take advantage of it due to the lack of a legal and institutional framework. Besides, the attractiveness of this alternative dispute resolution procedure has been diminished by the fact that conciliation continues to be obligatory (Art. 73 (1) DK). The *Taikinimo komisija* (Conciliation Commission), constituted by an equal number of authorised representatives of the parties, must hear the collective dispute within seven days from the date it was set up. The decisions of the Conciliation Commission must be adopted by agreement between the parties; the agreement must be executed in writing, and implemented by the parties within the timeframe and according to the procedure specified in the decision. If the Conciliation Commission fails to reach an agreement on all or part of the demands, it may refer them to the *Darbo arbitrazas* (Labour Arbitration), which is formed on an ad hoc basis by the district court or, the *Treciuju teismas* (Third Party Court), composed of one or several arbitrators, or otherwise decide to conclude the conciliation proceedings by drawing up a protocol of disagreement (Art. 70 DK). In fact, in almost every case, the parties choose the last option, which allows the strike procedure to be initiated sooner. The involvement of Labour Arbitration or the Third Party Court remains very unpopular because, despite the fact that the law defines their decisions as binding, they are not legally enforceable – the refusal of the employer or employer’s organisation to execute the decision only gives the other party the option to declare a strike ‘in accordance with the procedure of the *Darbo kodeksas*’.

Strikes

The wording of Art. 68 DK suggests that only conflicts of interests may be regarded as the subject of disagreements and therefore the pre-condition for initiating the strike procedure. However, in legal literature it is acknowledged that the notion of a collective labour dispute also covers disputes related to an employer’s non-compliance with his obligation to ensure the working conditions established in labour laws, other regulations, the collective agreement and agreements between the parties (i.e. legal disputes), if they are of a collective nature (i.e. affect all or a significant number of employees).

The right to adopt the decision to declare a strike is vested in the trade union and the works council (Art. 77 (1) DK). A strike may be declared if the corresponding decision is approved by secret ballot by two-thirds of the employees of an enterprise, or, in the case of a strike in a structural subdivision of an enterprise, by two-thirds of the employees of the subdivision and at least half of the employees of the enterprise. There are no specifications on declaring strikes at national, territorial or sectoral level, which makes strike action at such levels extremely difficult.

As a general rule, the employer must be given at least seven days written notice of the intended strike action, including a warning strike lasting up to two hours. When a decision is taken to hold a strike in essential services (see below), the employer must be given written notice of the strike at least 14 days in advance. The notice shall specify the demands of the strike, the initiation date and the body organising the strike (Art. 77 (2) – 77 (5) DK).
Declaring a strike is prohibited while a collective agreement is in force, provided that the agreement is complied with. Furthermore, the law prohibits strikes in internal affairs, national defence and state security systems (with the exception of individuals employed in those institutions under employment contracts), as well as in emergency health services. Strikes are also prohibited in natural disaster areas, and areas where Martial Law or a state of emergency has been declared.

The number of strikes in Lithuania is extremely low, falling from 55 in 2000 (involving 3303 employees) to just one in 2005 (involving 70 people). There were no legal strikes registered in Lithuania in 2006.

Lockouts are not mentioned in the Darbo kodeksas. The prohibition of lock-outs stems from Article 83 DK, which prohibits employers from unilaterally taking the decision to bring the undertaking’s work activities to a halt, to prevent employees from getting to the workplace, to refuse to provide work and equipment to employees and to make other decisions interfering with the undertaking’s normal operation.

III. EMPLOYEE REPRESENTATION SYSTEM IN THE UNDERTAKING

1. General issues

Until 2003, Lithuanian labour law had clearly followed the approach of a single channel of workers’ representation in an enterprise. The exclusive rights of representation of all workers in an enterprise, for the purpose of collective bargaining or industrial action, were vested in the trade union established in a given enterprise (enterprise-level trade union) or the joint negotiation body of several trade unions acting together in an enterprise. In order to increase the number of valid collective agreements in enterprises, the Darbo kodeksas introduced two new forms of employee representation at enterprise level:

- the general meeting of employees may transfer the rights of collective representation of all employees of the enterprise to the sectoral trade union (to date, this option has been used in only a few enterprises); or as an alternative
- the general meeting of employees may elect a works council for the purpose of representation (Art. 19 DK).

However, the possibility of delegating the representation rights to the sectoral trade union organisation or electing a works council depends directly on whether or not there is an acting enterprise-level trade union in the enterprise.

The current system can be described as a single-channel representation system with a supplementary channel for non-unionised workplaces. If a trade union is established in an enterprise, it enjoys the exclusive representation rights of all workers, and a works council cannot be established. In the absence of a trade union in an enterprise, the employees are allowed to elect the works council, but to initiate the election procedure, the approval of a fifth of all employees is required (Art. 6 (1) Law on Works Councils). But the fact that the trade union was established after the election of the works council does not mean the dissolution of the latter – they must both agree on the joint representation structure (Art. 27 (2) – 27 (3) Law on Works Councils). If they fail to agree, the general meeting of employees takes the decision on what body (works council or trade union) will represent them collectively.

The trade union in the enterprise, institution or organisation (imoneje veikianti profesine sajunga) is a primary channel for employee representation at enterprise level. As a general rule, a trade union may be established if it has more than 30 founders (employees) or if the founders add up to more than a fifth of all employees, although no fewer than three (Article 6 (2) Law on Trade Unions, Article 2.38 Civil Code 18 July 2000 (Civilinis kodeksas)). Sectoral trade unions (sakos profesine sajunga) may be authorised by the general meeting of employees to represent the employees employed by a single employer. As a general rule, any kind of trade union may be established if it has more than 30 founders (Article 6 (2) Law on Trade Unions, Article 2.38 Civil Code). There are no other legal requirements for the workings of a “sectoral” trade union, although the provisions of the statutes of each trade union, which define the scope of its activities, play an essential role. As far as the general meeting of employees is concerned, Article 3 (4) Law on Works Councils establishes that the employees’ meeting will be legally binding if attended by at least half the employees of an undertaking or establishment.
The works council (darbo taryba) may be elected in enterprises, institutions or organisations acting as a single employer and employing at least 20 employees (Art. 3(3) Law on Works Councils). Despite the fact that the Darbo kodeksas does not contain a specific provision, the Law on Works Councils consolidates the right of employees of enterprises with less than 20 employees to elect an individual employee as representative. This representative holds the competence and the protection of the works council mutatis mutandis (Art. 3 (4) Law on Works Councils).

2. Legal basis and scope

The Darbo kodeksas is the primary source of the law regulating collective and individual relations between the employer and the employee in a systematic way: where there is a contradiction between a provision of the Darbo kodeksas and the provisions of another law or regulation, the provision of the Code shall apply (Article 11 (1) DK). The law on Trade Unions of 21 November 1991 consolidates the freedom of association, the right to establish trade unions, the rights, duties and guarantees of trade unions and their members, relationship with employers and state bodies. The law on works councils of 26 October 2004 defines the status of works councils and the procedure for the formation, rights, obligations and guarantees of works councils and their members, the relationship with the employer, state bodies and trade unions in the enterprise. In the course of transposing the relevant EC directives, some new labour laws which regulate specific questions of employee representation in specific types of undertakings were adopted.

There are no specific exclusions as regards the type of activity performed by an employer. If the enterprise, institution or organisation employs natural persons under an employment contract, the provisions of the Darbo kodeksas and other labour laws on employee representation are applicable. Civil servants are described in the Public Service Act of 8 July 1999 as natural persons working for a state or local municipal institution or agency, performing the functions of public administration (Art. 2 (2)). The relationship between the civil servant (valstybės tarnautojas) and the public institution is considered to be of a public service nature (valstybės tarnyba) and not an employment relationship (darbo santykis). The civil servant does not therefore fall within the definition of an employee (darbuotojas) and the provisions on employee representation of the Darbo kodeksas and other labour laws do not apply. They are allowed to form and join trade unions (there are several active sectoral trade unions in the public sector) but the rights of trade unions in collective representation are to a large extent limited as they are not defined by labour legislation but by the Law on Public Service and other special laws.

3. Capacity for representation

The legislator does not generally divide the competences of workers’ representatives when representing the employees of the enterprise. If the enterprise-level trade union, sectoral trade union or works council is considered the representative of the workers of an enterprise, they are entitled to all the rights of collective representation: the right to enter into negotiation, the right to conclude the collective agreements, the right to strike and the rights to information and consultation. However, the legitimate exercise of some of those rights (conclusion of the collective bargaining agreement and the right to call a strike) depends on the approval of the general meeting of employees.

The works council is entitled to represent all employees of a given enterprise, institution or organisation. The Law requires the works council to represent the rights and interests of all employees and explicitly prohibits discriminating against single employees or groups of employees or individual employees of a particular structural subdivision of an enterprise (Art. 17 p. 2 of the Law on Works Councils). The representation capacity of a works council becomes practically impossible to implement when, after electing a works council, the enterprise-level trade union is established and, on failure to form a joint representation body, the general meeting of employees decides to appoint the trade union as sole employees’ representative (Art. 27 of the Law on Works Councils). From the elected works council’s first meeting, it is considered the legitimate representative of employees, under Article 19 of the Darbo kodeksas. According to the Civil Code, the works council does not acquire the status of a legal person, but it can initiate civil proceedings before the court, approach and receive information from the state and the municipal institutions and agencies (Art. 18 p. 7 and p. 5 of the Law on Works Councils). In the relationship with the employer and with third parties, the works council is represented by its chairperson or, in his/her absence, by the deputy chairperson (Article 12 (2) of the Law on Works Councils).
4. Composition

The Law on Trade Unions and the Civil Code set out the requirements for establishing trade unions. A trade union may be established if it has more than 30 founders or if the founders account for more than a fifth of all the employees, but no fewer than three. They also establish that trade unions must have regulations (statutes), which are approved at the meeting, as well as an elected governing body. A trade union is considered established and holding the rights of a legal entity as soon as the above-mentioned conditions are met. From then on, it is considered “the employees’ representative” under Article 19 of the Darbo kodeksas and it is conferred all the rights of collective representation15.

According to Article 4 of the Law on Works Councils, the works council has a minimum of three members and maximum of 15 members, depending on the number of employees in the enterprise:

– in enterprises with more than 20 but less than 50 employees – three members;
– in enterprises with more than 50 but less than 100 employees – five members;
– in enterprises with more than 100 but less than 200 employees – seven members;
– in enterprises with more than 200 but less than 300 employees – nine members;
– in enterprises with more than 300 but less than 500 employees – eleven members;
– in enterprises with more than 500 but less than 700 employees – thirteen members; and
– in enterprises with more than 700 employees – fifteen members.

According to Article 4 of the Law on Works Councils, the works council has a minimum of three members and maximum of 15 members, depending on the number of employees in the enterprise:

– in enterprises with more than 20 but less than 50 employees – three members;
– in enterprises with more than 50 but less than 100 employees – five members;
– in enterprises with more than 100 but less than 200 employees – seven members;
– in enterprises with more than 200 but less than 300 employees – nine members;
– in enterprises with more than 300 but less than 500 employees – eleven members;
– in enterprises with more than 500 but less than 700 employees – thirteen members; and
– in enterprises with more than 700 employees – fifteen members.

Members of works councils may be employees aged 16 and over who have held a valid employment contract for more than 6 months. This excludes employees holding a short-term employment contract (up to two months) and people acting as an employer or an employer’s representative, in accordance with the laws and the employer's activity documents. The term of office of an elected works council is three years from the date of its first meeting (Art. 4 (2) of the Law on Works Councils).

The election of a works council is announced by the employer after he/she receives a written request from one fifth of the employees. The steps of the election procedure are set out in Articles 6-10 of the Law on Works Councils.

5. Protection granted to the members

Employees elected to the representative body of a local trade union may not be dismissed on the initiative of the employer if the employee is not at fault (Art. 129 DK), and disciplinary sanctions cannot be imposed on them without the prior consent of the standing trade union (Art. 134 (1) DK). The Chairperson of a local trade union may not be dismissed without the consent of the trade union, unless on grounds of repeated breaches of work discipline if a disciplinary sanction has been imposed on him at least once in the last 12 months (Article 136 (3) p. 1 DK). In order to obtain the consent of the trade union the employer must submit a written application. The trade union must issue its written consent or refusal to dismiss an employee within 14 days from receipt of the employer’s application. If the trade union fails to reply to the employer within that period, the employer is entitled to terminate the employment contract or to impose the disciplinary sanction. The employer is entitled to contest in court the trade union’s refusal to give its consent. The court may reverse the decision if the employer proves that the trade union’s decision substantially breaches his interests. An employee who has been dismissed from work in violation of the above-mentioned requirements must be reinstated to his former position on the court’s decision.

Employees who are elected as members of the works council may not be dismissed on the initiative of the employer if the employee is not at fault (Art. 129 DK) without the prior consent of the standing works council (Art. 134 (1) DK). The Chairperson of the works council may not be dismissed without the

15 One peculiarity is related to the situations where a works council is elected prior to setting up of the trade union. In this case, the meeting of employees in the secret voting may deprive the trade union from the right of representation.
consent of the works council unless on grounds of repeated violation of work discipline if a disciplinary sanction has been imposed on him at least once in the last 12 months (Article 136 (3) p. 1 DK). The procedure is then as outlined for trade union representatives above.

6. Operation of the body and decision-making

As regards the organisation of the internal operation of trade unions, regardless of the level of activity, the Law on Trade Unions (Profesiniu sajungu istatymas) leaves election, work method and decision-making issues to the discretion of the trade union itself. According to the principle of non-interference in the internal affairs of trade unions, all these issues are regulated by the rules of the trade union concerned.

In its first meeting, the works council elects its chairperson (pirmininkas), deputy chairperson (pirmininko pavaduotojas) and secretary (sekrėtorius) through a majority of the votes. The chairperson or, in his absence, the deputy chairperson, calls and chairs the meetings of the works council, represents the works council in courts of law and in the work council’s relationships with the employer, employees and third parties, prepares the annual report of the work council’s activities and presents the approved report to the employees. The secretary is responsible for communication with members of the works council, takes the minutes of the meetings and organises the storage and management of the works council’s documents (Art. 12 of the Law on Works Councils).

The works council meets on the initiative of the chairperson at least once a month, unless otherwise specified in the collective agreement. The meeting shall take place in the employer’s premises and during working hours, unless otherwise specified in the collective agreement. The employer must be notified of a works council meeting at least three working days in advance, and the members of the works council must be notified two working days in advance (Art. 12 (1) – 12 (3) of the Law on Works Councils).

The employer and his representatives may participate in works council’s meetings by invitation only. The participation of other employees in works council meetings during their working hours must be agreed with the employer (Art. 12 (6) of the Law on Works Councils). Minutes of works council’s meetings must be taken and signed by the chairperson and the secretary. On matters not regulated by law, the works council may establish the respective procedures on the approval of a majority of the votes. The works council may adopt its decisions through a majority of the votes of its participating members, except in cases when a majority of all the members is required. Each member has one vote. In the event of a parity of votes, the vote of chairperson is decisive. The meeting makes decisions provided that at least two thirds of all the members of the works council are present (Art. 13 (4) – 13 (5) of the Law on Works Councils).

The Law on Works Councils obliges works councils to inform employees about its activities on a regular basis by submitting an annual report. In addition, in case of an urgent need to discuss important labour, social and economic issues with employees, the works council has the right to call a meeting of employees after coordinating the venue and the time with the employer (Art. 20 p. 3. 19 p. 9 of the Law on Works Councils). A member of the works council informs employees about the council’s activities, subject to the confidentiality restrictions (Art. 17 p. 5 of the Law on Works Councils).

7. Means

According to Art. 183 (3) DK, employees elected to the representative body of a local trade union must be given a leave of absence of up to six working days per year for the purpose of improving their qualifications, attending trade union events etc. The procedure for granting paid leave of absence must be stipulated in the collective agreement.

There are no stipulations in the law regarding financing the activities of the works council. The law only obliges the employer to provide the premises (office room) and to allow the works council to use the facilities available (computers, phones etc.) These issues may be regulated in the collective agreement or through a separate agreement between the employer and the works council. According to Article 18 (1) of the Law on Works Councils, the members of the works council must be given paid leave of absence of up to 60 working hours per year in order to carry out their duties. If there are considerable distances between the subdivisions and structural units where the employees of the enterprise perform their work duties, the employer must provide the transport or grant more paid leave to the members of the works council to enable him/her to perform the relevant duties. The collective bargaining agreement may reverse those
statutory guarantees to provide for more favourable, as well as less favourable, regulations on leave of absence.

The members of the works council must be granted up to three working days per year of paid leave to improve their qualifications on account of the employer. The procedure for granting leave must be stipulated in the collective agreement or in an agreement between the employer and the works council. The collective bargaining agreement may reverse those statutory guarantees to provide for more favourable, as well as less favourable, regulations on training.

There is no statutory obligation for the employer to finance external assistance to the works council. However, the collective bargaining agreement or the agreement between the employer and works council may provide for this. The works council may give authorisation to its members to access the premises of the undertaking during working hours in order to get an idea of the working conditions of the employees, provided that this does not interrupt their work. In addition, the works council may request information from the employer necessary to perform its duties (Art. 19 p. 4-5 of the Law on Works Councils).

There are no particular statutory provisions on the relationship with the management of the enterprise. The conditions for information and consultation, unless set out in the law, are established in the collective bargaining agreement or in the agreement between the employer and the works council. Art. 24 of the Law on Works Councils, with the title “Relationship of works council and employer”, prohibits the employer from influencing the decisions of the works council or interfering in its activities. The employer may file a complaint to the court of the works council to request the suspension of a particular action of the works council, should it breach the provisions of the law, the collective bargaining agreement or the agreement between the employer and the works council. Collective bargaining agreements, agreements between employers and works councils may provide for more privileges for the members of the works council.

8. Role and rights

The Darbo kodeksas defines the rights and guarantees of employee representatives as those applicable to trade unions. According to Art. 21 (1) DK, employee representatives hold the following main rights of collective representation: to conclude collective agreements and supervise their implementation, to submit proposals on the organisation of work in the enterprise to the employer, to organise and manage strikes and other lawful measures which employees have the right to undertake, to submit proposals to state and municipal institutions, to exercise non-governmental supervision and control compliance with labour laws, to protect the rights of employees when concluding and implementing contracts for the purchase/sale of the enterprise or the transfer of part of the business or the business as a whole, the centralisation of business structures or the reorganisation of enterprises, to receive information from the employer on the socio-economic situation and projected changes of the enterprise which may affect the employees' situation, file an appeal to the court against the decisions and actions of the employer or the employer's representatives if such decisions and actions are contrary to legal regulations, collective agreements or violate the rights of the represented employees. The rights of local trade unions to information, consultation and codetermination are regulated by the same rules as those of works councils.

Information

Employees have the right to receive information and consultation (Art. 47 (1) DK, and its amendments of 12 May 2005). The same Article provides that the definition of “information” covers that relating to the current and future activities of the enterprise and its economic and financial position, on the current state and structure of labour relations and potential changes in employment, on the measures to applied in the event of possible collective redundancies, and other information associated with labour relations and the activities of the enterprise. The organisation of work and the transfer of undertakings are not listed in the above-mentioned article. However, doubts still remain as to whether or not this provision consolidates the obligation of the employer to inform employee representatives. It seems that the purpose of this provision is to define the subject matter of the information, but not to establish the specific duties of the employer. This conclusion also stems from Article 47 (2) of the Darbo kodeksas (amendments of 12 May 2005), according to which, the conditions and the procedure for information and consultation are to be established in laws, collective agreements or agreements between the employer and the employee representatives. Therefore, information to employee representatives may only achieve practical application through a special provision in the law or a specific agreement. Special provisions in the law
are very rare. The parties to a collective bargaining agreement have the right to demand information on all issues relating to negotiations from each other (Art. 48 (5) DK) and the employer shall inform employee representatives in the event of collective redundancies (Art. 130 (5) DK).

The Darbo kodeksas contains only fragmentary rules on practical arrangements concerning information – the submission of objective information is mentioned among the principles of social partnership (Article 40 (2) p. 5 DK) and, according to Article 47 (3) DK, the information is to be provided in good time, free of charge and in writing, and the “employer will be held responsible” for the accuracy of the information. In addition, Article 21 of the Law on Works Councils establishes that the employer must supply to the works council the information free of charge and in writing, within 10 days in establishments and undertakings employing less than 100 employees, and within 20 days in all other establishments and undertakings.

The right of the works council to make proposals to an employer on economic, social and employment issues, decisions affecting employees and on the implementation of laws and collective bargaining agreements is expressly mentioned in the Law on Works Council (Art. 19 p. 6), although no subsequent substantial or procedural rules have been introduced.

Consultation

Article 23 (1) p. 2 DK establishes that the employer must hold consultations with employee representatives when making decisions that could affect the legal position of the employees. However, this declaratory provision of the General Part of the Darbo kodeksas is not directly enforceable. As in the case of information, the Darbo kodeksas does not establish the framework for regular consultation with employee representatives. This conclusion also stems from Article 47 (2) of the Darbo kodeksas (amendments of 12 May 2005), according to which, the conditions and the procedure for information and consultation are to be established in laws, collective agreements or agreements between the employer and the employee representatives. Therefore, the employer is obliged to consult employee representatives in the event of a special provision in the law or an agreement. The special provision only relates to redundancies: the employer is obliged to consult employee representatives in the event of termination of the employment contract due to economic, technological or similar reasons (Article 130 (4) DK).

Article 22 (2) of the Law on Works Councils requires the employer to submit the required information for consultation in advance. The employer must provide reasons and relevant, necessary information. The works council must express its opinion within the timeframes established by the employer, but such timeframes cannot be less than 10 days in establishments and undertakings employing less than 100 employees, and 20 days in all other establishments and undertakings. The parties may agree to extend the timeframes. The works council may ask for additional necessary information. After receiving the opinion of the works council, the employer must weigh it up and issue a reasoned response. He may also initiate discussions or a collective bargaining procedure with the works council. If an agreement is reached, it can be formalised in the form of a collective bargaining agreement or a written agreement between the works council and the employer (which, according to the national system of sources of law, cannot contain normative provisions).

9. Other representation bodies

There are no rules on coordinating the activities of works councils on a supra-enterprise level. According to Article 3 (2) of the Law on Works Councils, there may only be one works council in an enterprise, regardless of its establishment, branches or subdivisions.

Labour Protection Committees (darbuotojų saugos ir sveikatos komitetas) are established in enterprises employing more than 50 people. These committees consist of an equal number of employers and employee representatives elected at the general meeting of employees. The election is organised by the enterprise-level trade union, or, in its absence, by the sectoral union authorised at the general meeting of employees or by the works council. The Labour Protection Committees hears and evaluates the activities of employers, enterprise subdivisions and the occupational safety service (on issues of health and safety), it plans measures to improve health and safety and examines the reasons and circumstances of accidents and occupational illnesses. Members of the committee and employee representatives performing the tasks assigned to them are paid their average wage. They cannot be dismissed on the employer’s initiative without the consent of the Committee. The employer must inform and consult employees on all issues
related to the analysis and planning of occupational health and safety as well as the organisation and control of appropriate measures. The employer must provide the conditions for employees and their representatives to take part in discussions concerning occupational health and safety. The regulations of the committee must be approved by the employer by consensus with employee representatives (i.e. trade union, sectoral trade union, works council).

**European Works Councils**

The Republic of Lithuania transposed Directive 94/45/EC on 19 February 2004 by adopting the Law on the European Works Councils of 19 February 2004 (*Europos darbo tarybu įstatymas*). The law regulates the election of the Lithuanian members of the SNB and EWC in line with the national concept of employee representation. Priority was given to the institutionalised employee representatives in the undertaking or establishment concerned, i.e. enterprise-level trade union, or, in the absence of a local trade union, the authorised sectoral trade union organisation or works council. In the absence of an institutionalised body of representation, the Lithuanian representative must be elected by secret ballot in the general meeting of employees.

In the majority of aspects, Lithuanian law does not go beyond the requirements of the directive. Adopted rules on financing experts and the weak participation of trade unions meet the minimum requirements of the directive. Lithuanian law provides for extensive protection to Lithuanian employee representatives of the SNB and EWC, and regulates a number of issues in great detail, such as the reimbursement of travel and subsistence costs. The rules on protection against dismissal are even more broadly formulated, compared with those concerning national employee representatives.

Stipulation of the term of office of the EWC (four years), the requirements for incorporating into an agreement the rules on the renewal of the composition of the EWC, and the absence of a restriction on the number of SNB members may be considered peculiarities of the Lithuanian transposition law.

The transposition law has had limited impact in Lithuania, which may be attributed to the fact that few undertakings with headquarters in Lithuania meet the criteria of a ‘Community-scale undertaking’ or a ‘Community-scale group of undertakings’. So far, only a few Lithuanian undertakings or establishments have come up against the rules on EWC. All existing practice involves the participation of the Lithuanian representatives in the activities of a EWC or SNB established under foreign law.

**10. Protection of rights**

Article 36 of *Darbo kodeksas* establishes the ways in which infringed rights are protected by the courts, the obligation to perform duties and to claim damages. Article 295 (2) p. 3 of the Labour Code establishes that disputes between trade unions or other employee representatives and an employer concerning the non-performance of duties and non-fulfilment of obligations established in laws or in the collective agreement will be heard in court.

The right of trade unions to appeal to the courts on an employer’s non-compliance with his/her legal obligations is not expressly regulated by the Law on Trade Unions, but Article 22 (1) p. 8 entitles employee representatives to appeal to the court against the decisions and actions of an employer or an employer’s representatives should those decisions or actions breach legal provisions or agreements, or breach the rights of the represented person.

Article 19 (1) p. 7 and p. 8 of the Law on Works Councils entitles works councils to initiate legal action should an employer breach the provisions of the law, a collective bargaining agreement or an agreement between the employer and the works council, or should an employer fail to adhere to the statutory rights of the works council.

In all such cases, the competent courts are those with general jurisdiction and will be governed by the rules of the Code of Civil Procedure of 28 February 2002 (*Civilinio proceso kodeksas*).

There is no legal provision that exempts the trade union from fines, but Article 29 of the Law on Works Councils sets out this exemption in cases of complaints by works councils. There are no special stipulations with regard to administrative sanctions in the event of non-compliance with the obligation to ensure the proper conduct of employee representatives. In this respect, only a general regulation on
breaches of labour legislation (Article 41 (1) of the Administrative Penalties Act) is applicable. The general responsibility to supervise the enforcement of labour laws rests with the State Labour Inspectorate, which is entitled to impose fines from 500 LTL (approx. 145 EUR) to 5000 LTL (approx. 1450 EUR) in cases of breaches of labour legislation. To date, there have been no cases of administrative sanctions.

In accordance with Article 177 of the Criminal Code of 26 September 2000, a person interfering in the legal functioning of a trade union or its members will be punished by losing the right to exercise certain activities, with a sanction or imprisonment (from three months to two years). However, there have not been any examples of these punishments being given. The small number of claims that were filed managed to get resolved in the pre-trial investigation phase.

11. Codetermination rights

There are few statutory provisions requiring the employer to involve employee representatives in decision-making processes within the enterprise. The following are all approved by the employer in agreement with employee representatives:

- the work (shift) schedule (enterprise-level trade union, authorised sectoral trade union or works council) or in accordance with the procedure established in a collective agreement (Art. 147 (1) DK);
- the work regulations defining the work procedure in the workplace (Art. 230 DK); and
- the regulations of the occupational health and safety committee in an enterprise (Art. 269 (2) DK).

In private workplaces, qualification requirements, lists of vacant positions and the procedure for applying for them is established by the employer, taking into account the opinion of employee representatives (Art. 101 (2), 103 (2) DK). Finally, the Council has the right to oppose the dismissal of a member of the council, although these rights are guarantees geared towards protecting the proper functioning of employee representatives rather than rights of codetermination.

Article 22 (2) of the Law on Works Councils provides that the employer must submit the necessary information for joint decision-making in advance. He must provide his reasons and the necessary relevant information. The Works Council must express its opinion within the timeframe established by the employer, although the timeframe may not be less than 10 days in establishments and undertakings employing less than 100 employees and 20 days in all other establishments and undertakings. The parties may agree to extend the timeframes. The Works Council may request additional necessary information. After receiving the opinion of the works council, the employer must weigh it up and issue a reasoned reply. He may also initiate discussions or a collective bargaining procedure with the works council. If an agreement is reached, it may be formalised by way of a collective bargaining agreement or a written agreement between the works council and the employer (which, according to the national system of sources of law, cannot contain normative provisions).

IV. EMPLOYEES’ REPRESENTATION IN CORPORATE BODIES

Legal basis and scope

National legislation does not establish the right of workers (through their institutionalised representatives) to elect/appoint the members of the Supervisory Board nor does it impose any obligation on shareholders to discuss the possibility of employee involvement in the formation of the company’s bodies. There are however several theoretical possibilities for employee representatives to be elected to those bodies.

In their statutes, companies may provide the option of worker participation. This is difficult to imagine as it would formalise workers’ involvement through legally binding obligation, which would not be acceptable to most companies.
The shareholders’ meeting may elect the workers’ representatives to the Supervisory Board or Board (or the Supervisory Board may elect workers’ representative to the Board) proposed by employees, shareholders (or Members of the Supervisory Board). In some new or former state enterprises employees hold enough shares to influence the election results in favour of the proposed candidates. However, in these very rare cases, employees do not normally consider themselves representatives of the workforce but representatives of individual or collective interests of the shareholders.

Shareholders (or members of the Supervisory Board) may elect the workers’ representatives to the Supervisory Board (or Board) following an ancient regulation on the compulsory involvement of employees in state-owned companies\(^{16}\). Until 2000, there were few state-controlled companies with one third of the Members of the Supervisory Board comprised of employees. However, those employees were proposed by the Board and their primary task was not to represent the workers but to somehow counterbalance the influence of the representatives of the authorities in the operations of the company.

Companies may operate in Lithuania, especially those with foreign investors as shareholders, which - inspired by the principles of modern effective corporate governance – invite workers’ representatives to occupy specific seats on the Supervisory Board or Board. However, even major employers’ organisations were unable to give example of such cases.

**Representation of employees on the boards of European Companies**

Since there are no statutory regulations on board-level representation, the national implementation regulations of EC Directives 2001/86/EC supplementing the statute for a European Company, and Directive 2003/72/EC supplementing the statute for a European Cooperative Society, have not gone beyond the requirements of the Directives. Directive 2001/86/EC was transposed on 12 May 2005 through the adoption of the Law on the Involvement of Employees in Decision Making in the European Company, which was introduced on 28 May 2005. On 5 December 2006, the Parliament of the Republic of Lithuania (Seimas) adopted Law no X-935 on Employee Involvement in Decision-Making in European Cooperative Societies. Since both directives establish extensive rules on employee involvement in decision-making processes in European Companies and European Cooperative Societies, there was not much room left for variations in national implementation law. In addition, by drafting the transposition law, the Lithuanian legislator has clearly followed the model of transnational information and consultation procedures and its institutionalisation, already established a few years ago by the EWC-transposition law.

Since there is no European Company or European Cooperative Society with registered offices in the Republic of Lithuania, the application and effects of the majority of the legal provisions of the transposition laws can hardly be assessed. The existing practice is associated with the election of representatives of Lithuanian employees and their participation in the work of the SNCs of the European Company.

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\(^{16}\) In the early stages of transition (1990-1994) the Law on State Enterprises established the right of the enterprise to elect up to 2/3 of the Members of the Supervisory Board. One half of those members were elected by the higher administrative staff and another half by the general meeting of other employees. However, workers’ participation at the time could not prevent corruption and safeguarding the interests of the state and the employees, and the law was therefore abolished.
Luxembourg has a population of more than 450,000, which has grown by some 100,000 in the last 30 years. In comparison with neighbouring countries, this population growth is quite exceptional, both in terms of numbers and because of the predominant share of immigrants. The number of Luxembourg nationals has stagnated, and would have fallen had it not been for nationalisation and naturalisation. On an annual average, the migratory balance was more than 10% between 1990 and 2000, while in the EU-15 this figure was roughly 2.3%.

I. ECONOMIC AND SOCIAL FRAMEWORK

Some basic economic data

Financial services (banks, financial assistance) form the bedrock of the Luxembourg economy. Their weight in the economy has increased sharply since 1994. The share of industry in the economy has been steadily declining. In 1985, it accounted for nearly a quarter of total economic output, as opposed to just over a tenth in 2003. This “loss of weight” took place relatively early, chiefly to the benefit of business services (until 1993) and subsequently to that of the financial sector. Transport and communications, two of the most dynamic sectors in terms of economic growth, also increased their share in the country’s economic output by a third between 1985 and 2003. In the area of pure “economic performance” indicators, GDP per capita, Luxembourg is in the first rank of industrialised countries, thanks to its high rate of GDP growth from 1985 to 2001.

Labour Market

Since 1983, employment has grown steadily, especially as a result of the large influx of migrant workers who hold more than a third of the jobs in Luxembourg. Unemployment, which had long been insignificant, with rates of less than 3%, has grown sharply since the second half of 2002. In 2004, the unemployment rate rose above 4%. On December 31st 2006, the total number of wage earners was 303,976 of which 128,429 were manual workers, 150,696 were white-collar workers and 24,851 were civil servants. Between 2005 and 2006, employment increased by 12,057 jobs, of which 66.5% were white-collar jobs, 30.5% were manual worker jobs and 3% were civil service jobs. Nearly two-thirds of male manual workers work in construction (30%), manufacturing industry (21%) and transport and communications (14%). Their female counterparts are chiefly employed in the property, rental and business services sector, which includes cleaning services (18%), the hotel and catering industry (15%) and commerce (14%). Regardless of gender, white-collar workers are chiefly employed in financial intermediation, commerce, automotive, household goods repairs and property, rental and business services. The health and welfare sector accounts for 17% of female white-collar workers, and the manufacturing industry for 11% of male white-collar workers.

On March 31st 2007, the number of unemployed Luxembourg residents registered in the job placement service of the state employment agency (ADEM) and not covered by employment incentive measures was 10,045. In March 2007, the unemployment rate stood at 4.6%, the same level as in March 2006. Adjusted for seasonal variations, the unemployment rate totalled 4.4%. Unemployment, including non-jobseekers, adjusted for seasonal variations, remained stable at 6.3%. As to the distribution of waged employment by nationality, Portuguese citizens and those from the new Member States (NMS) mostly work as manual workers, French and Italian citizens are distributed almost evenly between manual and white-collar jobs, and Belgians and Germans are mostly white-collar workers. As for Luxembourgers, almost half are white-collar workers, while manual work and the civil service account for nearly a quarter each. It is also notable that in March 2006, wage earners from the new Member States accounted for no more than 0.6% of the total workforce.

It is interesting to note that, according to the 2006 Labour Force Survey, 8.6% of resident wage earners worked overtime during the week of reference. Nearly 20% of overtime was worked at the employer’s request, which is in line with the percentage of paid overtime. The average overtime worked was 7.7
hours, of which 1.6 was paid. As regards non-standard employment, it seems that Saturday work is very common, with 28.5% of wage earners normally or occasionally working on Saturday, followed by Sunday and evening work (nearly 20%). The number of wage earners doing shift or night work did not exceed 10%. In 2006, 6.1% of resident wage earners were employed under a temporary contract.

II. LABOUR AND INDUSTRIAL RELATIONS

1. Legal basis
Luxemburg employment rights are listed in the Labour Code as of the first of September 2006. It may be said that the legislator deals in detail with all aspects related to the legal environment of employees and that practically all related aspects are regulated by ‘policy laws’, and therefore compulsory under penalty of legal sanctions at a national level.

Luxemburg therefore has a minimum social wage which is compulsory in all economic fields, adjusted automatically to the variations in the cost of living, in accordance with the law dated 22 June 1963. Working hours, holidays and legal national holidays are also set legally, as well as opportunities for work contract termination. The autonomy of management and unions will not come into effect until beyond the minimal limits set by the legislator and exists in the form of collective contracts either at industry level, or individual company level.

2. Social partners
Unions
The rate of trade union membership is high in Luxembourg. Nonetheless, there are no official statistics on the subject, as the data tend to come from inner sources.

Table 1: OECD indicators

<table>
<thead>
<tr>
<th>Estimate 1995 OCDE,</th>
<th>Eurobarometer survey estimates</th>
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<tr>
<td></td>
<td>1993 Public</td>
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<tr>
<td>43.4%</td>
<td>55.7%</td>
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</tbody>
</table>

Sources: BIT (24), Eurobarometer survey (40), OECD in La Tribune 03.02.1998

The concept of “national representativeness” in Luxembourg was modified by a law of 30 June 2004 providing that only trade unions demonstrating their “general national representativeness”, namely trade unions with the necessary capacity to assume the resulting responsibilities and in particular to sustain a major industrial dispute at national level, are included in this category.

Unions in Luxembourg

The OGB-L and LCGB are the two trade union confederations entitled to sign collective bargaining agreements and to take part in tripartite negotiations.


- LCGB, Lëtzebuergër Chrëschtleche Gewerkschafts-Bond (Christian Luxembourg Trade Union), with Christian democratic tendencies, had some 40,000 members in 2006. FCPF- Syprolux, Fédération Chrétienne du Personnel des Transport (Christian Federation of Transport Workers), is of the same tendency.
The third organisation considered representative at national level until 1998 was FEP-FIT, Fédération des Employés Privés/Fédération Indépendante des Travailleurs et Cadres (Federation of Private-Sector Employees/Independent Workers’ Federation), affiliated to CEC and with some 11,000 private-sector white-collar members in 1997. But internal disputes led to a split and a sharp fall in membership. Spin-offs of FEP-FIT, SNEP, Syndicat National des Employés Privés (National Union of Private-Sector Employees) and UEP, Union des Employés Privés (Union of Private-Sector Employees) benefited from FEP-FIT’s decline in the trade union elections of 1998, receiving between them 26% of the vote for the Association of Private-Sector Employees and 22% of the vote for the Health Insurance Fund, though without gaining ground in employee committees.

On February 2003, the four trade unions ALEBA (bank workers), UEP, NGL, Neutral Gewerkschaft Lëtzebuerg (Neutral Trade Union of Luxembourg) and SNEP, joined forces to sign common statutes for a single trade union federation of nearly 20,000 members.

Employers

The various employers’ federations and professional associations were grouped together in an Employers’ Liaison Committee (CLP) set up on December 10th 1965. On June 29th 2000, UEL, Union des Employeurs Luxembourgais (Union of Luxembourg Companies) took over the Employers’ Liaison Committee.

The following associations are members of the UEL:
- ABBL, Association des Banques et Banquiers Luxembourgeois (Luxembourg Association of Banks and Bankers),
- ACA, Association des Assurances Luxembourgaises (Association of Luxembourg Insurance Companies),
- CCL, Confédération du Commerce Luxembourgeois (Luxembourg Confederation of Commerce),
- FEDART, Fédération des Artisans (Federation of Craftsmen),
- FEDIL, Fédération des Industriels Luxembourgais (Federation of Luxembourg Industrialists),
- HORESCA, Fédération des Hotels, Restaurants et Cafetiers (National Hotel and Catering Federation),
- CC, Chambre de Commerce (Chamber of Commerce),
- CM, Chambre des Métiers (Chamber of Trades).

The UEL currently represents some 30,000 companies, accounting for some 80% of domestic employment. It could be said that the UEL covers virtually all the employers’ associations and groups. The agricultural and social sectors as well as liberal professions are not part of the UEL, though their relations with it are described as friendly. Luxembourg has a number of tripartite bodies for which candidates may be nominated. The respective proposals are negotiated within the UEL.

In addition to trade unions and employers’ organisations, Luxembourg also has Occupational Chambers – structures elected to represent interests and to be consulted within the framework of law-making and implementation procedures (law of April 4th 1924).

These associations are:
- For workers: La Chambre de Travail (Labour Chamber, for manual workers), La Chambre des Employés Privés (Chamber of Private-Sector Employees), and La Chambre des Fonctionnaires et Employés Publics (Chamber of Civil Servants and Public Employees).
- For employers: La Chambre de Commerce (Chamber of Commerce, Industry, Financial Sector, Hotel and Catering), La Chambre des Métiers (Chamber of Trades, Construction, Food, Clothing and Craftsmen), and La Chambre d’Agriculture (Chamber of Agriculture).

3. Joint bodies

The State plays a vital role in labour relations in Luxembourg, whether through direct intervention or “tripartism”. Luxembourg has a legally regulated collective bargaining system with a strict legal hierarchy, the minimum legal wage and a more or less automatic income adjustment to changes in the cost of living.
Luxembourg set up a tripartite “social dialogue” system after the iron and steel crisis of 1974. The social partners regularly meet in tripartite conferences. The iron and steel industry restructuring and modernisation agreements and wage moderation agreements were negotiated within that framework. In a more institutionalised manner, several tripartite structures play a specific role in this negotiating system, together with the consultative Economic and Social Council. The Tripartite Coordination Committee, established by the Crisis Law of December 24th 1977, studies the economic and social situation and gives an opinion on the adoption of measures for general application and national solidarity. For example, the discussions on working hours which took place in 1998 were conducted within this Committee. The Market Watch Committee, the National Employment Committee, the Women’s Work Committee, the National Immigration Committee, and the Standing Iron and Steel Workers Monitoring Committee are other tripartite structures with specific functions.

4. Collective bargaining

Legal basis and key issues

The law regulates the subjects, levels, procedures, contents and effectiveness of collective bargaining agreements and specifies a legal hierarchy. The decentralisation of collective bargaining to company level and the extension of industry-wide agreements to non-wage issues is widespread in line with the general European trend.

Collective bargaining agreements cannot opt out of legal provisions, and have automatic effect on employment contracts, except where employees enjoy more favourable conditions. A collective bargaining agreement applies to all the employees of employers belonging to a signatory employers’ organisation and may be extended (declared “generally binding”) to the whole profession affected by a Grand Ducal regulation, following a proposal agreed by the two parties to the National Conciliation Service (ONC).

According to art. L. 162-1 of the Labour Code, for each collective bargaining agreement a unique negotiating committee is set up, consisting of trade union organisations demonstrating their “general national representativeness”, i.e. trade unions with the necessary capacity to assume the resulting responsibilities and, in particular, to sustain a major industrial dispute at national level. These trade unions may, by unanimous decision, grant or refuse access to negotiation to other unions. Trade unions which individually or collectively obtained 50% of the vote in the last election to the employee committee of companies or centres within the sphere of application of the collective bargaining agreement must be allowed to participate in the negotiating committee. On the request of these trade unions, an employer or its corresponding organisation is obliged to negotiate with a view to entering into a collective bargaining agreement.

Art. L. 162-12 of the Labour Code provides that collective bargaining agreements must specifically establish the working conditions agreed by the parties, and include at least:

- Conditions for hiring and firing employees, including appropriate induction measures and preparation for the tasks to be performed.
- The working hours and arrangement thereof, overtime as well as daily and weekly rest.
- Bank holidays.
- The applicable system of leave, including, inter alia, annual holidays.
- The pay system, wage items and treatment by professional category.

They must necessarily provide for extra pay for night work and arduous, dangerous and unhealthy working conditions, application of the principle of equal pay for men and women, and forms of combating sexual and other forms of harassment, including workplace bullying. The parties must also necessarily have discussed the organisation of working time, the company’s training policy, efforts made by the parties to the collective bargaining agreement to maintain employment growth and to combat unemployment, especially to benefit workers aged over 45, and the implementation of the principle of equal treatment between men and women.
Main features
Some 60% of the workforce is covered by collective bargaining agreements, half by industry-wide agreements and roughly the other half by company agreements.

5. Collective disputes
In the event of an industrial dispute, an obligatory conciliation procedure takes place at the National Conciliation Service. This Service, established in 1945, consists of employees’ and employers’ representatives, chaired by the Minister of Labour. Industrial disputes are suspended during the conciliation period. Arbitration (or mediation, in the public sector) may follow a fruitless conciliation process, but in practice it hardly ever occurs.

Strikes
The obligation to keep the peace in the industrial relations is provided by Luxembourg law (Labour Code art. L.162-11). This obligation entails that no industrial action may be embarked on during the term of a collective bargaining agreement. It is a principle related to industrial relations practices geared towards the seeking of agreements.

III. EMPLOYEES’ REPRESENTATION SYSTEM IN THE UNDERTAKING

1. General issues
Luxembourg seems to be one of the few countries in which the negotiations and dialogue practised over some 60 years form the basis of a form of social peace that embraces social progress, social justice and respect for working people.

In Luxembourg there are two main forms of representation outside the civil service:

- Employee Committees (DP), in centres with more than 15 employees, which solely consist of employee representatives. Employee committees defend workers’ interests and often act in close conjunction with trade unions. Some 160,000 employees in 2,600 companies were covered by such councils in 2006.

- Joint Employer/Worker Committees (CM), in companies with more than 150 employees. These Joint Committees, with equal representation of employers and employees, are essentially consultation and monitoring bodies, though they may also decide on certain employment issues. In 2006, there were some 110 Joint Committees.

In addition, there is minority employee representation on the board of directors of limited companies whose capital is semi-public, or with more than 1000 employees (see section 4 on employee representation at board level). There is also employee representation on European works councils, introduced by a law dated July 28th 2000 (currently arts. L.431-1 et seq. of the Labour Code), and employee involvement in European companies within the framework of Directive 2001/86 (arts. L. 441-1 et seq. of the Labour Code).

2. Legal basis and scope
The law dated May 18th 1979, amended by 10 subsequent laws, and currently integrated in arts. L. 411-1 et seq. of the Labour Code regulates employee committees.

17. There are no employee committees in the civil service; instead there are staff associations, normally established by categories and which often require membership of a particular trade union.
The law dated May 6th 1974, which establishes joint committees in private companies and provides for employee representation in limited companies, has been amended on many occasions and currently included in the Labour Code in arts. L. 421-1 et seq.

3. Capacity for representation
The employee committee has no legal personality as such. Article L. 416-1 of the Labour Code provides for the employee delegation to select a chairman, a vice-chairman and a secretary from its member by secret ballot, and that the delegation should also select an ‘office’ by secret ballot from its members for the execution of daily business and meeting preparation. The chairman, the vice-chairman as well as the secretary are automatically part of the committee office. The subject of the employee committee’s discussions is set by an agenda decided by the committee office and communicated to members at least five days before the meeting. The employee committee meets upon the chairman’s written request. The employee committee’s decisions and resolutions are taken by the majority of the attending members.

The joint committee does not have a distinct legal personality from that of its members. According to article L. 424-1 of the Labour Code, the joint works council is presided over by the general manager or the deputy. The joint council chooses a secretary from the employee representatives for the joint council. The council secretary is aided by an administrative secretary selected by the general manager from the company’s personnel. The joint works council meets upon the general manager or the deputy’s written request.

The general manager or deputy and the secretary set the agenda together and must communicate it to members of the joint works council at least five days before the meeting. The joint works council’s decisions and notices are adopted once they have gained the absolute majority of votes from the employer representative group and the employee’s representative group. The joint works council discussions are recorded in the meeting minutes and countersigned by the chairman and the committee secretary while the employee representatives must regularly report to employee committee as well as to equality representatives regarding the activities pursued by the joint council.

4. Composition
Centres with more than 15 employees, must constitute a representation, normally called “délégation” (employee committee) or “délégation principale” (main employee committee) in larger companies. An employee committee solely consists of employees (employed for more than one year) elected by all staff (employed for more than 6 months) from candidate lists put forward by the trade unions or the employees themselves, for a period of five years. In firms with less than 100 employees, elections are held by a relative majority (and single candidates are put forward). In firms with more than 100 employees, the vote is by proportional representation (with a list of candidates put forward). Lists may be put forward by national representative organisations, those supported by 5% of the centre’s employees, or those with a majority in the outgoing employee committee. The number of employee committee representatives is one for undertakings with 15 to 25 employees, four for undertakings with 100 employees, 13 for undertakings with 1000 employees, 25 for undertakings with 5500 employees, and an additional representative for every 500 employees above that. A deputy member is elected for each full council member. Representation is guaranteed for young workers (one to four committee members for every five young workers) and for manual and white-collar workers (as of 15 from each category, for a total workforce of 100).

Private companies based in Luxembourg and employing at least 150 workers over the last three years must establish a Joint Committee. Joint committees are made up of equal numbers of employer and employee representatives. The total number of full members (with as many deputy members) is six for undertakings with 150 to 500 employees, eight for undertakings with 500 to 1000 employees, 12 for undertakings with 1000 to 1500 employees, 14 for undertakings with 1500 to 5000 employees, and 16 for undertakings with more than 5000 employees. Employer representatives are appointed by the company manager. Employee representatives (employees of the undertaking employed for more than one year) are elected by the employee committee(s) for five years from lists of candidates with proportional representation. Manual and white-collar workers must be represented according to their relative weight in the enterprise, and may be elected in separate ballots.
5. Protection granted to the members

Under art. L. 415-11. (1) of the Labour Code, the full and deputy members of the various employee committees, the equality representative and the safety representative cannot be dismissed, and any dismissal notified by the employer is null and void. Within 15 days from the dismissal, the employee may file an application to the president of the employment tribunal with jurisdiction in urgent matters to declare the dismissal null and void and to order the employee’s reinstatement. The ruling of the president of the employment tribunal is provisionally enforceable and may be appealed.

However, in the event of serious misconduct, the employer is entitled to immediately suspend the employee from his/her job, pending the employment tribunal’s final decision, on the employer’s request, on whether or not to terminate the employment contract. If the employment tribunal rules against the employer, the suspension of the employee from his/her job is annulled and its effects cancelled. Within eight days from the notification of the suspension, the council member or equality representative may, on simple request, apply to the president of the employment tribunal for a ruling on whether his/her pay is to be maintained or suspended, pending the dispute’s final resolution. This ruling is subject to appeal and immediately enforceable. In the event of a dispute arising from the adoption of an opinion, separate opinions must be issued and transmitted to the company’s board of directors. Advisers, who may or may not be part of the company’s staff, may take part in the committee’s meetings and speak in a consultative capacity on request of an absolute majority of a group, although their numbers may not be greater than half of the number of representatives that make up the group. They are appointed by the most representative employers’ organisation or trade union at national level.

Under art. L. 415-2 of the Labour Code, the members of employee committees and their advisors are required to hold professional secrecy in all matters concerning manufacturing processes. They must also treat the information defined by the employer or his/her representative as confidential as such. Employee committee members who consider such definition abusive may seek a ruling from the Director of the Labour and Mines Inspectorate within eight days, who will rule on the confidentiality of the information in a decision not subject to appeal.
Under art. L. 425-2 of the Labour Code, the members of company joint committees and their advisors are required to treat all information defined as confidential in the minutes of the meeting by the employer or his/her representative as such. Joint committee members who consider such definition abusive may seek a ruling from the Director of the Labour and Mines Inspectorate within eight days, who will rule on the confidentiality of the information in a decision not subject to appeal.

7. Means

Under art. L. 415-1 of the Labour Code, employee committee members are subject to the centre’s internal regulations. By agreement between the council members and the manager of the centre, employee committee members are entitled to leave their workstations as required with no loss of pay, for the purpose of performing the functions conferred to them by law. The manager of the centre is required to allow the council members the necessary time to perform their functions and to remunerate it as working time. Administration costs are paid by the employer, who must also allow employees time off (eight hours per week distributed between five council members in a centre with 100 employees, 24 hours per week between six council members in a centre with 300 employees, 40 hours per week between eight council members in a centre with 500 employees) and release one or more council members (appointed by the employee committee in conjunction with the trade unions) from their work on a full-time basis in centres with more than 500 workers. In centres with more than 1500 employees, the representative trade unions at national level may each appoint a member released from work duties. Employee committee representatives may undergo training during working hours on labour, economic or technical issues related to their function, provided by trade unions or other bodies such as, in particular, EST École Supérieure du Travail (Higher School of Labour). In centres employing 150 or more employees, the employee committee may appoint advisors, from inside or outside the company, on suggestion of the representative national trade unions at national level present on the council.

The employer must provide the joint committee with suitable premises, necessary materials and secretarial facilities to hold its meetings.

8. Role and rights

The function of the employee committee is to safeguard and defend the interests of employees at the centre as regards working conditions, safety at work and employment status (except the responsibilities of the joint committee, if applicable).

Information

In corporations, management must submit a general annual report on the company’s economic and financial situation (including its activity, turnover, overall production and operating results, orders, any changes to the corporate structure, the total amount of staff pay and any investments made).

The company manager must also provide the employee committee any information required to update it on company developments (once a month, when there is a joint committee or otherwise at meetings with management). Management is required to report to the joint committee on the profit and loss account, the annual balance sheet, the auditors’ report and, if applicable, the board or directors’ or management report, along with any other document submitted to the general shareholders’ meeting, prior to the meeting. The joint committee receives an annual management report from the company manager and monitors the management of staff benefits.

Consultation

The employee committee:

- Must be informed in advance of any collective redundancy; the employer issues a written notice with a copy to the employment office, and the redundancy measure may not take effect until after 60 days of the notice (art. L. 166-1 of the Labour Code)

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18. Dismissal of seven employees over 30 days or 15 employees over 90 days.
EMPLOYEE REPRESENTATIVES IN AN ENLARGED EUROPE

- Must be consulted prior to any relocation (art. L. 127-6)
- Must be consulted before authorisation is requested from the employment office for extra work or part-time work (art. L. 211-23)
- Must give its opinion and make proposals on any measures concerning the improvement of working and employment conditions, and the employment situation of employees (art. L. 414-1 (1))
- Must give its opinion on the preparation or amendment of the company’s internal regulations and oversee their application; it may also propose amendments (art. L. 414-1 (1))
- Must be involved in protective measures in the workplace and work environment as well as in health and safety, appointing a staff safety representative at the centre (art. L. 414-2)

The company manager must inform and consult the joint committee at least once a year on the company’s current and foreseeable labour requirements and, in particular, any vocational training, retraining or adjustment measures and what they will entail for the company employees.

The company manager is required to inform and consult the joint committee in writing, at least twice a year, of the company’s economic and financial situation. To this end, the company manager presents the committee with a general report on the company’s activities, turnover, overall production and operating results, orders, any changes to the corporate structure, the total amount of staff pay and any investments made. The company manager must inform and consult the joint committee prior to any major decision concerning facilities, equipment and working methods. Furthermore, the company manager must inform the committee of the effects of such measures on the working conditions and work environment.

The joint committee must necessarily be informed and consulted in advance on any economic or financial decision liable to have serious effects on the company’s structure or job numbers (particularly as regards the volume or the orientation of production, investment policy, relocation plans, streamlining, expansion, plans of merger or organisational changes). Such information and consultation must cover the effects of the planned measures on the numbers and structure of employees, employment and working conditions, and any planned employment measures (especially as regards training).

9. Other representatives bodies

Divisional councils may be formed if a centre has at least three divisions, and on the request of the main council. A central council can be established where several centres form a single company (made up of three members of each employee committee and three central members).

There is a safety representative on all councils, appointed by the employee committee.

One equality representative was introduced in 1998 in all employee committees, also appointed by the council.

European Works Council

A law dated 28th July 2000 introduced the European works council as well as procedure into companies on a European scale. This text can currently be found in articles L.431-1 to 433-8 of the Labour Code. This text broadly follows that of the Directive (94/95EC) and had previously been submitted to management and unions.

According to article 16 (currently article L. 433-2), workers’ representatives in Luxemburg are designated or elected by employee delegation members. This solution, based on current structures, is democratically elected and does not involve excessive bureaucratic mechanisms, and has been approved by both management and unions during tripartite meetings.

19. Except where the operation may be compromised, if information is given within three days.
If the workers in Luxemburg have the right to more than one representative in the special negotiation body, one of the representatives must be in possession of a permanent work contract with the company or establishment in question, the other must be a representative of one of the most representative union organisations on a national level and must have put forward the negotiation request.

The provisions regarding expenses are limited to the minimum given in the directive, i.e. that expenses arising from the constitution and the activity of the special negotiation body, including a single preparatory meeting, are assumed by central management as required.

In accordance with the directive, the law dated 28th July 2000 makes provisions for the European works councils’ jurisdiction to be implemented either by agreement of the parties, either if opening the negotiations is refused, or in case of a lack of agreement on the information and trans-border consultation procedure.

The European works council’s jurisdiction is limited to trans-border information and consultation on economic and social questions of a strategic and trans-national nature as given in the directive.

However, matters relevant to the scope of trans-border information and consultation as listed in the directive (point 2 of the annex) have been widened on two points:

- substantial changes in the company or corporation’s shareholders; and
- continuous professional training policy on a trans-border basis.

In accordance with the directive, when exceptional circumstances occur that considerably affect the interests of workers, particularly in cases of relocation, company or establishment closure or collective redundancies, the select council, or by default the European Works Council, has the right to be informed.

In Luxemburg law, in addition to the directive’s provisions, if the works council issues a statement on this subject, central management must provide a response to this statement within an adequate timeframe.

10. Protection of rights

Under art. L. 417-2. L of the Labour Code, the Inspection du Travail et des Mines (Labour and Mines Inspectorate) is responsible for overseeing the application of provisions relating to employee committees and joint committees. Disputes related to the electorate and the regularity of electoral procedures fall under the jurisdiction of the Director of the Inspectorate. This Director’s decisions can be appealed before the administrative court (art. L. 417-3. (1)).

Other disputes come under the jurisdiction of the employment tribunal. Under art. L. 417-4 of the Labour Code, any intentional obstruction of the establishment of an employee committee, the free appointment of council members, the normal operation of a council, the appointment of an equality representative or the performance of his/her functions is punishable with a fine of 251 to 15,000 euros. If the infringement is repeated within two years from conviction, the penalties may be twice the above-mentioned maximum limit. A prison sentence of eight days to three months may also be handed down.

Under art. L. 427-3. (1), a fine of 251 to 10,000 euros may be imposed on anyone intentionally obstructing the establishment of a joint committee, the free appointment of its members, its normal operation or on anyone intentionally obstructing the free appointment of directors representing the employees. Anyone breaching the confidentiality obligation specified in section b10 “Professional secrecy” may be subject to a prison sentence of eight days to six months and a fine of 500 to 5,000 euros. If the infringement is repeated within two years, the penalties described above may be twice the previously mentioned maximum limit.

11. Codetermination rights

The joint committee has decision-making capacity over:

- Monitoring of performance and staff appraisal criteria;
- Selection criteria for recruitment, promotion, transfer and dismissal;
– Measures affecting health, safety and risk prevention; and
– Internal regulations.

IV. EMPLOYEES’ PARTICIPATION IN CORPORATE BODIES

In large companies, employee representatives make up a third of the board of directors or supervisory board and perform the same functions as the other board members. Such representation is to be found in about ten private and semi-public companies (the latter are Cegedel, RTL, Luxair, SES).

The legal basis is the same law as that for joint committees: law dated May 6th, 1974 currently integrated in arts. L. 426-1 et seq. of the Labour Code. The legislation applies to: Private limited companies with more than 1000 employees over the last three years and limited companies with a public holding of more than 25% or with a public concession applicable to their main activity.

Composition

The total number of board of directors or supervisory board members must be more than nine.

The number of staff representatives is:

– In private limited companies: one third of directors or members of the supervisory board.

– In limited companies with a public holding: one for every 100 employees, with a minimum of three and a maximum of one third of the directors or members of the supervisory board.

The staff representatives (employees for more than two years) are elected by the employee committee(s) from lists of candidates with proportional representation and, where appropriate, with separate elections for manual and white-collar workers.

In the iron and steel industry, three representatives are appointed by the trade unions. These representatives may be non-staff members but they cannot be members of more than two boards or be employees of a company performing the same activity.

The terms in office of staff representatives are the same as for other members of the board of directors or supervisory board, and they may be dismissed by the employee committee (or by whoever appointed them).

Functions

The employee representatives have the same rights and duties as the other members of the board of directors or supervisory board and are jointly and severally liable. They are also liable for errors committed during their tenure.

Unanimous support is required for the appointment of an independent auditor. A board meeting must be held if so requested by a third of the members of the board of directors or supervisory board if a meeting has not been held in the last three months and they may also demand the inclusion of points in the meeting’s agenda.

Protection and responsibility of representatives

Under art. L. 426-9. (1) of the Labour Code, the members of the board of directors or supervisory board representing employees cannot be dismissed during their term in office without the authorisation of the

20. Until 2006, Luxembourg companies had a single-tier structure. However, companies may currently adopt either a single-tier or a two-tier structure.
relevant court with competence over employment contracts. However, in the event of serious misconduct on the part of the director in the performance of his professional tasks in the company, the company manager is entitled to suspend him/her from the job immediately, pending the final decision of the labour court.

The above provisions are applicable to dismissals of former members of the board of directors or supervisory board during the six months after the expiry of their terms in office, and also to candidates for directorships, as of the presentation of their candidacies and for a period of three months.

Confidential information
If some legal provisions call for confidentiality on information of a confidential nature (such as article L. 425-2 of the Labour Code for members of the joint council), no specific provision is available for members of the board. However, it is obvious that the latter falls within the scope of the general legal provision in matters of professional confidentiality in article 458 of Luxemburg’s Penal Code.

Representation of employees on the boards of European Companies
Luxemburg has transposed Directive 2001/86 to a law dated 25th August 2006 “adding to the status of the European company (EC) in terms of workers’ involvement”. This law has been applicable in Luxemburg since September 2006. This law has been included in the Labour code by means of a grand-ducal regulation dated 22 December 2006 and currently features in Book IV under Title IV – ‘Workers’ involvement in the European company’ under articles L. 441-1 to L. 444-9.

This law is limited to setting minimum regulations aimed at guaranteeing workers’ rights in terms of participation in company decisions and implementing the ‘before and after’ principle. According to this principle, existing workers’ rights prior to the creation of the EC should be based on the appointment of their rights in terms of involvement within the EC.

Some of the essential aspects of this law are:

– the creation of a special negotiating body (SNB),
– appointment of seats among the participating companies of a same member state,
– negotiating an agreement.

V. EMPLOYEE INVOLVEMENT IN EXTERNAL DECISIONS THAT AFFECT THE UNDERTAKING

Recovery and bankruptcy proceedings
The protection of workers in the event of employer insolvency is guaranteed in art. L. 126-1 of the Labour Code, initially introduced in art. 19 of the amended law of December 24th 1977 authorising the government to take measures intended to stimulate economic growth and maintain full employment, known as the “Crisis Law”). Under art. L. 512-12. (1) of the Labour Code, companies undergoing particularly serious structural or temporary difficulties equivalent to an event of force majeure (in economic terms) may enter into collective bargaining agreements with the most representative trade unions at national level, leading to cost reductions with a view to safeguarding employment. Such agreements cannot opt out of the minimum provisions of the laws and regulations on working conditions and the protection of employees in the exercise of their work. The Tripartite Coordination Committee must give an opinion on the grounds for the request to open such negotiations.

Generally speaking, the Tripartite Coordination Committee, one third of which consists of representatives of the most representative trade unions at national level:
– Meets in the event of loss of competitiveness of Luxembourg companies (price trends, activity indicators, wage costs, short-time working, etc.).
– Assesses the economic and social situation and the government’s proposals for solving the situation.
– Adopts the view of the majority of the members of each of the groups, representing the employers and the most representative trade unions. If there is no agreement, a mediator may be appointed to assess the issues and make recommendations.

In the iron and steel sector, restructuring and modernisation agreements have been negotiated in the iron and steel tripartite committee, and the standing committee overseeing iron and steel workers has coordinated action to reintegrate workers into the labour market.

Furthermore, employee representatives may take preventative action:
– Within the framework of economic information and consultation with the employee committee and the joint committee.
– Within the framework of their representation on the board of directors.

**Operations affecting shareholders**
Under art. L. 423-2 of the Labour Code, the joint committee must necessarily be **informed and consulted in advance** in the event of plans for relocation, merger or organisational changes and, more generally, in the event of financial decisions that may seriously affect the structure of the company or job numbers. Where the relevant operation may be compromised, prior consultation is replaced by information, provided within three days.

Generally, employee representatives may act in the following areas:
– Within the framework of economic information and consultation with the employee committee and the joint committee.
– The Economic Committee gives a prior opinion on the various economic sectors’ eligibility for grants from the Employment Fund (short-time working).
– In the field of **vocational training**, specific implementation and oversight functions are granted to the professional associations.

Under art. L. 423-2 of the Labour Code, the company manager must inform and consult the joint committee at least once a year on current and foreseeable labour requirements, and in particular any vocational training, retraining or adjustment measures that may affect company employees. Moreover, employee representatives have the option to take general action within the framework of their representation on the board of directors.

**State aid**
**Tripartite structures** are the primary forums for discussing state aid, including the most representative trade unions at national level:
– The Tripartite Coordination Committee gives an opinion on the measures planned by the government with a view to solving the economic and social situation.
– Within the framework of economic information and consultation with the employee committee and the joint committee, especially as regards investments.
– Within the framework of employee representation on the board of directors or supervisory board.
MALT

The Maltese archipelago is a micro state situated in the middle of the Mediterranean Sea with an area of 246 square kilometres and a population of approximately 400,000. It has been colonized by various foreign rulers; the last foreign power to occupy Malta was Britain. Malta gained its independence in 1964. Ever since the review of the global military strategy of Britain, following the cessation of the Suez Canal in 1957, Malta was obliged to shift from a ‘fortress economy’ it had played since time immemorial and orient itself towards becoming an attractive platform of foreign direct investment. Since the first development plan of 1959, industrial manufacture and tourism, along with the supportive role of construction, have been the motors of local economic development and mass employment. In spite of the constraints of “peripherality” and insularity associated with small islands, Malta has managed to build a significant manufacturing base, equal in size to that of a developed country. Being a small country, Malta is not divided into regions or federal states.

I. ECONOMIC AND SOCIAL CONTEXT

Some basic economic data

Malta’s micro and open economy is highly susceptible to external influences. The country has in recent years suffered from a slow growth economy, largely due to a decreased level of competitiveness. Foreign direct investment has been decreasing while there has been relocation of manufacturing firms abroad. The attractions which Malta used to offer to foreign investment over the past decades were primarily its low labour costs, its proximity to Europe and Africa and a relatively educated and skilled workforce with a high level of fluency in English. These comparative advantages are being lost due to the new developments in countries on the North African coast which more or less have the same geographical position of Malta; the EU accession of the Eastern European countries with their low labour cost and high education and skill levels; and the industrialisation process which large Asian countries are currently undergoing.

At 70% of the EU25 average, the country’s income per capita is higher than that of most other new member states. Poor in physical resources, Malta relies heavily on imports for both its consumption and investment requirements, and its exports are of crucial importance to generate foreign currency to foot its import bill. The current lack of diversification of products, and the fact that the few existing competitive firms are highly susceptible to changes in global trade, means that the Maltese economy vulnerable.

Malta’s Gross Domestic Product (GDP) reached Lm 550,933 million during the third quarter of 2006 thus registering an increase of 5.7% over the same period in 2005. This growth in value added was generated primarily by the community, social and personal services sector and the financial intermediation sector. The manufacturing and construction sectors also contributed to the growth in value added. Higher intermediate costs especially due to rising oil prices, held back the growth across other sectors.

The largest productive sector is the manufacturing sector which accounted for 16.5% of the total Gross Value Added in Malta in 2005 (NSO News Release 277/2006) The sector experienced a growth of 37.5% between 1995 and 2000, but subsequently suffered a decline of 18.4% between 2000 and 2005. Several manufacturing activities, especially the labour intensive ones in the textile industry became less competitive and many factories had to close down, some of which relocating abroad. Some expansion has been registered in the pharmaceutical industry. Real estate, renting and business activity, and wholesale and retail trade, repair of motorcycles and personal and household goods are the second and third largest contributors to the national Gross Value Added with 13.9% and 12.9% respectively. The related sectors of mining and quarrying and construction have also registered substantial increases in value added in recent years. A large sector which has experienced a decline in recent years is hotels and restaurants. Malta is suffering from a decreased level of competitiveness in the tourist sector when compared to other destinations in the Mediterranean. The chronic decrease in the number of tourists visiting Malta has forced several hotels, especially in the three-star category, to close down in the past three years

Unit labour cost growth decreased by 2.2% in 2005 when compared to an average decrease of 0.6% in the EU25 (European Commission, 2006). On the other hand, at 80.5% of the EU 25 average (in 2005), labour productivity is still low (EC, 2006). While the figure is higher than that of the other new accession
country, it is much less than the EU15 average of 106%. Besides, in 2004 Malta registered the lowest level of growth (-0.1) in labour productivity in the EU25 (European Commission, 2006). The economy started to perform better in 2005, indicating the government’s fiscal and monetary policy measures are achieving some results.

**Labour Market**

According to the Labour Force survey there are about 154,663 employed people, 32% of who are females (NSO News Release 275/2006). Almost half (49.4%) of the working age population are inactive, a figure which is considerably higher than the EU average (European Commission, 2006). On the other hand, 3.2% of the working age population are unemployed. This amounts to about 2.3% of working age females and 4.2% of working age males (NSO News Release 227/2006).

Seventy percent of workers are employed in the services sector. The manufacturing and agricultural sectors have both registered a decrease in recent years, now only accounting for 28.2% and 1.7% of employment respectively.

In recent years, the government has adopted a policy to streamline the public sector through restructuring and privatisation. Government departments and ministries and companies with a public majority stakeholding have experienced reductions in their employees of 1.6% and 28% respectively between 2001 and 2006.

About 96% of all private enterprises in Malta are micro-enterprises (NSO). Despite this, the percentage of self-employed people when compared to the total number in employment is still lower than the EU25 average (13.7% and 15% respectively) (European Commission, 2006). In the (NRP), the government proposed several measures in a bid to boost entrepreneurship by among others, reinforcing an entrepreneurial culture and removing unnecessary obstacles or costs to entrepreneurs.

Statistics indicate that the Maltese labour market is not very flexible. The total number of employees in part-time and/or fixed-term contracts plus total self-employed as a percentage of total employment in Malta is one of the lowest in Europe (23.2% when compared to the EU25 average of 39.6% in 2005) (European Commission, 2006). However according to NSO figures for 2006 there has been an increase, in percentage terms, of self-employed and part-time workers in relation to the total workforce (see tables 7 & 8).

The number of registered part-time workers is relatively high. At 43,665 they account for 31.2% of the workforce. However 13.6% (19,048) of these part timers have a full-time job as well, whereas the part time job of the other 17.6% (24,617) part-timers is their primary job. While in the first category the men outnumber women by a ratio of 2.7 to 1, in the latter category women outnumber men by a ratio of 1.5 to 1. The three sectors with the highest number of part timers (both categories) are Hotels and Restaurants (8,858), Wholesale and Retail Trade (7,370) and Real Estate renting and business activities (6,458).

When compared to other EU countries, Malta has a low unemployment rate. Indeed, the unemployment rate in 2005 was 7.3% when compared to the 8.7 EU average (European Commission, 2006). At 9.1% (in 2005), the youth unemployment ratio is higher than the EU average of 8.4% (European Commission, 2006). The long-term unemployment rate decreased from 4.4% in 2000 to 3.4% in 2005. It is thus slightly lower than the EU average of 3.9% (European Commission, 2006). In recent years, structural unemployment has been decreasing, a trend which has continued in the second quarter of 2006 which registered 9.3% less people seeking employment for more than a year (NSO News Release 227/2006) when compared to the same quarter of the previous year.

However, this figure hides the problem of inactivity in Maltese society. Indeed, Eurostat statistics show that the employment rate in 2005 was 53.9%, considerably lower than the EU25 average of 63.8 (European Commission, 2006). If the current employment trends persist it will be very hard for the government to reach the target it set in the NRP to reach an overall employment rate of 57% by 2010.

One of the main difficulties to achieve higher employment is related to the low female participation rate, which, at 33.7% in 2005, is much lower than the EU average female employment rate of 56.3 (European Commission, 2006). The increase of 0.6 percentage points between 2000 and 2005 is very meagre and the NRP target of raising the female employment rate to 41% by 2010 seems to be highly unrealistic.
II. INDUSTRIAL RELATIONS

1. Key issues

Through the assimilation of Malta within the imperial network of Britain and its role as an important Mediterranean outpost, Malta became exposed to a wide range of industrial regulations, attitudes and experiences based upon the liberal-pluralist ideology prevailing in Britain. Today, after more than four decades of independence, the legacy of Britain still looms large in the field of industrial relations. Indeed the established model of industrial relations in Malta is that of voluntary bi-partite collective bargaining at enterprise level.

However during the last decade, a pattern of corporate, tri-partite, bargaining at national level has emerged. The setting up and the subsequent legal institutionalisation of national social partnership bodies shifted the Maltese system of industrial relations towards the European model. This shift occurred in response to a change in the balance of economic power, brought about by economic exigencies and demands of the restructuring needed to maintain the competitive edge in a globalised economy.

Malta’s constitution devotes considerable attention to work and to work relations. The first article describes Malta as democratic republic founded on work and on respect for the fundamental rights and freedoms of the individual (Article 1 of The Constitution of Malta). The second chapter of the Constitution sets out a number of important principles which it is incumbent upon the state to provide. Although these provisions are not enforceable in court, they are regarded as fundamental to the governance of the country. The constitution is used as a reference in a number of employment-related disputes as it contains a number of important legally binding, provisions, such as freedom from being subjected to forced labour and the regulation of the Public Service Commission which is the national body entrusted to make appointments of the public service and to exercise disciplinary control over such appointed persons. The role of the State in the field of industrial relations is manifest through the enactment of appropriate legislation regarding employment relations and conditions of work. The main piece of legislation which regulates industrial relations in Malta is the Employment and Industrial Relations Act (EIRA 2002). EIRA is accompanied by a number of regulations which bring into force specific provisions.

2. Social partners

EIRA recognises the right of workers and employers to form their own associations, provides for their official registration and rules of conduct and grants immunity from prosecution for any actions taken as part of an industrial dispute. The government entity entrusted to ensure conformity with the provisions of this legal act is the Department of Industrial and Employment Relations (DIER). Throughout the eighties and nineties, according to official statistics, trade union membership in Malta kept going up. From 1990 to 2001, a 26% increase in trade union membership was registered. However, a reversal to this trend started to show its first sign in 2002, when for the first time since 1984, a drop, albeit marginal (0.3%), in trade union membership was officially registered. In the successive years, up to 2005, with the exception of 2004, this decline has continued, even though it remained marginal.

Unions

Trade union density was 62.1% in 2005. The trade unions which benefited most from the increase in membership registered throughout the nineties and in 2,000 were the two general unions, which together represent more than 80% of unionised workers.

- The General Workers Union (GWU), currently the largest union, representing 53.6% of the unionised workers, owes its origins to the militancy of the Drydocks (formerly the Naval dockyard) workers. It is organised into 11 sections covering various trade and categories of workers in public and private sectors. It is a founder member of the International Confederation of Free trade Unions (ICFTU), having a seat in its executive board. It is also member of European Trade Union Confederation (ETUC) and acts as the official worker representative for Malta at the annual conference of the International Labour Organisation (ILO).

- The Union Haddiema Maghqudin (UHM) is the second largest union, with 30.4% of unionised workers. The immediate forerunner of the UHM was the Malta Government Employees Clerical Union (MGEU), itself the successor of Malta Government Clerical Union (MGCU). Both these unions had been restricted to public officers, whereas the UHM opened its membership to all categories of workers, more or less as the GWU. At present the union is divided into seven sections.
UHM is affiliated to the **Confederation of Malta Trade Union** (CMTU) which is an umbrella organisation for a number of independent unions. Internationally, the CMTU is affiliated to the World Confederation of Labour (WCL) and ETUC. It also participates actively in ILO conferences and other activities. Occasionally on matters of general interest, the confederation is a signatory party to an agreement. However, no collective agreements are signed by the Confederation at sectoral or enterprise level.

Currently there are ten unions affiliated to the Confederation. Three large unions stand out among these ten, the others are small craft unions. These three large unions are Union Haddiema Magħqudin (UĦM), the Malta Union of Teachers (MUT) and Malta Union of Bank Employees (MUBE). MUT embraces within its fold all personnel in the teaching profession, ranging from kindergarten assistants to University lecturers while MUBE membership consists of bank employees.

**Employers’ organisation**

- The **Malta Chamber of Commerce**, set up in 1848, is the oldest employers’ organisation. Other specialised organisations, representing sectional interests, have only emerged in recent years. Prior to 1960, employers felt little need for organisations to represent them. Over time however with the onset of industrialisation and the consolidation of the trade union movement, employers became aware of the need for an overall body to represent their interests. At present there are 23 employers’ associations registered under EIRA representing 8,789 members (including companies, self-employed and owners of small firms). There is no umbrella organisation that unites them all.

- The two largest employers’ organisations are **Malta Employers Association** (MEA), and the **Malta Federation of Industries** (FOI). These two organisations, with high representation in the manufacturing and service sector, have many things in common. However attempts to merge have so far been unsuccessful.

- Other employers’ associations which keep a very high profile in the industrial relations field are: the Chamber of Commerce, the **Chamber for Small and Medium-Sized Enterprises** (SMEs), formerly registered under the name of General Retailers and Traders’ Union (GRTU), and the **Malta Hotels and Restaurant Association** (MHRA).

Membership is not a good criterion for assessing the strength of an employers’ association. MEA has 240 members on its register while GRTU has 6,776 (79% of the total employers’ membership). However, most of the members of the latter are either self-employed or owners of small family-run businesses. On the other hand, most of the members of MEA tend to be employers of large or medium-size firms in the manufacturing or service industry. The companies registered with MEA are estimated to employ 40,000 workers, about 35% of the total workforce in Malta. These five associations represent the employers’ interest at the Malta Council for Economic and Social Development (MCESD), which is the national tripartite social dialogue institution.

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21 This organisation is not registered under EIRA and therefore does not feature in the statistics issued by the Registrar of Trade Unions.
Union and Employers’ Organisations

<table>
<thead>
<tr>
<th>Trade Union Organisation</th>
<th>Details of membership</th>
<th>Number of Members (June 2005)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CMTU</td>
<td>Umbrella organisation</td>
<td>Ten affiliate unions including UHM, MUT, and MUBE</td>
</tr>
<tr>
<td>General Workers Union (GWU)</td>
<td>General union with public and private sector membership</td>
<td>45,901</td>
</tr>
<tr>
<td>Union Haddiema Magbqudin (UHM)*</td>
<td>General union with membership across sectors</td>
<td>26,018</td>
</tr>
<tr>
<td>Malta Union of Teachers (MUT)*</td>
<td>Teachers</td>
<td>6,667</td>
</tr>
<tr>
<td>Malta Union of Bank Employees (MUBE)*</td>
<td>Bank workers</td>
<td>3,027</td>
</tr>
<tr>
<td>Malta Union of Midwives and Nurses (MUMN)</td>
<td>Midwives and nurses</td>
<td>2,301</td>
</tr>
<tr>
<td>Others**</td>
<td></td>
<td>1,706</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employers’ Organisation</th>
<th>Details of membership</th>
<th>Number of Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEA</td>
<td>Malta Employers Association – employer organisation with high representation in manufacturing and service sector, one of two largest employers’ organisations.</td>
<td>240 members – large or medium sized firms</td>
</tr>
<tr>
<td>FOI</td>
<td>Malta Federation of Industries – employer organisation with high representation in manufacturing and service sector, one of two largest employers’ organisations</td>
<td></td>
</tr>
<tr>
<td>Malta Chamber of Commerce</td>
<td>Oldest employer organisation</td>
<td></td>
</tr>
<tr>
<td>Chamber for SMEs (used to be called GRTU)</td>
<td>SMEs</td>
<td>6,776 – mostly self-employed or owners of small family-run businesses.</td>
</tr>
<tr>
<td>MHRA</td>
<td>Hotel and Restaurant Association</td>
<td></td>
</tr>
</tbody>
</table>

Source for union information: Report by Registrar of Trade Unions January 2006.
*Members of CMTU
**Consisting mainly of small, independent, enterprise-based or professional associations.

3. Joint bodies

The Malta Council for Economic and Social Development (MCESD) was set up by an Act of Parliament in 2001. The composition of this council is made up of nine people nominated by representatives of national employers’ and workers’ organisations, four representatives of the government and the governor of the Central Bank of Malta as ex officio. The chairperson is appointed following consultation with the employers’ and workers’ constituted bodies. This Act widened the council’s terms of reference by including social as well as economic objectives, as is reflected in the change of its title. It provides for the establishment of a standing forum for civil society appointed by the Council. The Council has, however, often expressed its independent opinion, which has sometimes been critical of government policy. It has even been used as negotiation machinery on specific issues such as pension reform. This does not mean that the spirit of consultation had been missing.

The representation of social partners is also statutorily provided for in the composition of the Employment Relations Board (ERB), which has to be consulted at the drafting stage of labour law. the Retail Price Index (RPI) Board, which decides on the Cost of Living Allowance (COLA) based on indexation of the inflation rate, and the Occupational Health and Safety Authority (OHSA).

4. Collective bargaining

The right of association and assembly, particularly in the industrial relations scenario, is highlighted in Article 42, sub article (1) of the Constitution of Malta. The importance of this article lies in the fact that trade unions and their members are given the legal right to take collective action to protect their
occupational interests. One of such type of action is collective bargaining which leads to collective agreements, the legal provisions of which are laid down in EIRA\textsuperscript{22}.

The Act, though not very explicit in terms on the legal effect of a collective agreement, makes provisions for the binding nature of collective agreements. A number of industrial tribunal awards and decisions by industrial tribunal and courts have confirmed the legally binding nature of collective agreements. The collective agreement, signed at enterprise level applies to all employees belonging to that enterprise. There are no sectoral agreements in Malta. A recent decision by the Civil Court determined that not only the substantive parts of a collective agreement are binding on the parties to the collective agreement, but also the procedural clauses aimed at regulating industrial relations between an employer and the recognised union, may be enforced in a court of law.

Collective agreements in Malta are decentralised in the sense that there is no sectoral or multi-employer negotiation. It is conducted on single-employer basis. The trade union which has official recognition by the management is often the signatory party of the collective agreement. The established practice which has been applied by courts and industrial tribunals is that the union which claims membership of at least 50\% plus one of the employees in an enterprise of a clearly demarcated category of employees (known as the bargaining unit) can claim recognition for that bargaining unit. This can be a category of workers in an establishment or the establishment as a whole (Chapter 16 of the Laws of Malta).

**Main features**

The collective agreements deposited at the registry of the Department for Industrial and Employment Relations (DIER) indicate that 34.7\% of collective agreements signed in 2003/2004 concerned the manufacturing sector. Most of the agreements were signed by GWU (56.9\%) and UHM (34.7\%). An empirical study conducted in the private sector revealed that about 26\% of employees in the private sector were covered by collective agreements.

According to DIER’s report for 2003/2004 (up to June 2004) workers are not covered by collective agreements in the primary sector. The table below shows that no collective agreement was signed in the Agriculture and Fisheries sector. A study in the quarry industry, another major economic activity in the Maltese primary sector, reveals a total absence of collective agreements in this industry. About one third of the collective agreements signed were in the manufacturing sector.

**Collective Agreements in Malta distributed by economic sectors (2003/2004)**

<table>
<thead>
<tr>
<th>Broad Economic Sectors</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture and Fisheries</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Industry</td>
<td>25</td>
<td>34.7%</td>
</tr>
<tr>
<td>Services</td>
<td>47</td>
<td>65.3%</td>
</tr>
<tr>
<td>Total</td>
<td>72</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

*Source NSO News Release 214/2005*

Most collective agreements were negotiated and signed by either the GWU or UHM. The number of agreements signed by each of the trade unions is a good reflection of the their membership in relation to the total number of trade union members.

\textsuperscript{22} The definition of a collective agreement in EIRA is “an agreement entered into between an employer or one or more organisations of employers and one or more organisation of employees regarding conditions of employment in accordance with the provisions of any law in force in Malta.” (Chapter 452 of Laws of Malta EIRA, General:2).
Collective Agreements signed in 2003 and 2004 by Trade Unions

<table>
<thead>
<tr>
<th>Trade Unions</th>
<th>Number of Collective Agreements</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Workers Union (GWU)</td>
<td>41</td>
<td>56.9</td>
</tr>
<tr>
<td>Union Haddiema Maghqudin (UHM)</td>
<td>25</td>
<td>34.7</td>
</tr>
<tr>
<td>House Union</td>
<td>5</td>
<td>6.9</td>
</tr>
<tr>
<td>Joint</td>
<td>1</td>
<td>1.4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>72</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Source: NSO ‘News Release’ 214/2005

Generally the terms listed in the collective agreements effectively regulate the employees’ conditions of employment for three to four years. The financial package is always a top priority to all trade union section secretaries engaged in collective negotiation. The focal point of collective bargaining remains the wage/salary increase (Montebello 2003). However the terms of collective agreements include both procedural and substantive clauses.

5. Collective disputes

Maltese labour legislation establishes and caters for voluntary settlement of disputes through mediation and conciliation. EIRA makes provisions for the appointment of a Conciliation of not less than five people to serve as conciliators in trade disputes as may be referred to them from time to time (Article 68). Where a trade dispute exists or is apprehended, the parties to the dispute may agree to refer the dispute to (a) the Director of DEIR or a conciliator who may be chosen by agreement by the parties to the dispute. If no such agreement is reached between the parties the Director chooses from amongst the conciliation panel established by virtue of Article 68. If the appointed conciliator reports a deadlock, the matter is referred to the Minister who may choose one of the following two options: (i) appoint a court of inquiry to inquire into and establish the causes and circumstances of the dispute; (ii) on an application by both parties to the dispute, refer such trade dispute to the Industrial Tribunal.

A court of inquiry has the same powers set out in the Code of Organisation and Civil Procedure in relation to a superior court, except that it shall not have the power to order the detention of any person. When a voluntary settlement of a dispute is reached, a memorandum of the terms of that settlement is listed and duly signed by all parties involved. A copy of the memorandum, together with a signed declaration by the parties that the dispute has been settled, is forwarded to the Minister. The terms detailed in such a memorandum are to be honoured by the parties and amendments are only allowed after a lapse of one year. According to statistics of DIER over a four year period, an average of 80% of conciliation meetings end with an agreement, about 18% in disagreement and 2% are referred to Industrial Tribunal.

The Industrial Tribunal, established under EIRA, is a special judiciary body which for all intents and purposes serves as Malta’s Industrial Court. The Tribunal is chaired by a member of a panel appointed by the Prime Minister, following consultation with MCESD. Such members serve as chairpersons either in turn or according to competence in specific cases. The tribunal also includes two other members, chosen from other panels, each representing in turn the interests of employers and employees. Both panels are also appointed through MCESD. In cases of a trade dispute, the Industrial Tribunal is presided over by three people. The Chairperson is chosen from the panel of people appointed by the Prime Minister to act as chairpersons after consultation with MCESD. The other people are chosen from two panels of people appointed by the minister to serve as members of the tribunal, one panel consisting of people nominated by trade unions represented on MCESD and the other panel consisting of people nominated by employers’ associations and other organisations representing the employers on the MCESD. Where the members of the tribunal in a trade dispute are unable to agree as to their award, decision or advice, the matter is decided by the Chairperson acting with full powers of an umpire.

The decisions of the Tribunal, which are binding on all parties, are rarely challenged in another court, although this is technically possible. In giving its award, the tribunal is expected to take into account social policies, the requirements of any national development plan and other official economic policies.
adopted by the government of the day. The Industrial Tribunal has explicit and exclusive jurisdiction to hear matters relating to unfair dismissals, discrimination, victimisation, harassment, equal pay and whistle blowing as well as matters relating to the organisation of working time and matters relating to dismissal linked with maternity leave. It should be noted that although the Industrial Tribunal has exclusive jurisdiction to determine these cases, employers and employees may refer to the Malta Arbitration Centre on a contractual matter which does not fall within the exclusive jurisdiction of the Industrial Tribunal. This Arbitration Centre was established by the Arbitration Act (Chapter 386 of the Laws of Malta). The decision of the appointed arbitrator, if appointed by the Malta Arbitration Centre, is binding on the parties and may be enforceable as an executive title in the national courts.

**Strikes**

Over the past four years there has been little fluctuation in the amount of industrial action. The average is eight instances of industrial action per year. Disputes are generally about pay increases and failure to renew a collective agreement.

<table>
<thead>
<tr>
<th>Year</th>
<th>Incidence of Industrial Action</th>
<th>Number of Days lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>11</td>
<td>3,315.5</td>
</tr>
<tr>
<td>2004</td>
<td>6</td>
<td>1,651</td>
</tr>
<tr>
<td>2005</td>
<td>8</td>
<td>1,240</td>
</tr>
<tr>
<td>2006</td>
<td>8</td>
<td>2,934</td>
</tr>
</tbody>
</table>

**III. EMPLOYEES’ REPRESENTATION SYSTEM IN THE UNDERTAKING**

1. **General issues**

There are practically no statutory or legal provisions for the setting up of representative bodies of workers at any level of the enterprise. The only employees who have a legal statutory right to elect a representative at board level are those of Enemalta (a statutory independent body operating within the public sector) and the University of Malta who in accordance with the Education Act of 1988 can elect four employees (two academics and two non academics) on the University Council. The main type of representation is through collective bargaining at enterprise level.

The Employment and Industrial Relations Act (EIRA) recognises the right of workers and of employers to form own associations, provides for their official registration and rules of conduct. Article 73 of the Act establishes the Industrial Tribunal that arbitrates in industrial disputes by means of a panel made up of employer and employee representatives. Sections 49 to 62 of this Act outline the manner in which trade unions and other associations may be formed and registered, their status and conduct, whereas Section 63 to 67 provide for restrictions on legal liability, the right to act in contemplation or furtherance of trade disputes. Article 63 of the Act gives trade unions and employers’ associations’ immunity from torts to actions in furtherance of a trade dispute.

Companies in Malta operate on a one-tier system. Although in Malta at present the practices of workers’ participation at the workplace are practically non existent, attempts were made to introduce this practice in the seventies, through workers committees. Rather than engendering mutual trust, these workers committees ended up giving rise to deep-seated suspicions between public sector employees and senior government officials. The trade unions, in dispute with the government, suspected that these committees were being used as a tool to circumvent potential strike action. On the other hand, the government accused the unions of using these committees for their self aggrandisement rather than to enhance participation. Once their term of office was terminated no fresh election for workers committees were held. Workplaces of religious organisations, registered charity organisations and NGOs have never featured in the debate about workers’ participation or representation.
As has already been noted the Maltese Industrial system is based on the British model. Even employees’ representation at the workplace seems to be more in line with the British rather than the European system. The main link between the trade union and the workplace is the shop steward to whom most of the trade union educational programmes are addressed and targeted. Shop stewards tend to take an ever-increasing lead of trade union representation through the involvement in the grievance and disciplinary procedures. Due to their proximity to the workforce, they command great loyalty. In an empirical study conducted in 2002, 58.8% of workers perceived the shop steward as being a good link between the union and workers whereas 17.9% perceive them as good link between workers and management. The shop steward generally takes an active part in collective bargaining and in some cases is also one of the signatory parties to the collective agreement.

The rather elevated representative role of the shop steward is due to the absence of any other form of workers’ representative at the workplace. The practices of having consultative bodies, representing employees at the workplace, are practically non-existent. Prior to the transposition of the EU Directive on consultation and information, there was no legal provision for works councils or committees. The procedures prescribed in the EU Directives and transposed in Maltese law are still the only mechanism regulated by law for workers’ involvement in decision making at the workplace. Such is this lack of culture of consultation at workplace level that the setting up of a works council, provided for in the agreement in 2004 between Air Malta and the four unions representing the various categories of employees, was hailed as a breakthrough in industrial relations. According to EU standards, Malta has the lowest workplace representation.

2. Legal basis and scope

Employee representation at the workplace suffers from a lack of a legal framework. Apart from the laws transposing the Directives concerning Information and Consultation Rights (2002/14/EC) and Collective Redundancies (98/59/EC), there is no legal basis for an employee representation system in the workplace. The only works council set up in the course of a negotiation about a collective agreement is to be found at Air Malta. The agreement was signed in October 2004 by four unions representing different categories of workers. The Works Council was set up in January 2005.

The trade union representation at the workplace is spelt out in the definition of a trade union as provided in the Employment and Industrial Relations Act (EIRA): “trade union means an organisation consisting wholly or mainly of workers and of which the principal purpose is by its rules the regulations of relations between workers and employers’ associations”. To have legal backing in its representation the trade union has to be registered with the Registrar of the Trade Unions (EIRA, article 51). The Act (article 5) also states that the conditions prescribed in a collective agreement shall be the recognised conditions of employment for the employees concerned.

3. Capacity for representation

This is as far as EIRA goes in defining the legal capacity of the trade union as a representative body at the workplace. The Employment and Industrial Relations Act (EIRA) makes provision for the settlement of dispute through a Conciliator and an Industrial Tribunal. The Minister also has the faculty to appoint a court of inquiry which has the same powers as conferred on a superior court by the Code of Organisation and Civil Procedure, except that it does not have the power to order the detention of any person (Article 69 (5)). These are voluntary settlements of disputes. A trade union can refer a case about representation to the Civil Court. A dispute about procedural matters is often referred to this court.

4. Composition

At workplaces where the workers are unionised any representative body which may be set up is always made up of people nominated by the union. The relations between workers’ representatives and union are normally very healthy. As has already been emphasised since the Maltese trade union bargain at enterprise level they tend to invest heavily in the competences of their representative/s at the place of work.

There are no fixed rules on the number of shop stewards. Normally there is one shop steward in every enterprise. However, if a union represents various categories of workers in a large enterprise, there will be a shop steward representing each category of employees.
EMPLOYEE REPRESENTATIVES IN AN ENLARGED EUROPE

The Legal Notice 10 of 2006, transposing the EU Directive on Information and Consultation Rights, does not make any provision for any specific number of employees representatives. At the time of writing (October 2007) there had not been any developments about the implementation of this Legal Notice.

5. Protection granted to the members

As regards the protection granted to members of the body of representation, article 36 (14) of the Act states that “an employer may not set up as a good and sufficient cause that the employee at the time of dismissal was a member of a trade union, or is seeking office as, or acting or has acted in the capacity of an employees’ representative”.

Means

There are no provisions in the law regarding the economic aspects of trade unions. In practice however, very often, a clause in the collective agreement makes a provision for the trade union membership fee to be deducted from workers’ pay packets. Paid time off for trade union representation and provision of material and facilities for trade union representatives may also be included in the collective agreement. This normally depends on the size and resources of the firm where negotiations are taking place. There is no provision in the laws for external assistance of experts financed by the undertaking. Nor is there any practice.

As a trade union official, the shop steward is to be provided with the necessary facilities for his functions.

6. Role and rights

Directive 2002/14/EC establishing a general framework on information and consultation was transposed by Legal Notice 10 of 2006. The option in Article 3(1) (a) of the Directive making provision for a transitory period was adopted into the Maltese Regulations. In January 2006 the law applied to undertakings with 150 or more employees, in March 2007 for those with 100 to 149 employees and on March 2008 for those with 50 or more employees. The method for calculation of the 50 employees, Article 3 (1) of the Directive, is not specified in Malta Regulations.

Generally speaking, the Malta Regulations go into detail about how to determine who the workers’ representatives shall be and tend to play down the procedural elements of the Directive. The Malta Regulations do not expand on what the appropriate level of negotiation should be or what appropriate consultation should be but are limited to the general wording found in the definitions of ‘information’ and ‘consultation’. The Malta Regulations do not provide any specifications about the timing of the consultation, except for what is mentioned in Article 4.3 and 4.4 of the Directive. The Malta Regulations appear to leave it up to the Collective Agreement to be negotiated between the employers and workers representatives to lay the details down.

The Maltese legislators in transposing this Directive opted to keep within the strict limits and provisions in the Directive. In other words no attempt was made to elaborate or expand. There was hardly any public debate about its enactment. Anecdotal evidence from trade union officials suggest that these regulations, in force for over a year, are not being implemented. This lack of implementation may not seem to affect unionised workers very much. The Maltese trade unions, due to their strength at enterprise level, are continuously involved in the consultation process with management. Trade unions feel that they can deal effectively with issues related to developments at the workplace. Naturally among the non-unionised workforce such a consultative mechanism would be effective.

Information

As regards representatives, according to Regulation 5 (1) the employer shall ensure that information and consultation of employees is carried out:

(a) in the case of undertakings where there is one or more recognised trade union covering all categories of employees, with the representatives of the recognised trade union or unions;
(b) in the case of undertakings where the recognised trade union or unions do not represent all categories of employees, with the representatives of the recognised union or unions, together with the elected or appointed representatives of the workers in the unrepresented categories:

(c) provided that in the case of election or appointment of these representatives, only employees within the unrepresented category or categories shall be entitled to take part in a secret ballot to select their representatives.

This is in line with the definition of employee representative in the Employment and Industrial Relations Act (EIRA) which states that the employee representative is the recognised union representative: Provided that where there exists no recognised union, the term shall mean such representatives of the union representing the employees, not withstanding that, in the case of non-unionised employees, the term shall mean such representative duly elected from amongst the non-unionised employees, by means of secret ballot called for such purpose by the director.

Regulation 4 (1) of Maltese Regulations states that the employer must provide the information and consultation representatives with information on:

(a) the recent and probable development of the undertaking’s activities and economic situation;

(b) the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular, where there is threat to employment within the undertaking; and

(c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the provisions referred to in regulation 10.

The provisions in Regulation 10 refer specifically to Collective Redundancies and Transfer of Business.

As regards the procedural aspect, Regulation 4 (2) states that

The information must be given in such a time, in such a fashion and with such content as is appropriate to enable, in particular, the information and consultation representatives to conduct an adequate study and, where necessary, to prepare for consultation.

**Consultation**

Regulation 4 (4) requires that the consultation is to be conducted:

(a) in such a way as to ensure that the timing, method and content of the consultation are appropriate;

(b) on the basis of the information and consultation representatives and of any opinion which those representatives express to the employer;

(c) in such a way as to enable the information and consultation representatives to meet the employer at the relevant level of management depending on the subject under discussion and to obtain a reasoned response from the employer to such opinion.

The Council Directive (98/59/EC) relating to collective redundancies, was transposed into Maltese law by Legal Notice 428 of 2002 and amended by Legal Notice 442 of 2004. As regards workers’ representatives, the Maltese legislators in transposing this directive adopted the definition in EIRA which states that an employees’ or workers’ representative is ‘either the recognised union representative or, in case of non-unionised employees, the representative or representatives duly elected from amongst the employees by means of a secret ballot called for by the Director of Employment and Industrial Relations’.

Union officials report that in the manufacturing sector, where most of the collective redundancies occur, employers conformed fully to the provisions of the regulations.
7. Other representation bodies

Article 6 of the Occupational Health and Safety Authority Act (Chapter 424 of the Maltese Laws) makes provisions for persons to be elected, chosen or designated to act as the Workers Health and Safety Representatives at the place of work. These representatives are to be consulted in advance and in good time by the employer on matters which may affect occupational health and safety. Apart from this there are no other bodies of representation at the workplace.

European Works Councils

The EC Directive (94/45/EC) on the establishment of a European Works Council was transposed into Maltese law in June 2004 through Legal Notice 324 of 2004. The Malta Regulations lay down that the Special Negotiation Body (SNB) shall be composed of at least three members. But the maximum of 18, as established in the Directive, article 5 (2) (b), is not prescribed. There are no provisions in the Malta Regulations for supplementary members of the SNB. An amendment is therefore recommended. Apart from these two points, the EWC Directive is implemented verbatim in the Malta Regulations. In the Malta Regulations there are no additional information and consultation requirements other than those found in the Directive.

According to trade union officials most of the Trans National Companies operating in Malta are conforming to the regulations. In some cases (e.g. De La Rue, a bank note enterprise, and ST Micro Electronics), Maltese representatives participated in EWC meetings before the transposition of the Directive. In the hospitality industry, only one hotel, Hilton, is known to be complying with the regulations. Some hotel groups are contending that they are not bound by the provisions of these regulations, arguing that they are operating as franchisees and not as subsidiaries of the parent company.

8. Protection of rights

Regulation 12 of Legal Notice 324 (see above) states that any person who fails to comply with their obligations under the regulations shall be guilty of an offence and shall, on conviction, be liable to:

(a) a fine of not less than 10 liri\(^{23}\) and not more than fifty liri for every employee in the Community-scale undertaking or Community-scale undertakings as the case may be in relation to a failure by central management to:

(i) provide information about the number of employees or the status of employees for the purpose of regulation 4 (Employees Request for Information) or to wilfully obstruct or delay the provision of such information or

(ii) establish, or fully establish, a Special Negotiation Body, a European Works Council or an alternative information and consultation procedure in accordance with any agreement reached pursuant to regulation 7 (Content of Agreements) or

(iii) comply with requirements referred to in regulation 8 (subsidiary requirements);

(b) in relation to any other offence, a fine of not less than five thousand liri and not more than five thousand liri.

The enforcement system in Malta is primarily entrusted to the Department of Employment and Industrial Relations which prosecutes offending employers in the Criminal Court of Magistrates for offences against employment legislation such as this one on European Works Councils. As a remedy unions or employees representatives may also bring a matter of non-compliance to the attention of the Industrial Tribunal who may make decisions on matters related to these regulations.

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One Maltese lira is equivalent to €2.3
IV. EMPLOYEES’ PARTICIPATION IN CORPORATE BODIES

Although in Malta there is no legal framework for employee board level representation, this form of workers’ participation has been in the forefront of the debate about industrial relations issues. An attempt at workers participation was at Malta Drydocks, by far Malta’s largest employer.

The Drydocks affaire

The Drydocks was originally a naval dockyard base for the British warships and was converted into a commercial enterprise by the British colonial government. In 1971 a newly elected government, soon after assuming office, set up a Board of Directors made up of three trade union officials representing the workers and three members appointed by Government. The chairperson was acceptable to both sides. The industrial peace ushered in by this system enabled the Drydocks to attain profitable trading position for the first time in its history in 1973-74. The prospects of a viable economic Drydocks induced the government to translate its principle into practice by making amendments in the Drydocks Act which stated that the enterprise was to be run by a board directly elected by the workers. By this amendment the Drydocks became a self-managed firm and for some time it appeared to be a model of workers’ participation. However the profitable trading position of the mid seventies did not maintain momentum and in the early eighties the company plunged into loss. The losses became chronic and the enterprise had to rely on heavy subsidies from the government to survive. These subsidies, it was continuously being argued in the press and in political debates, had become a burden to the Maltese taxpayer. Two reports commissioned by the government – one on the financial situation and the other on the management system of the enterprise – made adverse and damning comments about the way this self management was operating. The press took the cue from these two reports to deride ‘the myths of workers’ participation’ with one weekly newspaper commenting that “workers’ participation has failed as much as communism and extreme forms of right and left wing socialism”. Following the publication of these two reports the participation system at the Drydocks was dismantled. In 1997 an amendment to the Drydock Act reduced the number of worker directors to half, while in 2001 it was reduced to one. In the restructuring exercise of 2003 and the subsequent enactment of the Shipyards Act, the post of worker director was abolished. The reversal of this self-management system sounded the death knell of the dream workers’ participation.

Legal basis

The only surviving piece in the jigsaw of workers participation is the worker director which provides employees with one representative at board level. The workers’ participation schemes of the seventies included the appointment and/or election in public corporations and state-owned enterprises of a worker director who was to assume all the functions and obligations of the other directors as laid down in the Companies Act (Chapter 386 of the Maltese Laws). This scheme was to serve as a model for other companies in the private sector to follow suit. The government, in spite of its espoused socialist principles, was reluctant to legalise it as it had a deep-seated fear that such legislation would scare away foreign direct investment.

Composition and functions

Throughout the eighties the employee board level scheme continued to gather momentum and by 1988 there were total of 21 workers’ directors – 13 of whom were in public corporations, six in enterprises owned by the GWU and two in private firms. The posts of these employees’ board representatives, except for the four employees (two academic and two non academic) at the University do not owe their origin to any piece of legislation. Their posts were set up either through government initiative, to give expression to the socialist ideological principles of the party in office, or through collective agreements. Until 1988 none of them had any legal backing.

These workers directors, though in practice most keep in constant touch with the union, do not take part in the negotiation process leading towards collective agreement. They have the same responsibilities as other directors and as such have to conform to the treatment of confidentiality as stipulated in the law. They are also liable to damages as the other directors. When in the 1990s the trade union ordered strike action, the worker director did not follow the union directive and reported for work.

Appointment of workers director: a controversial issue

With a change in government in 1987 the appointment of workers director became a confrontational issue between the government and GWU. In the new board of two public corporations, Enemalta (generating and supplying electricity) and Telemalta (providing telephone services), the government failed to appoint a worker director. The GWU protested vigorously and even filed a judicial protest in the civil court claiming that this omission was a breach of the collective agreement. The government replied that the law gave it vested powers to nominate the members of the board of these two corporations. Still the government informed the GWU that it was willing to have a worker
director on the board of these two corporations, as long as they were elected directly by employees. Following protracted negotiations between the union and government, it was agreed to make an amendment to the Act regulating these two corporations so as to make provisions for the election and appointment of a worker director in each of these two enterprises. Following the amendments made, the composition of each of the board of the two corporations was to ‘consist of not less than three and not more than nine members appointed by the Minister except for one member who shall be elected by secret ballot by and from amongst the employees of the Corporation ...’ (Laws of Malta: Chapter 250 ‘Telemalta Act’ Article 4(2) and Chapter 272 ‘Enemalta Act’ Article 5(2)).

Telemalta has now been privatised, but during the extraordinary meeting held on 27th January 2005 the shareholders of Maltacom (the new name assumed upon privatisation) decided to retain the role of worker director. To date the worker director in this newly privatised company has been retained. Clause 55.2 of the Memorandum and Articles of Association of the company reads as follows: The Worker Director shall be appointed by other Directors on the advice of the Employees of the Company after an election is held from amongst the Employees of the Company. No other employee of the Company, other than the Worker Director, shall be eligible for appointment as a Director. The Directors may from time to time make such rules and regulations to provide for the conduct and proper administration of elections among the Employees.

This privatisation process leaves just one workers director whose appointment is backed by law. This lack of legal provision for the election and/or appointment has made the workers directors expendable. At present the number of employees’ board level representatives is twelve, who except for three, all belong to state-owned or run enterprises. Over the last three years the number of employee board level representatives decreased.

**Representation of employees in the boards of European Companies**

The European Company (SE) Directive was transposed into Maltese law in October 2004 by Legal Notice 452 of 2004. The passing of regulations by means of a Legal Notice is the preferred flexible way to update and make amendments to Employment and Industrial Regulation Act (EIRA). The EU Directives are transposed through these Legal Notices which, issued under the legal umbrella of EIRA, have the force of law. The process leading to a Legal Notice is a tripartite one as the draft Legal Notice is sent to a tripartite board, known as the Employment Relations Board (regulated by Section 3 of EIRA). This board is composed of members from the social partners (i.e. employers’ representatives and trade union officials) together with government representatives. Following several discussions sessions, the draft is amended and sent to the Ministry for final review. The final version of the Legal Notice is then presented to Parliament for approval. Since it has already been discussed intensely at a tripartite level, the Legal Notice is enacted without too much discussion and/or division.

The definitions of the terms are much in line with the general definitions of the Directive. Since the practice of employee board level representation is very limited and it lacks a legal framework, there is no transitive provision, or one which recognises the current national practices. The standard rules on employee involvement, set out in the Schedule to the Malta Regulations, specify the same arrangements as in the Directive. The ‘before’ and ‘after’ principle is transposed in the Malta Regulations. As regards the composition of the employees’ representative body, the Malta Regulations set out the same minimum number as in the Directive, ‘at least three’. Since there is no legal framework for an institutional form of workers’ participation, the wording **in accordance with national legislation or practice** in the directive is replaced by **in accordance with the method it adopts**

**V. EMPLOYEE INVOLVEMENT IN EXTERNAL DECISIONS THAT AFFECT THE UNDERTAKING**

**Recovery and bankruptcy procedures**

EIRA establishes a Guarantee Fund (art. 21) for the purpose of guaranteeing payment of unpaid wages due by an employer to those employees whose employment is terminated because of the employer’s proved insolvency. Legal Notice 432 of 2002 supplementing this article in the Act lays down regulations which shall apply to employee claims for unpaid wages arising out of contracts or service and existing against employers who are in a state of insolvency. This Guarantee Fund (art. 7) includes four representatives of employees appointed on the Employment Relations Board.
Operations affecting shareholders

Takeover legislation in Malta has been practically non-existent. The implementation of Directive 2004/25/EC required the introduction of a statutory framework. The Directive is transposed under Chapter 18 of the Listing Rules of the Malta Financial Service Authority (MFSA). Article Number 8 of the Directive which gives the right to employee representative to be informed when there is a bid for a takeover was fully transposed.
THE NETHERLANDS

The Netherlands are a relatively homogeneous country. However, there are regional differences. From an economic point of view, the western part is the most important and richest (the so-called Randstad), while the north eastern and south eastern parts particularly are less well-developed. National policy is by far the most important, without much room for the regions.

I. ECONOMIC AND SOCIAL CONTEXT

Some basic economic data
In 2002 and 2003, Gross National Product (GNP) growth was slightly negative. In the following years, the Dutch economy recovered, growing by 2% in 2004, 1.5% in 2005 and 2.9% in 2006. GNP stood at €527.9 billion in 2006. Between 2002 and 2005 labour productivity for every hour worked rose from €35 to €39. In 2001 and 2002 there were peaks in inflation of 4.5% and 3.4% respectively. Since then, the figures have dropped to slightly above the European average (1.5% in 2006).

In 2005, agriculture was responsible for 3% of GNP, goods for 23% and services for 74%. Industry shows a few large international groups (Philips, AKSO Nobel, Shell and Unilever) contributing to a buoyant external trade. In the financial sector, ABN-AMRO and ING are also important cross-borders employers.

The Netherlands is among the countries with high average living standards. The Dutch “model” was regularly cited as an example for its success in combining economic and social development.

Labour market
According to Eurostat, the total labour market in the Netherlands stood at 74% in 2005, and since then has shown a tendency to increase. Between 2000 and 2005, the male employment rate slightly declined from 82.1 to 79.9%, while the female employment rate rose from 63.5 to 66.4%. In the same period, the participation rate of older workers rose from 38.2 to 46.1%.

In 2005, there were 210,500 people employed in agriculture, 1,309,000 in industry (including extraction, construction and energy) and 4,913,500 in services (including government).

The rate of part-time work is exceptionally high in the Netherlands: almost 25% for men and over 75% for women (Eurostat, figures for 2005). Around a third, 34.5%, of all jobs in 2003 were part-time.

Fixed-term contracts are relatively important as well as the employment through temporary employment agencies. Unemployment has decreased in recent years, and the labour market is getting tighter. According to the Central Bureau of Statistics, unemployment stood at 5.0% in the period February-April 2007, one percentage point lower than the year before. Male unemployment stood at 4.1%, female unemployment at 6.1%. Youth unemployment was 9.9%, coming down from 11.5% a year earlier, while unemployment among older workers stood at 4.6%. Long term unemployment in 2003 stood at 3.8% of the active population (this figure has probably fallen since). As a percentage of total unemployment, long-term unemployment stood at 29.2% in 2003.

In 2004, 49.4% of Dutch employees were highly skilled (non manual), 24.8% were low-skilled (non-manual), 16.7% were skilled manual and 9.1% were carrying out elementary occupations (Eurostat 2005).
II. INDUSTRIAL RELATIONS

1. Legal basis and key issues
An important feature of Dutch society in the 19th and 20th century was the segmentation between the social democrats, the liberals and the confessionalists (in turn divided into protestant and catholic sections). This vertical segmentation was arguably more important for industrial relations than the division between ‘labour’ and ‘capital’. This segmentation maintained its importance for a long time after World War II, and resulted in a highly centralised industrial relations system, due to the leaders of the different segments working together to rebuild the country and more or less controlling their respective segments, including the unions. This vertical segmentation and the co-operation to a large extent explain the relative peacefulness of Dutch industrial relations, with low strike figures and rather smooth relations between employers organisations and unions.

Even today, the central level is still very important, although the sectoral level is dominant with regard to collective bargaining and collective agreements. Union presence at the company and plant level is still low, but unions make up more than half of works council members.

In the post war period, until 1982, the state has played a major role in the Dutch industrial relations system, regularly intervening, especially with regard to wage developments. In 1982, the so-called Wassenaar agreement more or less ended this period, although there have been several instances since in which the state has threatened to intervene.

Relations between social partners and the state, notwithstanding moments of discord, are relatively smooth. Major examples are the Laws on Flexibility and Security and on Working Time, which have been prepared and more or less composed in the Social and Economic Council. Twice a year, the government and social partners discuss the main developments in the so-called spring and autumn talks.

2. Social partners

Unions

There are three main union federations in the Netherlands, which also act in bipartite and tripartite advisory bodies. Most of the unions are organised in these federations, although there are several craft- and other unions:

- the Federation of Dutch Trade Unions (Federatie Nederlandse Vakbeweging, FNV),
- the Christian Trade Union Federation (Christelijk Nationaal Vakverbond, CNV)
- the Federation of Middle and Higher Personnel (Middelbaar en Hoger Personeel, MHP).

The FNV and CNV trace their roots back to organisations with a clear religious or political orientation. The FNV emerged from the merger of the socialist and the catholic union federations; the CNV still describes itself as a Christian union and comes from a tradition of Protestant trade unionism. The MHP was set up in 1974 to represent senior staff facing increasing pressure at the workplace. Relations between the FNV and CNV are good. However, the actions of Unie – part of MHP – in the area of collective bargaining have resulted in some disputes with the other two confederations. They have accused Unie of signing unsatisfactory agreements in areas where it has only low membership, blocking their own attempts at improvements.

The major unions and their confederations all have links with the respective European union organisations.

Approximately 1,866,000 people are affiliated to a trade union. In terms of the total working population, this means that less than a quarter of the Dutch workforce is unionised. The rate has fluctuated around the 27% mark for nearly 20 years but currently the rate of union membership is in decline. One unusual feature of Dutch trade unionism is the financial support received from employers with which they conclude collective agreements – akin to the ‘trade union premium’ paid in Belgium. There is no difference in the Netherlands between blue and white collar workers with regard to union membership.

With its 16 affiliated trade unions jointly representing over 1.2 million members (about 63% of all trade union members), the FNV is the largest trade union confederation in the Netherlands. The largest union, FNV
Bondgenoten, was formed through a merger at the end of the 1990’s between four unions from the private sector. The two other main unions affiliated to FNV are the union for civil servants (AbvaKabo) and the union for construction workers (FNV Bouw).

The Christian National Trade Union Confederation (CNV) accounts for about 18% of trade union members, while the trade union confederation for middle and higher management (MHP) represents 8.6%.

The remainder of unionised employees are members of non-affiliated craft organisations. These organisations do not operate within a confederation and generally represent a specific occupational group.

Two third of union members are male. Density is relatively high in the public sector and utilities and low in the private services sector. Union density has shown a gradual decline during the past decades, but has been more or less stable for the past few years. However, the ageing membership presents a major problem in the long run.

An independent trade union aimed at young workers and freelancers was set up in October 2005. The new Alternative Trade Union (AVV) is critical of employers and the existing trade unions, claiming they take into account only the interests of older workers and neglect the interests of the young. Specific issues highlighted by AVV include early retirement, pensions and protection against dismissal.

In a bid to maintain their position, trade unions in the Netherlands are looking for different ways to attract new members. In 2006, two trade unions, De Unie and CNV Dienstenbond, have set up a low-cost, low-threshold Internet-based union. Earlier, as an alternative to conventional membership, the Dutch Trade Union Federation (FNV) introduced a much cheaper option in the form of ‘donorship’ in the hotel, restaurant and catering industry. Both FNV and CNV have increased their activities for economically dependent workers.

**Employers’ organisation**

The Confederation of Netherlands Industry and Employers (known as VNO-NCW) is the largest employers’ organisation. It represents the common interests of Dutch business, both at home and abroad and provides a variety of services for its members. VNO-NCW has 150 branch associations, representing more than 80,000 enterprises covering almost all sectors of the economy, including more than 60% of all medium-sized companies and almost all larger firms. It also maintains special links with a variety of other organisations, amongst which Algemene Werkgeversvereniging VNO-NCW (AWVN) which supports and advises companies and business sectors on matters relating to employment conditions.

MKB Nederland represents the interests of small and medium-sized enterprises,

LTO Nederland represents the agricultural and horticultural sectors.

In 2005, VNO-NCW and MKB Nederland forged an alliance, with the aim to benefit the interests of the combined membership base.

The following table provides information about the main union and employer organisations:

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<thead>
<tr>
<th>Union Organisation</th>
<th>Details</th>
<th>Number of members</th>
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<td>FNV</td>
<td>Federation of Dutch Trade Unions (socialist and catholic)</td>
<td>1.2 million</td>
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<tr>
<td>CNV</td>
<td>Christian Trade Union Federation (protestant)</td>
<td>18% of trade union members</td>
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<tr>
<td>MHP</td>
<td>Federation of Middle and Higher Personnel (senior staff)</td>
<td>8.6% of trade union members</td>
</tr>
<tr>
<td>FNV Bondgenoten</td>
<td>Largest union formed by merger between four private sector unions</td>
<td></td>
</tr>
<tr>
<td>AbvaKabo</td>
<td>Union for civil servants affiliated to FNV</td>
<td></td>
</tr>
<tr>
<td>FNV Bouw</td>
<td>Construction Union</td>
<td></td>
</tr>
<tr>
<td>Unie</td>
<td>Part of MHP</td>
<td></td>
</tr>
<tr>
<td>AVV</td>
<td>Alternative Trade Union: Independent union aimed at young workers and freelancers</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employers Organisation</th>
<th>Details</th>
<th>Number of members</th>
</tr>
</thead>
<tbody>
<tr>
<td>VNO_NCW</td>
<td>Confederation of Netherlands Industry and Employers with 150 branch associations</td>
<td>More than 80,000 enterprises</td>
</tr>
<tr>
<td>MKB Nederland</td>
<td>SMEs</td>
<td></td>
</tr>
<tr>
<td>LTO Nederland</td>
<td>Agricultural and horticultural sectors</td>
<td></td>
</tr>
</tbody>
</table>
3. Joint bodies
The three major federations (FNV, CNV and MHP) are represented in the bipartite Foundation of Labour (Stichting van de Arbeid, STAR) and the tripartite Social and Economic Council (Sociaal Economische Raad, SER).

VNO-NCW, MKB and LTO are all represented in the bipartite Foundation of Labour (Stichting van de Arbeid, STAR) and the tripartite Social and Economic Council (Sociaal Economische Raad, SER).

4. Collective bargaining
Collective agreements are conducted between one or more employers’ organisations or an individual employer on the one hand and one or more unions on the other hand. In some companies agreements are conducted between the employer and the works council, but these agreements are not collective agreements in a formal sense. The public sector is also covered by agreements, but these also do not have the legal status of collective agreements. Collective agreements are regulated by the Law on collective agreements, dating from 1927.

Unions and employers (organisations) have the right to negotiate but there is no obligation on either side to negotiate.

There are no rules on the representativity of either unions or employers organisations. The only condition is that unions and employers organisations must have full legal status (legal personality) and that the articles of association of the unions have to state that one of the aims of the union is to conduct collective agreements.

The main effect of the collective agreement is that the content of the agreement directly carries over to the labour agreements between members of the organisations that were party to the collective agreement. Stipulations in the individual contract that are not compatible with the collective agreement are void and are replaced with the stipulations in the collective agreement. When the individual contract leaves open some issues that are part of the collective agreement, the individual contract will be supplemented with the collective arrangement. When the collective agreement has expired and has not (yet) been replaced by a new agreement, the former agreement keeps its validity.

The employer who is bound by a collective agreement has to offer the conditions he has to apply to members of the unions who were party to the agreement to all other employees. This to a large extend explains why some 84% of the employees are covered by collective agreements, while union density is only 24%.

When the majority of employees in a sector are employed by employers who are party to the collective agreement, the bargaining parties can request that the Minister of Social Affairs and Employment extends the collective agreement to the whole sector. The effect is that all employers and employees are covered by the agreement, except those employers (and employees) that are covered by a company collective agreement. Requests for extension are usually granted.

Although the bargaining system is relatively stable and most employers and employees seem satisfied with it, in recent years there have been some developments which might have consequences for the stability of the system. One such development is the emergence of new unions, which challenge the main federations FNV, CNV and MHP. In the long run, the gap between union density and bargaining coverage might pose a threat to the system. On the other hand, in recent years collective agreements have been shown to be quite flexible.

Main features
Looking at those collective agreements that have as their subject the regulation of the terms of employment (pay, working time etc.) rather than early retirement or training and education, the following picture emerges. There are 174 sector agreements, covering 5,307,000 employees and 574 company agreements, covering 859,000 employees. Looking in more detail at the sector agreements, 4,644,500 employees are directly covered by such an agreement and 662,500 employees by the extension of these agreements (figures from 2005, Labour Inspectorate).

Overall coverage is 84%. In some sectors (IT-sector, chemicals), coverage is much lower.
There is no strict hierarchy between the three levels of collective bargaining in the Netherlands. Although social partners at the national level often state what their main goals are for the next bargaining round, these are not binding for the unions at sector or company level. As is clear from the figures presented above, the sector is the most important level of bargaining in the Netherlands in terms of coverage, although the number of company agreements is increasing.

Sector agreements have become more and more flexible in recent years. In several sectors, employers’ federations and unions have negotiated multi-level agreements, with a view to more flexibility. Examples are the agreements for the Metal and Engineering Industry (Metalectro) and the Grafimedia-agreement. In the Metalectro-agreement, a distinction is made between so-called A- and B-provisions. At company level, parties can agree to differentiate from the original agreement. With regard to the A-provisions, this can only be done when the result is more favourable to the employees. This is not necessary with regard to the B-provisions. The new agreements have to be negotiated with the parties who were also present at the original negotiations. The Metalectro-agreement also contains the possibility of negotiating working time arrangements with the works council.

In the Grafimedia-agreement, a distinction is made between three categories of provisions. The first category (A) applies to all companies covered by the agreement and consists of primary and ‘hard’ secondary terms of employment. The second category (B) contains provisions for specific sectors, like newspapers. The third category (C) consists of the so-called decentralised subjects, like working time arrangements, an “à la carte” system, variable pay etc. C-provisions that violate A and B are void, the same is true for B-provisions that violate A.

More and more collective agreements allow employees to make so-called à la carte choices, where they exchange certain terms of employment (sources) for other terms of employment (targets). Within – collectively agreed – limits, it is possible for individual employees to choose. The range of targets and sources is very wide and includes different forms of time (holiday, overtime) and pay (end of year bonus, extra pay for shift work), but also early retirement arrangements and childcare facilities. In 2004, more than half of the collective agreements contained à la carte elements.

Although works councils do not at present have a formal bargaining role, they are nonetheless frequently involved in agreeing company-level terms which provide for improvements to and elaboration of the industry agreement. These may be laid down in a company handbook as well as in individual contracts and are usually carried over in the individual employment contract by way of an alteration clause in that contract, incorporating the agreement between employer and works council. This is necessary because agreements between the works council and the employer do not have the same status as agreements between employers and unions.

Other terms may be unilaterally set by management, although more often than not the works council’s ‘agreement’ is subsequently sought. There are examples of companies which have devised their own pay scales building on top of the industry grading system, and gained approval from the works council. In some companies, terms of employment are fully settled through negotiations with the works council. This is still more the exception than the rule, however.

Collective agreements cover a wide range of subjects. The core subjects are working time (including holidays, working time reduction, working on Saturdays and Sundays etc.) and pay, but many agreements contain 100 pages or more, covering a wide range of issues, including:

- facilities for union and works council activities;
- training and education;
- different forms of leave (for care, study etc.);
- younger and older workers;
- reorganisations and mergers;
- sickness and disability; and
- pensions and early retirement.
5. Collective disputes and industrial action

There is a growing interest in arbitration and mediation in the Netherlands, but in the field of industrial relations such procedures are not of major importance. Some collective agreements contain such procedures. In exceptional cases (like the railways in 2003) mediation initiatives have been used to try to break out of deadlocks in industrial relations conflicts.

Strikes

There is no law on strikes and lockouts in the Netherlands after a bill was retracted in 1970. After two rulings by the Supreme Court in the 1990s, the right to strike is based on the direct effect of the European Social Charter. The right to strike resides in the employees themselves, although in practice the overwhelming majority of strikes are organised by the unions. Lock outs are unknown in the Netherlands. The boundaries of the right to strike have been elaborated in case law. The main limits are:

- strikes should be seen as a matter of last resort. Parties must have done their utmost to reach a solution through negotiations;
- sufficient care should be taken in calling the strike (e.g. a timely announcement); and
- the rights of third parties and the general public (e.g. passengers in public transport) should be respected. There are several court cases in which strikes in public transport have been forbidden during rush hours.

The Netherlands have a peaceful tradition with regard to strikes and are among the least strike-prone countries in the EU. However, in some years there have been peaks in strike activity. In 2006, 16,000 workdays were lost due to 31 strikes, involving 11,000 employees. In the table below, the figures since 1999 are presented:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of strikes</th>
<th>Employees involved</th>
<th>Working days lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>24</td>
<td>58,900</td>
<td>75,800</td>
</tr>
<tr>
<td>2000</td>
<td>23</td>
<td>10,300</td>
<td>9,400</td>
</tr>
<tr>
<td>2001</td>
<td>16</td>
<td>37,400</td>
<td>45,100</td>
</tr>
<tr>
<td>2002</td>
<td>16</td>
<td>28,600</td>
<td>245,500</td>
</tr>
<tr>
<td>2003</td>
<td>14</td>
<td>10,800</td>
<td>15,000</td>
</tr>
<tr>
<td>2004</td>
<td>12</td>
<td>104,200</td>
<td>62,200</td>
</tr>
<tr>
<td>2005</td>
<td>28</td>
<td>29,000</td>
<td>41,700</td>
</tr>
<tr>
<td>2006</td>
<td>31</td>
<td>11,300</td>
<td>15,800</td>
</tr>
</tbody>
</table>

Source: Central Bureau of Statistics

The most important subjects of strikes in recent years are privatisations, collective bargaining issues and reorganisations (including takeovers and outsourcing). There are more disputes in the public sector and in transportation. The duration of most strikes is between one and five days.
III. EMPLOYEES’ REPRESENTATION IN THE UNDERTAKING

1. General issues
The main form of employee representation in Dutch enterprises is the Ondernemingsraad (works council), composed solely of employee representatives, set up in enterprises with over 50 employees and having extensive consultation rights and some decision-making powers. In small enterprises, the law makes provision for less extensive types of information and consultation. Employees also have an influence on the composition of the supervisory board in large companies and the management board.

A works council must be set up in any enterprise (in the sense of a structured organisation functioning as an independent entity where work is performed under a contract or relationship of employment – (WOR Article 1) in which 50 people are employed (WOR Article 2). Representation for “atypical” workers was extended in 1998 (abolition of minimum hours, possibility of participation by temporary workers after two years, etc.). In enterprises with 10 to 50 employees, an employee representation committee (personeelvertegenwoordiging) can be set up by the employer. These are competent in respect of working hours and conditions and have a right of opinion on strategic decisions having a major impact on a quarter of employees. The employer is obliged to set up an employee representation committee at the request of a majority of employees (WOR Article 35c).

In the absence of representation, the employer must hold a bi-annual meeting of employees (personeelvergadering), at which anyone may express their opinion; he must present accounts, provide information on the general situation of the company and on labour policy and consult employees about decisions that may lead to job losses or to a major change in the work of a quarter of employees (WOR Article 35b).

A central works council (Centrale Ondernemingsraad) must be set up when a head of enterprise runs at least two enterprises each having a works council, at the request of the majority of the works councils. One or more divisional works councils (formally group works councils (Groepsondernemingsraad)) may be set up when a group has one or more branches of activity in which there are several works councils (WOR Article 33). The position of these central and divisional works councils was strengthened in 1998 when they were given an independent position and their prerogatives extended to matters concerning the enterprise or group as a whole (including the situation and decisions of the dominant enterprise).

In 2005, 96% of enterprises with over 200 employees had a works council, 84% of enterprises with between 100 and 200 employees, 78% of enterprises with between 75 and 100 employees, and 60% of enterprises with between 50 and 75 employees. In 15% of enterprises with between 10 and 50 employees an employee representation has been set up. In 18% of these enterprises a (voluntary) works council had been established.

2. Legal basis and scope
Employee representation has a relatively recent history in the Netherlands. Collective action by workers in practice took place primarily at industry level (the collective labour agreement was regulated by law in 1907) with the focus then shifting to the national level.

In 1943, unofficial negotiations between the main employers’ and employees’ organisations led to a compromise allowing the trade unions to take part in decision-making at all levels in return for more limited trade union activity in enterprises and in respect of employers’ managerial prerogatives. Some days after the liberation in 1945, the Labour Foundation (Stichting van de Arbeid) was set up, placing cooperation between the social partners on an institutional footing and acting as a pivot for wage policy. In 1949, the law established other institutions composed of both employers and employees: the Social and Economic Council (SER - Sociaal-Economische Raad) at national level, with consultative and supervisory tasks in respect of occupational organisations and regulatory powers in some areas (it established Joint Sectoral Committees (Bedrijfscommissies) for this purpose, in particular in the area of

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24. Large Dutch enterprises have a two-tier structure.
works councils) and the occupational and product corporations (Bedrijfs- en Productschappen) at branch and sectoral level.

In 1950, the first law on works councils was enacted, making it compulsory for all enterprises with over 25 employees to set up such a council (but without penalties in the event of a failure so to do), chaired by the employer and whose remit was to “contribute to the best of its abilities to the optimum running of the enterprise”. The trade unions then encouraged the practice of works council “pre-sessions” among employee representatives (preparatory meetings).

In 1971, an overhaul of the law raised the threshold to 100 employees, recognised the pre-sessions and modified the remit of the works council. This became twofold: “to represent the interests of enterprise employees” and “serve the interests of the enterprise to the best of its abilities”, with the employer continuing to chair the works council. The consultation rights of the works council were increased and protection, training and other resources were provided for elected members, with provision for penalties in the case of non-application. 48% of enterprises with more than 100 enterprises had works councils in 1972, 75% in 1974 and 85% in 1975. The industrial disputes of the 1970s raised questions, however, about the role of the works council and their position vis-à-vis the unions. The social partners gave specific opinions on a second reform of the works councils.

The Law on works councils (Wet op de ondernemingsraden - WOR) of 5 July 1979 is on the whole still in force today. The employer is no longer a member of the works council and the role of the works council was increased, in particular as regards financial consultation and the right of appeal, in a changing relationship with the employer.

The Law of 22 May 1981 (Wet Medezeggenschap Kleine Ondernemingen), incorporated into the WOR, set out consultation systems for small enterprises: works council with limited rights between 35 and 100 employees and forms of information and consultation of all employees between 10 and 35 employees.

Representation of civil servants, which took place through participation in departmental committees (dienstcommissies), was in most cases brought into line with employee representation in 1995. The rights of works councils in the public sector are to some extent restricted: these works councils have no rights with regard to political decisions (decisions taken by democratically-elected or controlled bodies), except in so far as these decisions have a direct impact on the civil servants.

There was a further amendment of the law on works councils in 1998: the general threshold was changed to 50 employees, and employee representation with more limited rights or a bi-annual meeting was introduced for 10 to 50 employees, group level intervention was recognised (see below) and the possibility of bargaining by the works council was formally introduced (although trade union bargaining continued to take priority).

There is no legal basis for trade union representation in the enterprise, apart from the presentation of lists of candidates for the works council. In 1997, the Labour Foundation (STAR) drew up recommendations for the legal recognition of workplace union representatives and the rights to be awarded to them. Most collective agreements contain provision for workplace union activities. However, in the Netherlands union presence at workplace level is relatively weak. As a rule, unions are responsible for bargaining and conducting agreements on primary terms of employment (wages and duration of working time), while works councils are responsible for secondary terms of employment (rosters, all kind of secondary benefits etc.). However, in some sectors (part of chemical industry, many IT-companies) works councils negotiate all terms of employment. Overall, the decentralisation and differentiation of bargaining have gradually increased the importance of enterprise-level bargaining. Many sectoral collective agreements delegate the further elaboration of many terms of employment to the works council.

3. Composition

The obligation to set up a works council is incumbent on the employer (WOR Article 2).
A works council is composed of members elected directly by and from among the employees of the enterprise, and has between three and 25 members depending on employee numbers\(^{25}\) (WOR Article 6). The average number of members is nine or 10.

Electors must have been employed for more than six months and candidates for more than one year (WOR Article 6).

Candidates are elected from lists by secret ballot. The lists are drawn up by the trade unions, after consulting their members in the enterprise, or by the electors (one third and 30 signatures above 100 employees, 10 below) (WOR Article 9).

Central and group councils are elected by and from among the members of the individual works councils involved (possibly with representation of small units).

The office lasts for three years in principle (two or four years according to the works council rules - WOR Article 12).

4. Protection granted to the members

Works council members are protected by law, particularly against dismissal. This protection also covers former members for two years, and candidates and committee members (Articles 7:670a and b Civil Code).

5. Working of the body and decision-making

The works council elects a chairman and one or more deputy chairmen from its members (WOR Article 7). The works council draws up its own rules, although the head of enterprise has the right to express an opinion on them, and they must also be sent to the external joint sectoral committee (WOR Article 8)\(^{26}\).

These rules in particular set out how meetings are to be run, how they are to be called and govern voting rights, agendas and minutes (WOR Article 14). The works council meets alone or with the head of enterprise at consultation meetings whenever one party so requests (WOR Article 23).

The works council may invite one or more directors of the enterprise, supervisory board members or experts to its meetings and the meetings of its committees (see below - WOR Articles 16 and 22). Consultation meetings are chaired alternately by the head of enterprise and the chairman of the works council. The works council secretary normally acts as secretary at these meetings. The head of enterprise and the works council agree how meetings are to be conducted.

Two of the consultation meetings are set aside for an examination of the general situation of the enterprise, and the members of the supervisory board (or one or more of their representatives) are invited to attend (WOR Article 24). A consultation meeting must also be held whenever the works council is required to give its opinion (the supervisory board also attends in this case) or its consent (WOR Articles 25, 27 and 30). Other consultation meetings may also be held at the request of one or other of the parties, at which the works council may put forward proposals (right of initiative).

In its rules, the works council may provide for the creation of committees (WOR Article 15). These committees, which are to be found in many enterprises, take several forms:

- standing committees are responsible for some categories of personnel or certain matters (one of these committees is often responsible for health and safety issues — “ARBO”); they are

\(^{25}\) 3 members for personnel numbers below 50, 5 from 50 to 100, 7 from 100 to 200, 9 from 200 to 400, 11 from 400 to 600, 13 from 600 to 1000, 15 from 1000 to 2000, +2 for each further 1000 up to a maximum of 25 - WOR Article 6.

\(^{26}\) The joint sectoral committees are set up by the SER (Social and Economic Council).
composed of a majority of works council members and other employees; the works council may delegate all or part of its prerogatives over the matter in question to these committees;

– committees responsible for some parts of the enterprise; these are composed of works council members and employees from these parts; the works council may delegate its prerogative of consultation with the management of the parts concerned to such committees;

– ad hoc committees set up to prepare matters; these must include at least one works council member; the works council cannot, however, delegate any of its prerogatives to such committees.

6. Means

Generally speaking, “the head of enterprise must allow the works council and its committees to use the facilities he has available and that they reasonably need to carry out their tasks”. In the case of objection, after mediation by the sectoral committee, the court shall decide. Collective agreements may stipulate more favourable provisions than the law or flesh out such provisions.

Meeting time: the works council and committees meet as far as possible during normal working hours and works council and committee members continue to be entitled to their wage during this time (WOR Article 17).29.

Time-off rights: works council and committee members are each entitled to time-off rights, with a minimum of sixty paid hours a year, to carry out their tasks (WOR Article 18).

Training: works council members are entitled to paid absence of at least five days a year to “attend training that they deem useful for the performance of their tasks” (WOR Article 18). Training costs are borne by the employer.

Costs: “the costs of the works councils and its committees shall be borne by the employer”. “The head of enterprise may, in agreement with the works council, set the costs to be incurred in a year by the works council and its committees … at an amount to be used at the discretion of the works council. Costs in excess of this amount shall be borne by the employer only if he so accepts”. Legal costs are borne by the head of enterprise, following prior notice (WOR Article 22).

“The works council may invite one or more experts to attend a works council (or committee) meeting to address a particular matter”. “An expert may also be invited to give an opinion in writing” (WOR Article 16).

Either party may invite an expert to attend a consultation meeting. If there is disagreement, after mediation by the joint sectoral committee, the district court decides.

“The costs of consulting experts … shall be borne by the employer only if he has been informed in advance of the costs to be incurred” (except when the works council has an overall package). If there is disagreement, again after mediation by the joint sectoral committee, the district court decides.

The head of enterprise must also notify the works council of his intention to ask for advice from an expert on a matter for which the works council’s consent is required (WOR Article 31c) and must ask the works council for its opinion when the expert’s task relates to a planned decision on which the works council is required to give its opinion (WOR art.25).

7. Role and rights

The works council is established “in the interests of the correct operation of the enterprise with respect to all its objects, and for the benefit of consultation with representatives of persons employed in the

27. Except the right to take legal action.
28. For instance an establishment, but in contrast to the works council, a committee may not take legal action.
29. There is no statutory limit on the number or duration of these meetings.
enterprise” (*WOR* Article 2). Under the law, therefore, the works council has a twofold remit: representation and consultation.

**Information**

“The head of enterprise must, on request, provide the works council and its committees promptly with any information and data that they may need to carry out their tasks”, when requested in writing. In the event of objection, after mediation by the joint sectoral committee, the district court decides (*WOR* Article 31).

**Basic information**

At the beginning of each works council session, the head of enterprise must provide written information on the legal form of the enterprise, the composition of the supervisory board and the management board, group and dependent relationships and enterprise organisation (*WOR* Article 31).

**Economic and financial information**

– Annual accounts: the annual report must be presented to the works council “as soon as possible after it has been drawn up”. This report must be supplemented, where necessary, by information on the various enterprises or the group and by the report of the auditor or other expert responsible for auditing the annual accounts (*WOR* Article 31a).

– Planning documents: if the head of enterprise draws up a multi-annual plan, an estimate or a budget, he must forward it to or provide a summary for discussion by the works council (*WOR* Article 31a).

– General situation of the enterprise: at least twice a year, the head of enterprise forwards, for discussion of the general situation of the enterprise, information on the enterprise’s activities and results and his forecasts for the forthcoming period, including investment forecasts, in the Netherlands and abroad (*WOR* Article 31a).

The head of enterprise must provide written information at least once a year on employment and the labour policy that he has applied, and on forecasts and the policy that he intends to apply (*WOR* Article 31b).

As of 1 September 2006, works councils in – with some exceptions – establishments with more than 100 employees have the right to be informed about the salaries of the different categories of employees, including the management and supervisory board (*WOR* Article 31d and e). For reasons of privacy, categories comprise a minimum of five people.

**Consultation**

The head of enterprise (*WOR* Article 25) must enable the works council to give an opinion on:

– transfer of authority over the enterprise;

– acquisitions and divestitures, including financial holdings and long-term cooperation between enterprises;\(^{30}\)

– the closure of activities, whether in full or in part;

– the retrenchment, expansion or modification of activities;\(^{31}\)

\(^{30}\) Except when the enterprise is established abroad and it is not anticipated that this decision will have major repercussions for an enterprise in the Netherlands: the “foreign clause”.

\(^{31}\) The 1976 law on collective redundancies states that an employer intending to dismiss at least 20 employees over 90 days must inform the workers’ organisations involved of such plans for consultation purposes. The regional employment director examines redundancy requests within a month of notification of proposals, provided that the trade unions have actually been consulted. The consultation period was reduced for “atypical” workers by the 1997 “flexicurity” law.
– relocation of activities;
– major changes to the organisation of the enterprise or changes to the place at which it is carried on;
– the recruitment or hiring of labour;
– major investments or the contracting of a substantial loan for the enterprise, and the establishment of credit guarantees;
– technological innovations;
– measures to protect the environment;
– the decision to carry the risk for sick and disabled employees32; and
– the provision and formulation of an expert report on one of these matters.

The head of enterprise must request the opinion “in enough time for this opinion to influence the decision to be taken”, and forward a statement of reasons for the decision and its consequences. A consultation meeting must be held before the works council gives its opinion. Following the works council’s opinion, the head of enterprise must notify the works council in writing of the decision and, where appropriate, why he has not taken account of the opinion. During the period of grace of one month that follows this notification, the works council may lodge an appeal with the Enterprise Chamber of the Amsterdam Court, unless the decision complies with the works council opinion or if the works council decides not to do so.

**Appeal** (*WOR Article 26*): the appeal may be brought only on the following ground: “the head of enterprise, having considered the interests in question, has not reached his decision in a reasonable manner”. The Enterprise Chamber therefore examines whether the procedures have been respected and whether the employer’s decision is valid and may order the withdrawal or suspension of the decision, and take provisional measures33.

### 8. Other functions and responsibilities

The employer must take account of the positions and proposals of the works council in respect of matters concerning the enterprise. A consultation meeting must be held and the head of enterprise must provide a reasoned reply to a written proposal (*WOR Article 23*). If the employer refuses to accept the proposal, the works council has no right of appeal.

**Works councils – Supervision and management** (*WOR Articles 28 and 29*)

The works council:

– supervises the application of the terms of employment, the regulations on working conditions and working time and ensures that there is no discrimination;

– encourages workplace consultation, and stimulates care for the environment by the enterprise; and

– appoints, where appropriate, half of the members of the company welfare office.

The works council has also a right of negotiation and consultation on matters relating to the safety, health and well-being of workers, both conferred by the Law on works councils (see below) and the Law on health and safety (LHS), although in the latter many concrete stipulations have been abolished as of 2007.

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10. Introduced after the privatization of the laws on sick and disabled employees. When an employee falls ill, the employer has to continue paying the wages for 104 weeks.

31. The Companies Division decides in favour of works councils when the employer has failed to request the works council’s opinion, has not given adequate information or has requested the opinion too late, or has not taken adequate account of the repercussions of the plan on employees.
The basic provision is Article 12 LHS, which states that employer and works council should co-operate in the field of working conditions. It may accompany Labour Inspectors during their visits to the enterprise and meet with them (LHS Article 12.4).

The employer and works council have the right to agree on measures to reach a certain goal, as defined in the LHS, in another way than prescribed in the LHS itself (LHS Article 17).

9. Other specific representation bodies/committees

The works council can establish committees for specific subjects, like health and safety, equal treatment, pensions etc. (see 3.5).

European Works Councils

Directive 94/45/EC on European works councils, which concerns some 130 Dutch groups, was transposed into law on 21 January 1997. At present (2007) there are some 60 European works councils with their base in the Netherlands.

10. Protection of rights

If the employer fails to abide by the obligations incumbent on him under the law on works councils, the works council may take the case to the joint sectoral committee for mediation, and then initiate proceedings before the district court. The maximum penalty for failure to comply with a court ruling is €16,750, or a maximum prison sentence of six months. The court can also impose penalty damages (including €1000 for every day of non-compliance).

11. Codetermination rights

Labour-related decisions (WOR Article 27)

The head of enterprise requires the consent of the works council, except where the matter is already settled by a collective agreement, for any decision planned in respect of:

- the rules on recruitment, dismissal, promotion, personnel assessment, pay and grading and training;
- pension, savings and profit-sharing schemes;
- provisions on working time and leave,
- provisions on health, safety and working conditions;
- personnel records, personnel monitoring systems and expenditure reimbursement methods;
- welfare schemes in the enterprise; and
- rules on workplace consultation and grievance procedures in the enterprise.

If the works council fails to give its consent after a consultation meeting, the head of enterprise may ask the joint sectoral committee to mediate. When mediation fails, the employer can ask the district court for permission to take the decision. Permission is only granted when the refusal by the works council to give its consent is unreasonable, or when the decision is necessary for economic or organisational reasons.

A decision taken in one of the areas mentioned above without the consent of the works council is null and void when the works council so requests in writing. Discussions between the works council and the employer may lead to the signature of an agreement.
IV. EMPLOYEE PARTICIPATION ON THE SUPERVISORY BOARD

The legislation providing for employee representation in supervisory bodies was introduced in 1971 following long years of argument for workers’ participation. The so-called structure regime, which the legislation set up, provided for the co-option of candidates recommended by the works council onto the supervisory boards of larger companies (see below for the current thresholds). There was no limit on the number of candidates which could be proposed by the works council, although equally there was no obligation on the supervisory board to co-opt the candidates the works council put forward. In practice supervisory boards in companies covered by the structure regime often drew up a profile of the desired composition of the board, in terms of background and experience and this profile was sometimes agreed with the works council. An important element of the system was that the individuals nominated by the works council could neither be employed by the company or the group, nor could they be employed by a union involved in collective bargaining with the company.

However, the structure regime, as introduced in 1971, did not just provide for the co-option of candidates from the works council but of all candidates. In other words neither the general meeting of shareholders nor the works council could choose the members of the supervisory board. They could both only make recommendations, with the final decision being taken by the supervisory board.

This system of co-option was opposed by the unions, who urged that both the works council and the general meeting of shareholders should each appoint one-third of the members of the supervisory board. And in the 1990s increasing shareholder activism led to the system being seen as less and less appropriate among shareholders. In 2001 the SER (Economic and Social Council) produced a report recommending significant changes. This report led in turn to new legislation which was passed in July 2004 and came into force on 1 October 2004 (for details see below).

The works council has the right to recommend members of the supervisory board Article (Art. 2:158 and 268 of the Civil Code), who since 1 October 2004 are appointed by the general meeting of shareholders. For a maximum of one third of these members, this is a so-called enhanced right. This right applies to “structured” companies, i.e. public limited companies (NV), private limited companies (BV), cooperatives and mutual insurance companies having more than 100 employees and a capital of more than € 16 million, i.e. some 500 companies. The estimate is that about 50% of the works councils concerned actually use their rights.

Functions

The Dutch system of participation is highly specific and based on the “principle of trust” and the quest for consensus: whatever the background to their appointment, supervisory board members represent all the parties involved “in the interests of the enterprise” (Civil Code, Book II, Articles 140 and 250).

The supervisory board appoints management board members and may dismiss them (Civil Code, Book II, Articles262 and 272), and normally has to approve major decisions, such as those concerning investments and financial and personnel movements (Civil Code, Book II, Articles164 and 274), and generally decides on directors’ pay (Civil Code, Book II, Articles 135, 4 and 245). There is a clear separation between management and supervisory tasks.

The individuals nominated by the works council may not be employees of the company nor may they work for unions involved in collective negotiations with it. As a result, the issue of protection for supervisory board representatives who are also employees does not arise in the Netherlands.

In international companies (international meaning more than half of the employees works outside the Netherlands) the right to appoint and dismiss the management board members resides with the general meeting of shareholders ((Civil Code, Book II, Articles135 and 265). This is called mitigated or weak structure law and also applies to daughter companies of foreign-based internationals.

International holdings (international again meaning that more than half of the employees work outside the Netherlands) are exempted from structure law. In these companies, including all major multinationals, (mitigated) structure law is applied on the level of the Dutch subholding.
EMPLOYEE REPRESENTATIVES IN AN ENLARGED EUROPE

The right of recommendation by works councils is only applied to some extent. In some enterprises, one or more supervisory board members – not necessarily the recommended member – are specifically responsible for relations with the works council. Works council members expect these supervisory board members to have a good knowledge of the enterprise, to communicate with them and to take account of the works council’s point of view and labour issues.

Supervisory board members are invited to attend the two annual meetings of the works council set aside for the examination of the general situation of the enterprise and when the works council is required to give its opinion or consent (WOR Articles 24, 25, 27, 30). In most enterprises, “triangular consultations”, including the management, and looking at the company’s main data, are held on one or more occasions.

Appointment or dismissal of a member of the management board

The opinion of the works council must be requested in respect of any planned appointment or dismissal of the member of the management board (Raad von Bestuur), who is in charge of labour affairs. In most enterprises, this is the CEO (WOR Article 30). The procedure is the same as for major decisions, except that there is no provision for suspension and appeal is not possible.

Representation of employees on the boards of European Companies

Dutch members of the board of a European Company, set up under the fallback procedure in the directive, are appointed, in order of priority, by the central works council (COR), if one exists; by the intermediate works council (GOR) or councils; or by the individual works councils. Where not all works councils are covered by the central or intermediate bodies, they should be included in the process. If there is no works council the employees themselves elect the members with unions having nomination rights. (Involvement of Employees (European Companies Act) 2005 Article 3:13)

V. EMPLOYEE INTERVENTION IN DECISIONS CONCERNING THE ENTERPRISE

Enterprise problems and rectification and insolvency procedures

In the event of alleged mismanagement, the trade unions have a right of investigation, as do shareholders (Civil Code, Book II, Articles 345-359). The procedure starts with a complaint to the management or supervisory board, on which the works council must have given an opinion. After a period of time, proceedings may be brought by the trade unions before the Enterprise Chamber of the Court of Amsterdam. If the Court deems an investigation justified, independent experts are appointed and have free access to all information concerning the enterprise. If mismanagement is proved, the Court may suspend or cancel decisions and suspend, dismiss or appoint members of the management bodies (Civil Code, Book II, Article 356). If mismanagement is not proved, the enterprise is entitled to compensation. This however has never happened.

The right of investigation is not used a great deal by the unions; since 1971 there have been some 15 cases.

By agreement with management, the right of investigation can also be granted to the works council. Recently, this has happened twice, both times in 2005.

Employee intervention is particularly substantial as regards the prevention of enterprise problems and the reorganisations34 to which they may lead and includes:

34 Reorganisations also involve the “structure” law (Structuurwet), collective agreements, the law on notification of collective redundancies, the SER code on takeovers and mergers, the law on enterprise transfers, the law on working conditions and the laws on social insurance.
the works council “suspension opinion” procedure, with the possibility of appeal, in respect of major decisions, in particular those relating to reorganisations, investment, loans or credit guarantees (WOR, Articles 25 and 26);

the detailed economic and financial information that the works council receives (WOR, Article 31 and 31a), and meetings between the works council and the supervisory board.

The Law of 16 May 1986 governs collective procedures:

– Enterprises facing problems may request a judicial moratorium and the judicial administrator appointed by the court reports to the creditors’ meeting with a view to an interim stay of proceedings;

– If there is no rectification, the procedure becomes a collective judicial insolvency procedure, supervised by the receiver, leading to the liquidation of assets or to an arrangement with creditors. The creditors’ meeting decides on an arrangement plan and on continued proceedings.

Employees are involved in the procedure as creditors and their representatives are informed by the liquidator of any redundancies that may be made. When the receiver takes decisions the works council may have the right of opinion (see above). In practice, this is an exception.

Operations concerning shareholders

Employee intervention in financial matters is possible as a result of:

– the works council suspension opinion procedure, with the possibility of appeal, in particular as regards transfers of authority, including financial holdings and long-term cooperation between enterprises,

– the economic and financial information received by the works council and meetings between the works council and the supervisory board.

The SER (Economic and Social Council) has also laid down a code of conduct to be followed in the case of mergers (which also applies to takeover bids). These rules are generally known as the “merger code”35. When negotiations on a potential merger seem set to lead to an agreement, the trade unions must be informed of the reasons for and effects of the merger envisaged by the employer and must keep these negotiations confidential. They are consulted about the repercussions of the merger on labour and any measures planned in this area and may give an opinion from the point of view of employees’ interests.

In the case of takeover bids, many Dutch enterprises have set up protection devices, generally supported by employees’ organisations. However, the use of these devices is declining, due to both legislation and shareholder pressure.

With regard to shareholder rights like the amendment of the articles of association, or the increase or decrease of the amount of shares outstanding, the works council has no rights, except when decisions on these issues straightforwardly carry over to the enterprise and the employees. An example is the decision by the general meeting of shareholders to abolish the structure regime (which had been applied voluntarily).

35. Compliance with this code is monitored by a merger commission composed of employee representatives, employers and independent members. This commission may issue a public reprimand, or draw up a public notice.
NORWAY

The Scandinavian economic and social systems converge and interpenetrate in many respects and the Scandinavian countries have developed links forged through common linguistic, cultural and social traditions. Since the Second World War, Scandinavian cooperation has been constructed, transforming the heritage of historic unions and dominations among its components. In 1994 the majority of Norwegians declared they were opposed to entry into the European Union. Norway is member of the European Economic Area (EEA), which came into force in 1994. As a consequence, it is affected by questions relating to the European Works Council and to the other directives concerning the information and consultation of workers.

In fact, apart from the free movement of persons, goods, services and capital, the EEA takes up the most important aspects not only of the Treaty on European Union but also of “secondary legislation”. The regulations and directives adopted in the fields covered by the EEA Agreement (and Community case law) are applicable there as in the European Union. Social policy is one of the areas covered by the EEA Agreement and the signatory States have adopted a declaration which is annexed to the Agreement and in which they stress their willingness to contribute actively towards developing the social dimension within Europe. The three spheres of action of social policy in the EEA Agreement are health and safety at the workplace, gender equality and the rights of workers.

Norway is a constitutional monarchy with a parliamentary system, in the case of the latter since the dissolution of the “Union” with Sweden in 1905. Norway is marked by a distinction between the south, where the major towns are located and where industry is concentrated, and the North, which is sparsely populated and where climatic conditions are harsher. Most of the Norwegian population lives in urban agglomerations (78% in urban settlements, according to Statistics Norway). There is still net migration from the northern parts of Norway to the Oslo area, as well as from rural to urban centres more generally. Norway conducts a generous regional policy to maintain the northern populations. Hence in Norway, agricultural and food prices are markedly higher than Community prices on account of the massive support to the fragile Nordic agriculture. Arctic regions have dreaded the end of subsidies, and accordingly their way of life, with entry into the European Union and have for the most part been opposed to it.

I. ECONOMIC AND SOCIAL CONTEXT

Some basic economic data

At the beginning of the century, Norway was a poor country and there was a high level of emigration of young people to the United States. Subsequently, rapid economic development took place after the Second World War based on hydraulic energy (electrochemistry, electrometallurgy, timber processing) and the sea (maritime trade, mechanical engineering, aqua farming). Unlike in other European countries, this development continued after 1970 on account of the exploitation of petroleum and gas in the North Sea. Norway is the third largest exporter of crude oil after Saudi Arabia and Russia and petroleum is today the bedrock of national wealth, despite the dependence on fluctuating prices and fears about the future viability of the system.

Services account for over 65% of employment in Scandinavia and occupy a particularly dominant place in Norway. Whereas primary and secondary employment generally went down in the 1980s, tertiary employment rose markedly e.g. municipal jobs. There has been a marked contraction in the primary sector in recent decades. Yet, depending on prices, petroleum accounts for 25% of the GDP. In addition to the exploitation of petroleum and gas, energy-consuming industries (electricity of hydraulic origin) have developed: aluminium (Norway is the world’s second-largest producer), chemical fertilisers, paper, etc. Moreover, shipping occupies an important economic position - the Norwegian fleet represents 5% of the world’s merchant fleet with Norske Veritas certifying 16% of it. The public sector also accounts for 32-33% of all dependent employees. Public undertakings (telecommunications, post, electricity, transport) are no longer included in public employment due to deregulation.
Exports and imports represent a 40% of GDP. The nature of Norwegian exports correspond to energy (gas and petroleum), accounting for 50% of Norwegian exports. For Norway, Europe is a primary market: 60 to 80% of exports are destined for the European Economic Area and the most important commercial partners, apart from the other Scandinavian countries, are Germany and the United Kingdom and, to some extent, the United States.

*Labour market*

Norway's industrial structure is marked by the importance of energy, partly controlled by the State (in particular Statoil). On 1 October 2007 Statoil and the oil division of Hydro merged, and the new company, StatoilHydro, has 31,000 employees in Norway and abroad. The other sectors are essentially covered by small and medium-sized undertakings (SMEs), although large groups such as Orkla and Aker/Aker Kværner play an important role in several industries. Concentration has taken place since the 1970s.

During the late 1990s the labour market situation improved, and in 2007 the unemployment rate was below 3%. The employment rate is 70% (15 to 74 years), 73% among men and 67% among women. The assurance of full employment also constitutes an essential issue in Norway’s social and economic policy. Priority has been given to employment by Norwegian governments and both sides of industry through the “Solidarity alternative” tripartite pact which was important for industrial relations and in the 1990s (the background for the tripartite pact was the economic recession that marked the Norwegian economy in the late 1980s/early 1990s). The social partners and the government have continued the co-operation, both with regards to labour market policy and the later years also on “inclusive workplaces” (i.e. measures to reduce sickness absence rate and disability rates, and to improve the labour market position for senior employees, employees with disabilities and migrant workers). In 2007 the labour market situation was very good, and there were shortages of labour in several sectors.

**II. INDUSTRIAL RELATIONS**

1. **Legal basis and key issues**

In Norway, there is greater State intervention in pay policy, directly or indirectly through the operation of conciliation or arbitration. Norway does not have such massive unionisation as other countries do, since the links between unemployment funds and unions were broken in 1938. Legislation, which is often drafted by committees in which the social partners are represented, provides for a framework for resolving disputes (the first law instituting the industrial tribunal and a mediator dates back to 1915) and the participation of employees in an undertaking’s decisions (in both these instances collective agreements also play an important role in the regulation regime); minimum provisions for the protection of employees (working time, notice, dismissal, leave), health and safety, particularly in the case of vulnerable workers, and also the foundations of the social welfare system.

The State is actively involved in an incomes policy which has been drawn up by way of tripartite cooperation as well as is the leading player in economic and tax, employment and social redistribution policy, which has been framed in cooperation with the social partners.

2. **Social partners**

*Unions*

Norwegian unions have a total of 1.5 million members, 1.1 million of them in employment in 2004 (or 53% of working employees. This rate of unionisation is high and has been stable since 1956. It is lower than in the other Scandinavian countries, mainly on account of the absence of any link with unemployment funds. Unionisation is higher in the public sector (81% in 2004) than the private sector (40%). Within the latter there are major variations between branches: 67% in banks and insurance, 55% in manufacturing, 53% in transport, 42% in construction, 15 % in hotels/restaurants and 21% in trade.
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The LO is the foremost union organisation and has for nearly a century negotiated with the main employers' organisation NHO. Its numbers have changed little in 40 years: from 502,000 working members in 1956 to 631,000 in 1980, then 592,000 in 2004, although its share among the working population fell steeply from 43.6% in 1956 to 37.1% in 1980, then 28.1% in 2004 (287), mainly on account of its primary establishment in the industrial sector and among employees without education at university level. Despite this relative decline, its predominance in the private sector and its establishment in the public sector still make it the dominant union force.

The white-collar confederations YS, Akademikerne and Unio accounted for 20.5% of the working population in 2004. Of these Unio and Akademikerne organise employees with higher education.

Employers

Undertakings affiliated with employers' organisations employed approximately 58% of employees in the private sector in 2001. Affiliation increases with the size of undertakings. NHO continues to dominate employers as a body but there is stiff competition among employers' organisations.

The following box provides information about the main union and employer organisations:

### Trade Unions

**The LO Landsorganisasjonen i Norge (Norwegian Confederation of Trade Unions),** founded in 1899 and a member of the CES, is the main confederation by far. It has been closely linked with the Labour Party since its establishment, although the link is weakening and collective membership was abolished in 1997. It is made up of 21 trade unions, the most important of which are the federation covering metallurgy, construction, clothing, paper, printing industry, hotels and restaurants, forestry and agriculture and the federation of Municipal, Health and Social Care Employees. It is organised at local, regional and national level. In 2004, it had 53% of working union members and 28% of working employees (831,000 members in total, 592,000 employed members, 55% of them in the private sector and 50% of them women).

In addition three other employee confederations are present in the Norwegian labour market.

- **YS Yrkesorganisasjonenes Sentralforbund (Confederation of Vocational Unions),** established in 1977, is organised in 23 associations. It has 14% of working union members and 7% of working employees (201,000 members in 2004 of which 152,000 are employed members). YS is important among employees in the public sector, in insurance and in banks. Tensions have arisen between the LO and YS, particularly in the transport sector, in public services and in the petroleum sector.

- **Akademikene** was established in 1997 and has 13 affiliated associations. It has 9% of working union members and 5% of working employees (2004). The Akademikene associations organise groups of professionals with a higher education.

- **Unio** was established in 2001 and has 10 affiliated trade union associations. Unio has 35% of working union members and 9% of working employees (2004). Members of Unio are, among others, unions for teachers, registered nurses, employees of the police force, physiotherapists, researchers and the clergy (the last two since 2005).

Around 20 independent unions represent 7.5% of trade union members and 4% of working employees (102000 members in 2004). The most important is that of engineers, NITO, with 51,000 members.

### Employers Organisations

The main employers' organisation is **NHO Naeringslivets Hovedorganisasjon (Confederation of Norwegian Enterprise),** which is a member of BusinessEurope. In 1989, NHO merged the Norwegian Employers' Confederation NAF, founded in 1900, and the industry and craft federations. In 2006, 16,600 undertakings, responsible for 40% of the private sector value creation and employing 480,000 employees, were members of one of the 22 NHO branch federations, the main one of which is Norsk Industri (Federation of Norwegian Industries) that was established in 2005 by a merger of the Federation of Norwegian Manufacturing Industries (TBL) and the Federation of Norwegian Process Industries (PIL). Norsk Industri comprises 1900 companies with 109,000 employees. The Federation of Building Industries is the second largest branch federation with 3,250 member companies employing 68,000 people. Following the example of the LO, its union counterpart, NHO is largely
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centralised.

There are approximately 25 independent employers’ organisations in the private sector, particularly for trade (HSH - Federation of Norwegian Commercial and Services Enterprises with 12,000 member companies employing 152,000 people), banks and insurance companies, agriculture, forestry, etc.

The employer organisation Spekter mainly organises deregulated public enterprises (included publicly-owned hospitals), and the 186 member companies employ 165,000 people.

Public sector employers are represented in negotiations by KS, the Association of Local Authorities (896 authorities and undertakings, 407,000 employees) and the government in the case of the 130,000 public servants.

3. Joint bodies

The renewal of tripartite consultation in the 1990s was formalised by a “pact” on the “solidarity alternative”, entailing limitation on the growth of the highest-paid employees in favour of the creation of employment. It was concluded for the years 1992 to 1997. Tripartite consultation has also been taking place in the period after 1997, among others in several public committees. The social partners also meet regularly in tripartite bodies such as the Governments Contact Committee and the Technical Calculation Committee on Income Settlements (which among other things produces wage statistics). Traditionally only LO and NHO took part in these committees. However in the 1990s also other employers’ organisations and trade union confederations were included as members.

4. Collective bargaining

Legal basis and key issues

In Norway, the social partners have concluded multi-annual “basic agreements” (Hovedavtalen) regularly since 1935, like the one updated every four years between LO and NHO occasionally called a “work charter”. Supplementing the law, these agreements regulate industrial relations (representation and negotiation) and form the first part of all other collective agreements, regulate cooperation between the social partners at central and collective undertaking level (in particular cooperation and codetermination systems) and certain aspects of business organisation and development (health services and work safety, training, the introduction of new technologies, gender equality, etc.).

In Norway, collective bargaining has remained highly centralised and hierarchical. Sectoral and professional collective agreements, usually for a period of two years with a review at the end of the first year, lay down the general conditions of pay, employment, working conditions and, more recently, training. The agreements are concluded separately but negotiated in a coordinated way between the public sector and the private sector and between the different union and employer confederations. These agreements may be supplemented, without being derogated from, by company agreements. The relationship between sector level agreement and supplementary company level agreements are strict hierarchial, sometimes with opening clauses stated in the sector level collective agreement. The aim of the company agreements is to adapt and supplement national agreements, particularly in connection with wages and working conditions. Company level negotiations should be based on the economic situation, results and prospects of the company in question, and within the framework of a peace obligation.

The economic framework set by the agreements in the LO-NHO area (the trend-setting industries) still function as a reference for the sectors that follows on, among others the public sector. The principle of letting the pay increases of the trend-setting industries act as a norm for what can be achieved in other sectors, is seen as imperative for a small open economy like Norway. Public sector unions, especially the professional unions within Unio and Akademikene, have pressed for a revision of this model since they have seen an increasing wage-gap between white-collar employees in the private and public sector. In the last years account has been taken of the fact that within the private sector, white-collar employees on average have had better pay development than blue-collar employees (the LO-NHO groups). The public sector now bargains within an economic framework set by an average of blue- and white-collar employee wage increases, within the trend-setting areas.

Collective agreements legally bind only the signatory parties and there is no general extension procedure. However, in 2005 and 2006 parts of the collective agreements within the construction sector, including
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those covering minimum pay rates, have been extended to cover all employees within the sector. The potential extension of collective agreements in Norway was introduced into the legal framework in 1993. Extension is limited to situations where foreign employees are paid considerably less than Norwegian employees (but an extension will apply to all relevant employees), and the observation of sub-standard wage- and working conditions for posted workers from the new EU-countries lead to the use of extension mechanism. In the public sector (state and municipal sector) the agreements covers all undertakings/subsectors and all employees.

Collective agreements can not be derogated. Individual labour contracts in breach of a collective agreement are invalid. Employers must follow the collective agreement, except from instances where the CA involves an (individual) option. This applies to organised labour directly (follows from membership) and to unorganised indirectly (the employer is not allowed to treat them differently expect if explicitly allowed for - which is extremely seldom). The individual firm is bound on the basis of unionised employees and a demand from the union. Employer association is not necessary (unions can enter an agreement with an individual employer), and member firms are not necessarily bound if they have no unionised employees. Still, affiliation on both sides is the most usual case.

Representativity applies only in the state sector. In the private sector, collective agreements reflect bargaining power. As long as a union has members in a company (usually at least 10 percent of the relevant employees but there are exceptions from this threshold) the union is free to demand a collective agreement. Competing collective agreements are usually avoided, so that all employees in each category can be treated equally. The question of which collective agreement that should be implanted is usually a matter for the parties at the central level, partly though internal regulations or if there are disagreements or uncertainty, the matter will be settled by parties at confederate level (for instance LO and NHO).

Main features

Collective agreement coverage is maximum 70%. It is 100% in the public sector on account of the simple bargaining structure and the decision to apply the agreements to all employees regardless of union affiliation. In the private sector, where there are nearly 400 nationwide agreements, an agreement only binds the signatory organisations and each undertaking, even if it is a member of the signatory employers' organisation, applies it on the basis of the presence of members (occasionally at a certain percentage) of the signatory union organisation. Where an employer applies the agreement, the individual rights also apply to those who are non-unionised but not the collective rights.

Certain employers who are not members of employers' organisations also apply the provisions of existing collective agreements or their own agreements. In all, coverage in the private sector is put at maximum 55%. There are variations between sectors reflecting the level of unionisation.

5. Collective disputes

The Labour Disputes Act (no. 1 of 5 May 1927) governs the peace obligation and methods of negotiation, mediation and arbitration. State sector is covered by “Tjenestetvistloven (Dispute Act in State sector, Law no. 2 of July 18 1958), while the rest of the employees are covered by the labour disputes act. The mediation and arbitration system is essential in the operation of Norwegian collective bargaining and highly respected by the main social players. It is derived from the 1915 Act on Collective Disputes and gained credibility in resolving the disputes of 1928 and 1931; it was institutionalised in the 1935 “basic agreement” and supplemented by the Act on Disputes in the Public Sector in 1958. In the event of a dispute of interests, mediation is compulsory when the parties cannot conclude an agreement; collective action has to be notified to the public mediator, who may suspend it for 10 to 21 days, depending on the sector. The mediator may combine different negotiations, and this is important in order to neutralise any “go it alones” (this possibility is controversial). A compulsory ad hoc arbitration procedure is also used to resolve disputes affecting essential services, particularly in the event of disputes caused by unions in competition with majority organisations. Discussions have been held with a view to replacing compulsory arbitration - which does not comply with the conventions of the ILO – by stricter provisions as regards representativeness in collective bargaining and the triggering of collective measures.
**Strikes**
The “duty of peace” is essential and was instituted at the beginning of the century in Norway. According to this duty of peace, any “dispute of rights” must be resolved by negotiation or by the courts. Hence any strike relating to the content of an agreement during its validity is illegal. A strike or lockout can only be triggered, after negotiation and mediation, in the event of a “dispute of interests”, i.e. when a new agreement is negotiated.

**IV. EMPLOYEES’ REPRESENTATION IN THE UNDERTAKING**

1. **General issues**
There are both statutory and contractual foundations for employee representation in Norwegian enterprises. The overall structure of the participation arrangement is identical in all four major sectors (private, municipal, state and “former state” sector); a Basic Agreement, the law on working environment and sectoral laws covering the peace obligation, methods of negotiations, mediation and arbitration. The state and the municipal sector have in principle each one Basic Agreement covering all workplaces while in the private sector have several Basic Agreements, all stating back to the first one (1935). The different trade unions enter different Basic Agreements with their counterpart, but they do basically cover the same areas and give the same rights and obligations. In addition, in all businesses considered a legal entity in their own right (regardless of ownership or sector), the employees are entitled to demand representation at board level.

However, the level and nature of the different participation arrangement do vary from sector to sector. As an example, in the state sector the right to participate is given to union representatives while the Basic Agreement in private sector gives rights to both union representatives and representatives of the employees. The Work Environment Act poses several possibilities of mixing union rights and employee rights depending on sector.

The various types of employee representatives having prerogatives are:

<table>
<thead>
<tr>
<th>Foundation</th>
<th>Private sector</th>
<th>Public sector</th>
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<tbody>
<tr>
<td><strong>Basic Agreement</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part A:</td>
<td>“Meeting point”</td>
<td>“Meeting point”</td>
</tr>
<tr>
<td><strong>Committee</strong></td>
<td>Employee representative</td>
<td>Employee representative</td>
</tr>
<tr>
<td>Committee</td>
<td>Shop stewards elected by local union branches (clubs) responsible for the day-to-day representation of employees’ interests and partners in bargaining about pay, working hours and working conditions (supplementing central/sectoral collective agreements)</td>
<td>The level of collaboration follows the structure of the company; e.g.</td>
</tr>
<tr>
<td>Committee for group of companies</td>
<td>Group shop steward (konserntillitsvalgt)</td>
<td>Local shop steward vs. local management</td>
</tr>
<tr>
<td><strong>Part B</strong></td>
<td></td>
<td>Middle shop steward vs. middle management</td>
</tr>
<tr>
<td><strong>Part C</strong></td>
<td></td>
<td>Head of the union vs. top management</td>
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<tr>
<td>(Special agreements)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>More than 100 employee bipartite company works’ councils (Bedriftsutvalg)</td>
<td>Employee representatives elected among all employees and all unions</td>
<td>No part B in public sector. No arrangements based in elected among all employees, only qualifying (coverage and membership numbers) trade unions and their shop stewards’ have prerogatives.</td>
</tr>
</tbody>
</table>
| More than 200 employees bipartite “workplace work council” (avdelingsutvalg) | Employee representatives elected among all employees and all unions | As in private sector (stated in “part A”)
| Ac hoc committees | Special’ shop stewards who can be elected as a supplement to the other shop stewards and have specific resources, for example Computer shop steward | |
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<thead>
<tr>
<th>Foundation</th>
<th>Private sector</th>
<th>Public sector</th>
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<tr>
<td></td>
<td>“Meeting point”</td>
<td>Employee representative</td>
</tr>
<tr>
<td>Work environment law</td>
<td>Bipartite working environment committees, dealing with issues of health, safety and working conditions; Compulsory if more than 50 employees at the request of one of the parties if 20 and 50 employees</td>
<td>Elected by and among all employees</td>
</tr>
<tr>
<td>Company law</td>
<td>Company board (single-tier system) If 30 employees: 1 member If 50 employees: 1/3 of board members Company assembly</td>
<td>Board member (equal rights and obligations to shareholder elected members) elected by and among all employees of requested by the employees Member (equal to shareholder elected members) elected by and among all employees</td>
</tr>
<tr>
<td>Other laws</td>
<td>For municipal sector only: Joint “administrative committee” with politicians</td>
<td>Employee representatives appointed by the trade unions.</td>
</tr>
</tbody>
</table>

2. Legal basis and scope

The **LO-NHO Basic agreement** forms the foundation of all basic agreements. The agreement is negotiated every fourth year under the peace obligation. The parties may however bring disagreements into the next collective bargaining round and thus, industrial action may be used. The last negotiation took part in 2005. According to LO, shop stewards and how to increase their knowledge and competence was the main issue.

This Basic Agreement has three parts

- Part A deals with shop stewards (**tillitsvalgt**) (in addition to collective bargaining and conflict resolution), information, co-operation and codetermination procedures and contains supplements on safety delegates and work environment committees (see 3.11). “Shop stewards shall be recognised as representatives and spokesmen of organised employees” (Ha 6-2). They are the mainstay of employee representation in economic areas as well. Together with the other forms of “participation”, they are part of the objective of co-operation and codetermination on which LO and NHO agree in order to jointly enable the development of enterprises and the improvement of working conditions.

- Part B, which applies to industrial and traditional enterprises, forms the “cooperation agreement” (**Samarbeidsavtalen**) and deals with works councils (**Bedriftsutvalg**), departmental councils, committees in groups of companies, the development of skills and responsibilities and joint cooperation and development measures. Works councils are joint and deal chiefly with financial, economic and production issues. They are not entitled to negotiate wages and working hours, or to sign agreements on these issues, which are the prerogative of the shop stewards (Ha §12-10).

- Part C contains “supplementary agreements”, the first of which covers enterprise development, the second technological development, the eighth health and environmental training and the tenth the European works councils and a general agreement on teleworking.
EMPLOYEE REPRESENTATIVES IN AN ENLARGED EUROPE

It is important to note that while the legal framework covers all of Norwegian working life, a substantial part of the private sector is not covered by the participation arrangement stated in the collective agreements and further – both in the private and in the public sector – the level of influence and the level of collaboration and activity in this area vary to a very large extent.

3. Capacity for representation
According to “basic agreements”, notably LO/NHO Basic Agreement (Ha) 1998-2001 and collective agreements, and the Act relating to worker protection and the working environment (L1977/4), “Shop stewards representing the organised employees shall be elected where the enterprise or the employees so demand” (Ha §5-1). In the 2005 Agreement it is specified that if the company alters its company structure in a way that does not comply/match with the way the trade union is organised, the parties should enter a discussion on how to maintain suitable arrangements. There are specific provisions for construction and offshore platforms.

Affiliated industrial and traditional enterprises with over 100 employees (or under 100 employees if one of the parties so requests and the confederations agree) (Ha §12-1 et 1-2) are obliged to have a works council. However, these works councils are not comparable to e.g. German works councils – the far most important arrangements are the provisions in HA § 9.

4. Composition
The number of shop stewards varies according to the number of members of the signatory union and can be adapted by agreement. The figures set out in the LO-NHO Basic Agreement are two shop stewards in enterprises with fewer than 25 union members, three between 26 and 50 union members, four between 51 and 150 union members, six between 151 and 300 union members, eight between 301 and 500 union members, ten between 501 and 750 union members, and 12 shop stewards above 750 union members (Ha §5-2). Elections are organised by local union branches (groups of union members in an enterprise affiliated to the same union, called “clubs”). The LO-NHO Basic Agreement states that shop stewards must be employees of recognised ability, with experience of and insight into the working conditions of the enterprise, not representing the employer and, as far as possible, over 20 years old with two years of service in the enterprise (Ha §5-9). In the 2005 Agreement the following was added (§ 5-2, -3): If a company reorganises or regroups, or the number of employees changes, the parties should enter a discussion on the number of shop stewards. The number of shop stewards should at all time match the number of employees. Elections are for one calendar year. The chairman, vice-chairman and secretary may be elected for two years. A shop steward who leaves the enterprise shall cease to function as such.

Works councils include equal numbers of management and employee representatives. The number of members depends on the total workforce of the enterprise, whatever their trade union affiliation. The figures set out in the Basic Agreement (Ha §12-2) are: six below 100 employees: three management representatives, one representative elected by supervisory, commercial and technical staff and two representatives of manual workers (including the chairman of the shop steward executive committee); ten between 100 and 400 employees: five management representatives, one representative elected by supervisory staff and one by commercial and technical staff, three manual workers’ representatives (including two elected representatives and the chairman of the shop steward executive committee); 14 above 400 employees: seven management representatives, one representative elected by commercial staff, one representative elected by technical staff and four manual workers’ representatives (including two elected representatives, the chairman and another member of the shop steward executive committee). All employees, with the exception of management, are entitled to vote. The election is organised by shop stewards and takes place by groups and by secret ballot (Ha §12-3).

5. Protection granted to the members
Shop stewards benefit from specific protection against dismissal. The minimum period of notice is 12 weeks. The issue must first be discussed with the shop stewards’ executive committee and, in the event of LO’s disagreement, dismissal from the enterprise cannot take place before a judgement has been issued by the Labour Court (Ha §6-11).

The provisions concerning the eligibility criteria and protection of the elected members of the works councils are the same as for shop stewards (Ha §12-5).
6. Working of the body and decision-making

An executive committee formed by a chairman (also called head union representative), a vice-chairman and a secretary is elected by the shop stewards (Ha §5-4). When there are several “clubs” of the same confederation in the enterprise, they may form a committee (committee of shop stewards) and jointly elect a chairman (chairman of shop stewards). (Ha §5-6).

The works council each year elects a chairman and a secretary (and their deputies), representing the management and employees alternately (Ha §12-6).

7. Means

In large enterprises, trade union representatives often carry out their tasks on a full-time basis. According to Ha §6-7, by agreement with the management, shop stewards may hold meetings during working hours. If there are merger, de-merger or major reorganisation plans, the shop stewards of the enterprises concerned may hold joint meetings with the management. Meetings of members to elect shop stewards, vote on proposed collective agreements, or on the proposal of the shop steward committee and with the agreement of the management, tackle issues requiring an immediate decision or of particular importance, are held during working hours.

Shop stewards must “be allowed the necessary time to perform their duties”. At the request of one of the parties, this amount of time and the equipment made available to representatives must be set out in an agreement (Ha §6-6). The time spent in negotiations and the meetings mentioned above must be paid (Ha §6-8). In the case of group committees, the group is also responsible for travel and accommodation costs relating to meetings (Ha §14-2). Shop stewards are free to move around the enterprise or the group’s enterprises on behalf of group representatives (Ha 6-6 et 6-12) and may consult the employer or his representative at any time (Ha §6-2 et 6-3). Training for shop stewards is the responsibility of the confederations (Ha §6-1). The parties may consult their organisation. Shop stewards may consult experts (Sakkyndige) after notifying management. If this expert, in agreement with the enterprise, has the task of examining the accounts, he should have access to the necessary records and information. The expert must not use the confidential information disclosed to him for purposes other than his actual task. Payment of experts depends on enterprise agreements (Ha §9-8), except in cases of dismissal (L1977/4 §56A al2) and of the introduction of new technologies where the rule, if there is no contrary agreement, is that payment is made by the enterprise (Ha suppl. Agr.II).

Ha §12-7, 12-9 and 15, require that meetings of the Works council are held at least once a month unless otherwise agreed by the parties, and extraordinary meetings may be held at the request of one of the parties. The agenda and further documents are prepared by the chairman and secretary, and distributed three days before the meeting. Minutes are drawn up with contradictory points of view if necessary, and distributed to shop stewards and the working environment council. Reports on work are sent to the confederations and employees kept informed. A joint works/departmental council meeting may be held at which the management gives general information and the councils’ work schedule is discussed. This meeting will decide about the frequency of the information meeting for all employees (at least once a year). Apart from the group council and the budget allocated for certain projects (welfare or safety measures), the Basic Agreement does not set out any specific financial resources for works councils. There are, however, detailed provisions on the supply of information and an obligation of secrecy must be observed in respect of information presented as such (Ha §12-8).

8. Role and rights

Shop stewards shall be recognised as representatives and spokespersons of unionised employees (Ha §6-2 and 6-5). Shop stewards and employer representatives are under an obligation to do their best to maintain smooth and peaceful cooperation and must ensure that the obligations arising from legislation and collective agreements are observed. Shop stewards may commit employees on issues concerning all or certain groups of employees, having asked them to vote if they consider it necessary. Shop stewards may deal with, and attempt amicably to settle individual grievances and disputes. Disciplinary action is taken if these contractual clauses are breached and the rules on information and negotiations broken (Ha §9-19).

Shop stewards must be informed and consulted by the management of the enterprise on a regular basis and prior to major decisions. When an enterprise is organised into departments or divisions authorised to
make their own decisions, these prerogatives are likewise exercised at this level (Ha §9-9). Information and consultation meetings with shop stewards may, when necessary, be combined with works council and departmental council meetings (Ha §9-10).

The main task of the works council is to work, through cooperation, for the most efficient production possible and for the maximum well-being of all those who work at the enterprise (Ha §12-8).

**Information**

Information and discussion about the general operation of the enterprise (Ha §9-3): “The management of the enterprise shall discuss with the shop stewards (the executive committee) issues relating to the economic position of the enterprise, its production and development, issues directly related to the workplace and everyday operations, and general payment terms and working conditions in the enterprise. Unless otherwise agreed, discussions shall be held as early as possible, and at least once a month and whenever requested by the shop stewards”.

The accounts of the enterprise shall be submitted to the shop stewards when they so request. The annual financial report shall be submitted to the shop stewards immediately after being adopted. Moreover, the shop stewards shall be allowed to study matters concerning the financial position of the enterprise as and when this is necessary to defend members’ interests (Ha §9-7).

The employer must inform shop stewards of the recruitment of new employees and provide a list of employees and the collective agreement applicable (Ha §9-15). There must also be information about, and discussion of, individual claims and grievances (Ha §6-2), individual redundancies (Ha §10-2), the employment of disabled people (Ha §10-3), recruitment in the year following redundancies (Ha §10-4), and, in the industrial and traditional enterprises, control systems (Ha suppl.agr.V) and the promotion of equal professional status between men and women (Ha suppl.agr.VI).

Financial information shall be provided to the Works council in writing to the same extent as it is given to shareholders in the annual statement submitted to the annual general meeting. When so requested by council members, opportunities shall be provided to examine the accounts at a meeting of the council specified for this purpose. An obligation of secrecy covers this information when required by the management (Ha §12-8).

**Consultation**

Contact meetings with the board of directors and attendance at working groups: each party can request a contact meeting to be held between the board of directors and the shop stewards about matters affecting the enterprise and its employees, notably to allow the shop stewards to present their views to the board of directors (Ha §9-18). Shop stewards must be able to exert their influence on the composition and terms of reference of the working, planning and steering groups set up in the enterprise and the employees concerned about their work (Ha §9-2).

Consultation prior to reorganisations of operations, production and redundancies (Ha §9-4): “The management of the enterprise shall discuss the following matters with the shop stewards (executive committee) as soon as possible:

- important reorganisations for employees and their working conditions, including important changes in production systems and methods,
- employment issues, including plans to increase or reduce employment.”

Before decisions are adopted concerning the employment and working conditions of employees, the enterprise shall invite shop stewards to present their views. If the management finds it impossible to take their views into account, it shall state its reasons. Minutes shall be kept of these discussions and shall be signed by the parties [...] (Ha §9-6). Shop stewards must also be informed of the reasons and any resulting legal, economic and work consequences for employees (Ha §9-6).

Shop stewards must also be consulted before giving notice of lay-offs, which may be as much as six months (Ha §8).
In the case of mass redundancy (masseoppsigelser), defined as the redundancy of 10 employees over a period of 30 days, the legal provisions of L1977/4 §56A establish the consultation (drofting) of shop stewards, at decision-making level, in order to reach an agreement on the possibilities of avoiding redundancies or mitigating their consequences, supplying written information (Informasjon) to shop stewards on the expected redundancies (reason, number and categories concerned, normal workforce, time-scale, selection criteria, etc.). Plans that the trade unions consider contrary to the contractual provisions and the redundancy plans that do not respect the seniority principle for reasons that the shop stewards do not consider justified are suspended pending the outcome of negotiations held as soon as possible between the LO and NHO. (Ha §9-6 and 9-12). In the event of failure to comply with this duty to inform and consult shop stewards, the employer must pay two or three months’ wages, depending on the case, to employees who are made redundant (Ha §9-11).

The shop stewards must be kept informed, trained and be able to take part in the introduction and modification of work organisation systems (L1977/4 §12.3). In the case of technological change in industrial and traditional enterprises, information accessible without special knowledge must include long-term plans and any experiments and research carried out. Shop stewards must be able to intervene upstream before choices are made. A special shop steward (computer shop steward) may be elected for these issues and plans intended to enhance the participation of employees and their representatives on technological issues are promoted by the confederations (Ha suppl.agr.II).

Reports on the activities of the enterprise and any existing production plans in the short term must be provided to the works council and discussions must take place at the earliest opportunity to enable the council to deliver its opinion early enough to influence the final decision. If these matters are to be dealt with by the board of directors or corporate assembly of the enterprise, the council’s statement shall be included with the relevant documents, unless lack of time has made it impossible to obtain such a statement. The management shall deal as quickly as possible with matters on which the works council has given an opinion and shall inform the council of its decision at the first meeting after a decision has been made.

Bargaining

Shop stewards are authorised to conduct negotiations with the employer (Ha §6-2 et 6-4).

These negotiations take place in particular to conclude or renew enterprise agreements (special agreements) concerning pay and working conditions (Ha §4). They also cover working hours (L1977/4 chapX) and, in industrial and traditional enterprises, the introduction of individual pay systems based on work assessments (Ha suppl.agr.IV), performance-related pay after a prior time and motion study (involvement of special stewards: time and motion study shop stewards - Ha suppl.agr.III) and agreements on equal professional status between men and women (Ha suppl.agr.VI).

The works council is also responsible for promoting rationalisation and drawing up vocational training plans. It may administer and establish welfare and safety measures.

9. Other representation bodies

The adoption in 1977 of the law on the working environment established safety delegates and work environment committees. The so-called psychosocial work demands (§ 12 in the old act) (which required that the employers took responsibility for creating workplaces where individual employees have direct participation, autonomy, variation and contact with their colleagues) attracted a lot of attention both in national and international research. In 2001 LO initiated a complete examination of the law and a committee with all three social partners was set up. However, much to LO (and the other trade union confederations) discontent, the right wing government presented a new law which – in the opinion of the trade union – undermined employee and trade union rights on behalf of the employers. The most controversial changes in the “Act relating to working environment, working hours and employment protection, etc - The Working Environment Act” were subsequently amended, last by Act of 21 December 2005 no 121) and then reversed when a left-wing Government re-entered office in 2005.

Section 7-1 of the Work Environment Act requires the enterprise to establish work environment committees. Undertakings which regularly employ at least 50 employees shall have a working environment committee on which the employer, the employees and the safety and health personnel are represented. Working environment committees shall also be formed in undertakings with between 20 and
50 employees when so required by any of the parties at the undertaking. Where working conditions so indicate, the Labour Inspection Authority may decide that undertakings with less than 50 employees shall establish a working environment committee. The employer and the employees shall have an equal number of representatives on the committee. Representatives of the employer and of the employees shall be elected alternately as chairman of the committee. The representatives of the occupational health service on the committee shall have no vote. When votes are equally divided, the chairman shall have the casting vote. The employee representatives in the committee are elected by and among all employees. However, it is possible for other cooperative bodies in the undertaking to act as the working environment committee.

In **groups of enterprises**, representation at group level is established in an agreement using one of three formulae (*Ha §5-7 and 14-1)*:

- a coordinating shop stewards committee, formed by the chairmen of the local shop steward committees, when the enterprises of the group have a joint collective agreement,
- a (joint) committee where the representatives of workers and other groups are able, at least once a year, to discuss matters of common interest with representatives of the management of the group and enterprise,
- another appropriate form of cooperation.

In the absence of agreement, the decision is taken at the top level of the organisation. In groups of over 200 employees, the shop steward of one of the constituent organisations may be elected by the group’s representatives as group shop steward. This delegate has all the rights and prerogatives of shop stewards (*Ha §14-3*).

Consultation at group level (*Ha §9-17*): If plans for expansion, reductions or restructuring are likely to have a significant impact on employment in several enterprises of the same group, the group management must, at the earliest opportunity, discuss these issues with a coordinating committee of shop stewards. These discussions must also take place concerning the financial position of the group, its production and development. Shop stewards must be given the opportunity to present their views before the group management makes its decision. If the group management finds it impossible to take these views into account, it shall state its reasons for not doing so. Minutes of the discussions shall be kept and shall be signed by both parties.

In enterprises with over 200 employees having independent departments authorised to make their own decisions, departmental councils may be established under the terms set out in a local agreement. The departmental council has similar prerogatives to the works council, notably consultation on plans and budgets, but information is limited to the department. The works council therefore deals with issues of general interest (*HA chap. XIII*).

Representation at group level (*Konsern*) is by agreement using one of three formulae (shop stewards coordinating committee, joint committee or other method of cooperation) with group stewards. This group council then has the economic and financial prerogatives of the works council and shop stewards for issues affecting the group as a whole (*HA chap. XIV*).

A joint council may be established and composed partly of people elected according to the rules for works councils and partly of people elected according to the rules for working environment councils, without modifying the prerogatives of either category.

**European Works Councils**

Provisions on European Works Councils are found in the Supplementary Agreement X in the Basic Agreement (*Agreement on European Works Councils or equivalent procedures for information/consultation*).
10. Protection of rights

“Dispute of rights” (breaches of collective agreements or disagreements on the interpretation of the provisions given by such agreements) can be taken to the Labour Court. The parties will first try to reach agreement by bringing in the central level parties. The (private sector) basic agreements also state that material breaches of the rules concerning information, cooperation and codetermination may be subjects to fines (Basic Agreement LO-NHO §9-19). No such cases have so far been taken to the Labour Court. The basic agreements also define the rights and duties of employers and shop stewards (for instance Basic Agreement LO-NHO Chapter VI), including a special protection with regard to reductions, reorganisation and lay-offs. The basic agreements also regulate the working conditions of shop stewards.

11. Codetermination rights

Codetermination rights in the sense that the social partners have equal rights are only found when the collective bargaining processes take place, when both parties are entitled to use legal strike as their instrument. Other than that, only in the Basic Agreement in the state sector (§13) the right to negotiate as equals are stated. However, in addition (see below), the employees are entitled to elect members of the company board – and these members have the same rights and obligations as the shareholder elected members of the board. “True” codetermination concerning company matters is therefore only found at board level.

IV. EMPLOYEES’ REPRESENTATION IN CORPORATE BODIES

Norwegian companies have a one-tier system. Employee representation in company bodies (Styrerepresentation) is regarded as a positive component of the system of dialogue and cooperation in the enterprise and does not cause controversy. A Fafo-report from 2005 (Hagen 2005) found that both managers and the representatives themselves regarded the arrangement as an important tool for improving the board activity and for improving collaboration between the social partners connected to collective agreements. This effect was particularly important when the employee representatives also held the position as a shop steward.

Legal basis

If the company is regarded as a legal entity in its own, most companies are covered either by the Joint Stock Companies Act of 1972 and other similar laws for different types of company and corresponding regulations. The passing of the law in 1972 ended a long and loud dispute, but ever since the arrangement seems to have gained support. However, representation is not compulsory, but has to be demanded by the employees or trade unions at company level. Recent figures (Hagen 2005) show that only approximately half of the companies covered by the different laws actually have employee representatives at board level.

The law applies to all companies with over 30 employees (average over the last three financial years) except press and fishery companies, consumer cooperatives and foreign shipping companies for which the rules are contractual. In companies with over 200 employees, there are provisions on corporate assemblies. There are specific provisions for banks, financial companies and insurance companies.

Composition

A corporate assembly (bedriftsforsamling) composed of a number of members divisible by three and having 12 or more members must be established in companies with over 200 employees. Two thirds of its members and deputies are elected by the general meeting of shareholders and one third by employees. For the establishment of the corporate assembly, all employees are eligible to vote apart from members of the management and employers with over 10% of the capital. The elected representatives must have been employees of the enterprise for at least one year. However, due to the fact that the vast majority of Norwegian companies have less than 200 employees and the fact that a majority of employees or unions representing two thirds of employees may conclude an agreement dispensing with a corporate assembly, this arrangement is of less importance to the employees than the regulations ensuring employee representation at board level.
In enterprises with 30 to 50 employees, two thirds of employees may request that a director, an observer and deputies are elected by and from among employees. In enterprises with over 50 employees, the majority of employees may request that one third of directors and their deputies are elected by and among employees. If an agreement implies not having a corporate assembly, the employees are entitled to elect an additional employee director and a deputy (or two observers) to the board of directors.

In the case of a group (based on shareholder interests or joint management), the majority of employees or unions representing two thirds of employees may demand board representation at group level, using the same regulations as in a single company.

The decision regarding how the group is defined and what companies to include is taken by a national “industrial democracy monitoring committee” made up of employee representatives, employers and legal experts: Bedriftsdemokratinemnda. Unless otherwise stated, the term of office must not exceed four years (L1976/59 §8-2, 8-19, 8-23).

**Functions**

Due to on-going changes in the public sector in Norway, (heavily influenced by New Public Sector recommendations), the number of legal entities, fully or partly owned by either the state or municipals, have increased considerably, especially since 2000. These companies, partly covered by the Company Act and partly by special law, do include employee representatives at board level, using the Company Law regulations when designing the arrangement. However, some of the companies may include employee representatives even if the number of employees does not exceed 30. During the last negotiations concerning the LO-NHO Basic Agreement, the right to one week training (with no loss in salary) for employee representatives was confirmed. This shows that even if the trade unions have no formal role in the board arrangements, the right to board level representation is an important and integrated part of the Norwegian participation arrangement. A Fafo-study shows that approximately half of the employee representatives also serve as shop stewards. Both the representatives themselves as well as the CEOs express their satisfaction with this mixture.

The right to employee representation at board level is not controversial in Norway. Instead the subject of women directors has completely dominated the debate. This issue is important when employee participation is concerned, because it places restrictions on the employees’ right to elect representatives and thus limits the possibility of electing shop stewards as board representatives, especially in the male-dominated part of Norwegian Industry. The law, stating that each sex should have at least 40% of board members was passed Parliament in 2003. However, due to serious difficulties fulfilling the requirement, the final date was set to 1.1.08. The law covers all companies owned by state or municipalities and public limited companies. The law as such does not cover joint stock companies. Concerning employee representatives, if two or more representatives are elected, both sexes must be represented. The same apply to deputy members. However, the rules do not apply if more than 80% of the employees are male or female. The number of each sex is counted individually for both shareholders elected and employee elected board members, on account of the fact that the two election processes are independent of each other.

Norway has adopted the directive on European Companies/Cooperative Societies. The Norwegian legislation concerning board level representation may thus functions as a tool for introducing representation for foreign workers when SE-companies are formed and registered in Norway. However, due to the limited number of SE-companies, no conclusion can be drawn here.

**V. EMPLOYEE INVOLVEMENTS IN DECISIONS AFFECTING THE ENTERPRISE**

**Recovery and bankruptcy procedures**

If an enterprise plans to cease trading, the possibility of continuing production, perhaps in the form of a takeover by the employees, must be discussed with shop stewards (the executive committee),” (Ha §9-8).

In the event of closure, recovery or bankruptcy, the shop steward must continue in his or her job for as long as possible (Ha §6-11).
As preventative action, employee representatives are able to obtain information and take action in the event of the enterprise finding itself in difficulty:

- in their representational role in the bodies; and
- as part of the process of cooperation in which the shop stewards and works councils are involved, notably through financial and economic information, prior consultation about major projects, reorganisations and plans to close down all or part of the activity, redundancies and technical unemployment measures.

**Operations affecting shareholders**

Since 1995 ([L1977/4 chap.XIIA](#)), the law has stipulated that shop stewards must be consulted on transfer projects (*overføring*): information on the reasons, legal, economic and social consequences, the measures anticipated with regard to employees, consultation of shop stewards about these measures in order to reach agreement.

The Basic LO-NHO Agreement also deals with these issues: “The management of the enterprise shall, as soon as possible, discuss the following issues with the shop stewards (the executive committee): mergers, sales, closures of all or part of the activity, or reorganisations of the legal form of the activity. (Ha §9-5).

The shop stewards must be informed of the reasons and consequences that may arise for employees legally, economically and with regard to employment (Ha §9-6). A meeting must be organised between shop stewards and the new owners about the transfer and continued application of the collective agreement (Ha 9-5).

If mergers, separations or major reorganisations are planned, the shop stewards of the enterprises concerned may, in agreement with the management, hold joint meetings with no deduction of wages.

“In the event of a change in the shareholders of a private limited company, the shop stewards shall be informed as soon as the management has accurate information on this matter, when the buyer:

- acquires over 10% of the shares or acquires shares to which are attached over 10% of the voting rights in the enterprise; or
- becomes the owner of over one third of the shares or of shares representing over one third of the voting rights.

The management shall ensure that buyers inform employees of their intentions as quickly as possible (Ha §9-16).

Employee representatives generally have an opportunity to obtain information and take action on changes in the shareholders:

- in their representational role in the bodies; and
- as part of the process of cooperation in which the shop stewards and works councils are involved, notably through financial and economic information, prior consultation about major projects, reorganisations and plans to close down all or part of the activity.

**State aid**

In a non-specific manner, employee representatives have the opportunity to obtain information and take action on public aid:

- through the continuing processes of dialogue and cooperation between the State and the trade union and employer organisations;
- in their representational role in the bodies; and
as part of the process of cooperation in which the shop stewards and works councils are involved, notably through financial and economic information, prior consultation about major projects, notably with regard to investment.
POLAND

Poland regained its independence in 1918 only to be overrun by Germany and the Soviet Union in World War II. It became a Soviet satellite state following the war, but its government was comparatively tolerant and progressive. Labour turmoil in 1980 led to the formation of the independent trade union "Solidarity", which over time became a political force and by 1990 had swept through parliamentary elections to take the presidency. A "shock therapy" program during the early 1990s enabled the country to transform its economy into one of the most robust in Central Europe, but Poland still faces the lingering challenges of high unemployment, an underdeveloped infrastructure, and a poor rural underclass.

Solidarity suffered a major defeat in the 2001 parliamentary elections when it failed to elect a single deputy to the lower house of Parliament, and the new leaders of the Solidarity Trade Union subsequently pledged to reduce the trade union's political role. Poland joined NATO in 1999 and the European Union in 2004. With its transformation to a democratic, market-oriented country largely completed, Poland is an increasingly active member of Euro-Atlantic organisations. Public administration is divided into central and regional administration (self-government). There are 16 provinces or voivodships, 380 districts or poviats and 2,478 municipalities (gminas).

I. ECONOMIC AND SOCIAL CONTEXT

Some basic economic data

Poland has steadfastly pursued a policy of economic liberalisation since 1990 and today stands out as a success story among transition economies. In 2006, GDP grew by 5.8%, based on rising private consumption, a 16.7% jump in investment, and burgeoning exports. The Polish economy, with GDP growth of 3.2% in 2005, is developing much faster than the Euro zone (1.3%) and higher than the average of all 25 EU members (1.5%). GDP growth for the second quarter of 2006 was 5.5%. Poland's growth has been driven to a significant extent by export growth, industrial production and investments. If the economic situation of a country can be illustrated by the growth of GDP per capita, Poland has the best GDP growth rate per capita in the region. In fact, Polish GDP per capita roughly equals that of the three Baltic States. In addition, consumer inflation prices are stable. Consumer price inflation – at 1.3% in 2006 – remains among the lowest in the EU. Average annual inflation in 2005 was only 2.1%. In March 2006, consumer prices fell by 0.1%.

Poland also has a thriving private sector which created more than 300,000 new jobs during 2006 alone. Since 2004, EU membership and access to EU structural funds has provided a major boost to the economy. Inflows of direct foreign investment exceeded $10 billion in 2006 alone – and more than $100 billion since 1990 – with major investments being announced by foreign firms in computers, consumer electronics, and automobile component production.

Despite Poland's successes, more remains to be done. Agriculture is handicapped by inefficient small farms and inadequate investment. Restructuring and privatisation of the remaining state-owned industries, especially sensitive sectors such as coal, oil refining, railways, and energy transmission and generation, have stalled due to concerns about loss of control over critical national assets and lay-offs.

Reforms in health care, education, the pension system, and state administration have failed so far to reduce the government budget deficit, which was roughly 2.7% of GDP in 2006. Further progress in public finance depends mainly on reducing losses state enterprises, restraining entitlements, and overhauling the tax code. The previous Socialist-led government introduced a package of social and administrative spending cuts to reduce public spending by about $17 billion through 2007, but full implementation of the plan was trumped by election-year politics in 2005.

Labour market
The most recent evolution of the Polish labour market can be described by the following table.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total population (000)</th>
<th>Total employment (000)</th>
<th>Population in employment aged 15-64</th>
<th>Employment rate (% population aged 15-64)</th>
<th>FTE employment rate (% population aged 15-64)</th>
<th>Self-employed (% total employment)</th>
<th>Part-time employment (% total employment)</th>
<th>Fixed term contracts (% total employment)</th>
<th>Activity rate (% population aged 15-64)</th>
<th>Total unemployment (000)</th>
<th>Unemployment rate (% labour force 15+)</th>
<th>Youth unemployment rate (% labour force 15-24)</th>
<th>Long term unemployment rate (% labour force)</th>
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Employment is concentrated in services, and has fallen in industry and agriculture.

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<th>Employment in Industry (% total employment)</th>
<th>Employment in Agriculture (% total employment)</th>
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Unemployment varies significantly from province to province.

The level of female economic activity is lower than male economic activity. Two thirds of the economically inactive population are women.

II. INDUSTRIAL RELATIONS

1. Legal basis and key issues

According to article 20 of the Constitution of The Republic of Poland (2 April 1997) a social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and
cooperation between social partners, is the basis of the economic system of the Republic of Poland. The Republic of Poland will protect ownership and the right of succession. Expropriation may be allowed solely for public purposes and for just compensation (article 21). Limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons (article 22). The basis of the agricultural system of the state is the family farm. This principle shall not infringe the provisions of Articles 21 and 22. Work is protected by the Republic of Poland. The state exercises supervision over the conditions of work (article 24).

The freedom of association in trade unions, socio-occupational organisations of farmers, and in employers' organisations is ensured. Trade unions and employers and their organisations have the right to bargain, particularly for the purpose of resolving collective disputes, and to conclude collective labour agreements and other arrangements. Trade unions have the right to organise workers' strikes or other forms of protest subject to limitations specified by statute. For protection of the public interest, statutes may limit or forbid the conduct of strikes by specified categories of employees or in specific fields. The scope of freedom of association in trade unions and in employers' organisations may only be subject to such statutory limitations as are permissible in accordance with international agreements to which the Republic of Poland is a party (article 59). The rule of tripartism is regulated in the Act on Tripartite Commission for Socio-Economic Issues and provincial social dialogue commissions, 6 July 2001.

Everyone has the freedom to choose and pursue his occupation and place of work. Exceptions are specified by statute. An obligation to work may be imposed only by statute. The permanent employment of children below 16 years of age is prohibited. The types and nature of admissible employment is specified by statute. A minimum level of remuneration for work, or the manner of setting its level, is specified by statute. Public authorities pursue policies aimed at full, productive employment by implementing programmes to combat unemployment, including the organisation of and support for occupational advice and training, as well as public works and economic intervention (article 65).

Everyone has the right to safe and hygienic conditions of work. The methods of implementing this right, and the obligations of employers, are specified by statute. An employee has the right to statutorily specified days free from work as well as annual paid holidays; the maximum permissible hours of work are specified by statute (article 66).

A citizen has the right to social security whenever incapacitated for work by reason of sickness or invalidity or having attained retirement age. The scope and forms of social security are specified by statute. A citizen who is involuntarily without work and has no other means of support has the right to social security, the scope of which is specified by statute (article 67). The state, in its social and economic policy, takes into account the good of the family. Families, finding themselves in difficult material and social circumstances – particularly those with many children or a single parent – have the right to special assistance from public authorities. A mother, before and after birth, has the right to special assistance from the public authorities, to the extent specified by statute (article 71).

2. Social partners
Social dialogue as a particular form of a debate on social interests has become one of the principles of the Republic of Poland. The legal basis of social dialogue was defined in the Constitution: “A social market economy based on the economic activity’s freedom, private ownership and solidarity, dialogue and co-operation of social partners, enacts the basis of the economic system of the Republic of Poland.”(article 20 Polish constitution).

Article 59 of the Constitution states that the freedom of association in trade unions, socio-occupational organisations of farmers, and in employers’ organisations shall be ensured. Trade unions and employers and their organisations have the right to bargain, particularly for the purpose of resolving collective disputes, and to conclude collective labour agreements and other agreements. Trade unions have the right to organise workers’ strikes or other forms of protest subject to limitations specified by statute. For protection of public interest, statutes may limit or forbid the conduct of strikes by specified categories of employees or in specific fields. Moreover, the scope of freedom of association in trade unions and in employers’ organisations may only be subject to such statutory limitations as are permissible in accordance with international agreements to which the Republic of Poland is a party.
According to the Constitution (art. 58) the freedom of association shall be granted to everyone. Associations whose purpose or activities are contrary to the Constitution or statutes are prohibited. The courts adjudicate on whether to permit an association to register or to prohibit an association from such activities. The statutes will specify the types of associations requiring court registration, a procedure for such registration and the forms of supervision of such associations.


Trade unions

Trade unions play a special role among social organisations and associations, in particular due to the Independent Self-governing Trade Union “Solidarity” (Niezależny Samorządy Związków Zawodowych “Solidarność” – NSZZ “Solidarność”).

Trade unions in Poland

There are three trade union organisations representative within the meaning of the Act on Tripartite Commission for Socio-Economic Affairs and provincial social dialogue commissions of 6 July 2001:

- The Independent Self-governing Trade Union “Solidarity” (Niezależny Samorządy Związek Zawodowych “Solidarność” – NSZZ “Solidarność”) is a trade union federation founded in September 1980 as a result of worker protests and established on the basis of the Gdańsk Accords signed on 31st August 1980 by the Inter-enterprise Strike

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36 Journal of Law No. 100, item 1080 with amendments
37 Journal of Law 2001, No. 79 item 854 with amendments
38 Journal of Law No. 55, item 235 with amendments
39 Journal of Law No. 55, item 236 with amendments
40 Journal of Law No. 99, item 1001 with amendments
Committee and the Government Commission. It was the first non-communist trade union in Poland. NSZZ Solidarność represents 722,000 workers, 4.35% of the total unionized workforce in Poland (11-13%). Its membership includes a wide range of professions, for example, managers, administrators and professional staff as well as scientists and technicians; full-time and part-time workers; pensioners/retirees, school students in factory-run vocational schools doing sub-contracting work for factories, or receiving vocational training in such schools. According to union data Solidarity unites 900,000 members. “Solidarity” is a member of the International Labour Organization, the European Trade Union Confederation, and the International Confederation of Free Trade Unions. In addition, Solidarity is represented in the Union Advisory Committee at the OECD.

The All-Poland Alliance of Trade Unions (Ogólnopolskie Porozumienie Związków Zawodowych – OPZZ) is a left-wing Polish trade union federation. OPZZ was established by national trade unions and trade union associations on 24 November 1984 on the basis of the 1982 Trade Union Act. The mission of OPZZ is stated as the defence of social and worker’s right of the trade unions. OPZZ has strongly supported the demands of the state-owned industry sector. OPZZ associates 90 national trade union organisations (uniform trade unions and federations) grouped in 12 branches. OPZZ is a member of the International Labour Organization. Since 2006 OPZZ has been affiliated to the European Trade Union Confederation and the International Trade Union Confederation.

The Trade Unions Forum (Forum Związków Zawodowych – FZZ) is a national trade union center in Poland. It held its first congress in April 2002 in Warsaw and the second in April 2006 in Zegrze near Warsaw. FZZ has about 400,000 members. FZZ includes 27 trade union organisations which represent in particular policemen, nurses, midwives and a various kind of transport.

In Poland there are many nationwide (300) trade unions and federations of trade unions (273), as well as regional trade union organisations (23,995). As well as the organizations mentioned above, there are also unions of farm workers.

Employers’ organisations

Under article 1 of the Act of 23 May 1991 on Employers Organisations employers have the right, without prior authorisation, to found organisations of their choice as well as to join them, on condition that they observe their statutes.41

The employers’ organisation shall be founded by a resolution passed at a founding meeting by at least ten employers. The meeting which passed the resolution is obliged to adopt a statute and elect a founding committee composed of at least three people. The employers’ organisation is subject to compulsory registration in National Court Register.

The protection rights and representation interests, including economic interests, of associated members in relation with trade unions, authorities and bodies of governmental administration as well as territorial self-government bodies were recognised as the main tasks of employers’ unions, federations and confederations.

The Act on Employers’ Organisations prescribed the entitlements which are vested in representative employers’ organisations:

- the right to pass opinions on proposals for and drafts of legislation within their scope of activity (Article 16);
- the right to pronounce opinion on consultative documents of the European Union, in particular white papers, green papers and communications, as well as draft legislation of the European Union within their scope of activity (Article 16); and
- the right to apply for adoption or amendment of legislation within their field of activity (Article 16).

Under the rules specified in separate regulations, employers’ organisations have the right to conduct collective negotiations and enter into collective agreement as well as other agreements within the scope their statutory activities.

41 According to provisions of the Labour Code of 26 June 1974 (Journal of Law from 1998, No. 21, item 94 with amendments) an employer is an organisational unit, even if it does not have legal identity, as well as a natural person who employs employees (the article 3).
Employers’ organisations

- The Confederation of Polish Employers (Konfederacja Pracodawców Polskich (KPP)) is the largest and the oldest employers’ organisation in Poland. It was established in November 1989. Today, the Confederation represents nearly 6,000 companies, ranging from small enterprises to the largest companies in Poland. The majority of them are private companies (82%). The main purpose of their activity is to represent employers’ interests to the government, public authority and social partners.

- The Polish Confederation of Private Employers Lewiatan (Polska Konfederacja Pracodawców Prywatnych “Lewiatan” (PKPP Lewiatan)) was established in January 1999 to represent employers at national level to the state and trade unions. Today it is an organisation of 55 sectoral and regional associations of private employers and 13 individual members. There are about 3,000 companies employing over 600,000 workers. Each association is an autonomous organisation that associates individual enterprises, each possessing its own statute and management. PKPP Lewiatan runs its own office and employs professionals experienced in a wide range of issues such as: labour relations, macroeconomics, small and medium-sized enterprises sector, and the European Union. PKPP Lewiatan is a member of BusinessEurope (Union of Industrial and Employers’ Confederations of Europe).

- The Polish Craft Association (Związek Rzemiosła Polskiego (ZRP)), craft chambers and guilds are organisations of the craft economic self-government acting according to the Law on Crafts of 22 March 1989 - amended by the Law of 26 July 2001 as well as their own statutes. The craft co-operatives are economic organisations acting according to the Law on Co-operatives and their own statutes. Within the structure of the Polish Craft Association there are 483 guilds, 27 craft chambers including 26 regional ones and one branch chamber. The Polish Craft Association is a member of the European Association of Craft, Small and Medium-sized Enterprises (UEAPME).

- The Business Centre Club (Business Centre Club – Związek Pracodawców (BCC-ZP)) was founded in 1991 as a multilevel organisation supporting enterprises in Poland. BCC is an elitist business club which affiliates over 1,200 companies (chiefly private-owned), represented by close to 2,000 entrepreneurs jointly controlling PLN 120 billion ($30 billion) in capital and employing 600,000 people. BCC also affiliates lawyers, journalists, scientists, publishers, physicians, members of the military and students. It concentrates on lobbying activities aimed at furthering the growth of the Polish economy, curbing unemployment and assisting entrepreneurs. BCC has members in 249 cities. It is an international organisation with links to institutions in the EU, the U.S., Russia and Canada.

3. Joint bodies

The most important social dialogue institution is the Tripartite Commission for Socio-Economic Affairs. The willingness to establish the Commission was expressed in the “Pact of national entrepreneurship in the transformation process”, signed on February 6th, 1993. The Commission was to create a common platform in order to formulate opinions on the matters concerning the direction of and tools of socio-economic policy of the state – being a forum of just and responsible dialogue between social partners and the government.

On July 6th, 2001 the Sejm (Polish parliament) passed the “Act on Tripartite Commission for Socio-Economic Affairs and on provincial social dialogue commissions”, which defines its framework, organisation, competencies and activities. The Commission is composed of representatives of the main national administration bodies as well as trade unions and employers’ organisations, who are the signatories of the “Pact of national entrepreneurship...”. It has acted in such a legal form for almost 8 years. The Tripartite Commission is composed of representatives of government, employees’ and employers’ parties.

The other institutions of social dialogue are voivodship social dialogue commissions (vsdc). Their legal basis is Act of 6 July 2001 on Tripartite Commission for Socio-Economic Affairs and on provincial social dialogue commissions, as well as the resolution of the President of the Ministers’ Council from 22 February 2002 on provincial social dialogue commissions (Journal of Law No. 17, item 157).

The commission is composed of the representatives of:

- the province –the governmental party;
- representative trade unions - the employees’ party;
- representative employers’ organisations –the employers’ party; and
• the marshal of the province – the self-government.

**Tripartite Branch Committees** (TBC) are institutions of social dialogue, acting under the Tripartite Commission for Socio-Economic Affairs. The main purposes of their activity are the problems of particular branches relating to privatisation and reorganisation. There are 12 TBCs.

**The Commission for Collective Agreements** is composed of representatives of government, the Main Inspector of Work, representative employees’ and employers’ parties. The Commission supports collective negotiations and helps the parties by concluding collective agreement.

### 4. Collective bargaining

**Legal basis and key issues**

Whenever the Labour Code refers to the labour law, it means the provisions of the Labour Code and the provisions of other acts of law and secondary legislation specifying the rights and duties of employees and employers, as well as the provisions of collective agreements and other collective arrangements based on the Acts of law, rules and statutes specifying the rights and duties of the parties to the employment relationship. The provisions of collective agreements and collective arrangements or rules and statutes cannot be less favourable to employees than the provisions of the Labour Code or other acts of law and secondary legislation. The provisions of rules and statutes cannot be less favourable to employees than the provisions of collective agreements or collective arrangements. The provisions of collective agreements and other collective arrangements based on the Acts of law and rules and statutes specifying the rights and duties of the parties to the employment relationship that violate the principle of equal treatment in employment are invalid.

A multi-establishment collective labour agreement, referred to as the “multi-establishment agreement”, is made between, on the part of employees by a statutory body of a multi-establishment trade union organisation, and on the part of employers by a statutory body of an employers’ organisation – on behalf of employers united in that organisation. If a multi-establishment trade union organisation representing employees for whom a multi-establishment agreement is to be made, is united in an association (federation) of trade unions or a nationwide confederation of trade unions, only that multi-establishment trade union organisation is authorised to make the agreement.

A nationwide confederation of trade unions shall participate in negotiations and sign a multi-establishment agreement on behalf of its member multi-establishment trade union organisations representing employees for whom the agreement is to be made, and which became representative organisations referred below, only when requested to do so in writing, with specification of reasons, by at least one of the remaining multi-establishment trade union organisations negotiating the agreement. The organisation that received the request cannot refuse to negotiate – a refusal results in the loss of the right to represent all the organisations that were to be represented by the organisation that received the request for the purpose of a given multi-establishment agreement.

If the employers’ organisation for those employers who are to be covered by the multi-establishment agreement is united in a federation or confederation, the right to make the agreement belongs to the organisation of which those employers are direct members. The right to initiate the procedure for the conclusion of a multi-establishment agreement belongs to the employers’ organisation authorised to sign the agreement on behalf of employers, and also to each multi-establishment trade union organisation representing employees for whom the agreement is to be concluded.

If the employees for whom the agreement is to be concluded are represented by more than one trade union organisation, negotiations relating to the conclusion of the agreement are carried out by joint representation or separate trade union organisations acting jointly. If, within the time limit specified by the initiator of a multi-establishment agreement, not shorter than 30 days from the day on which the initiative of the conclusion of agreement was made known, some trade union organisations do not join negotiations in accordance with the procedure specified above, only those trade union organisations that have so far joined the negotiations are entitled to continue them. The negotiations are conducted in accordance with the procedure specified above.
The condition for carrying out these negotiations is the participation of at least one representative of a multi-establishment trade union organisation referred to below. If a multi-establishment trade union organisation is established before a collective agreement is signed, it has the right to join the negotiations. The multi-establishment agreement is concluded by all trade union organisations that negotiated that agreement or at least by all representative trade union organisations referred to below that participated in negotiations.

A representative trade union organisation is a multi-establishment trade union organisation which is representative within the meaning of Act on Tripartite Commission for Socio-Economic Issues and provincial social dialogue commissions; or consists of at least 10% of the total number of employees to whom its statute applies, but not less than ten thousand employees; or consists of the largest number of employees for whom the multi-establishment agreement is to be concluded.

A multi-establishment trade union organisation can apply for confirmation of its power to representation to the Circuit Court in Warsaw, which decides within 30 days after the submission of the application, in accordance with the provisions of the Code of Civil Procedure on non-litigious proceedings. If a nationwide confederation of trade unions is confirmed as being representative, the national trade union organisations and associations (federations) of trade unions united by it shall become representative at law. Upon a joint request of the employers’ organisation and the multi-establishment trade union organisations that entered into a multi-establishment agreement, the Minister responsible for labour affairs may extend the applicability of the whole or a part of that agreement to the employees employed by the employer:

- who are not covered by any multi-establishment agreement: and
- who carry out business activities identical to or similar to those carried out by employers covered by that agreement, specified on the basis of separate regulations on the classification of activities,

In the event of a merger or division of a trade union organisation or an employers’ organisation who concluded a multi-establishment agreement, its rights and duties are subrogated by the organisation established as a result of that merger or division. In the event of dissolution of an employers’ organisation or all trade union organisations that are parties to a multi-establishment agreement, the employer may stop applying the whole or a part of the multi-establishment agreement on the expiry of a period equal at least to the period of termination of the agreement, by giving a relevant notice in writing to the other party to that agreement.

A collective labour agreement, the “establishment agreement”, is made between the employer and the establishment’s trade union body. The right of initiation of the procedure to conclude an establishment agreement belongs to the employer and to any trade union organisation in the establishment. If the employees for whom the establishment agreement is to be concluded are represented by more than one trade union organisation, negotiations relating to the conclusion of the agreement are conducted by their joint representation or different trade union organisations acting jointly.

If, within the time limit specified by the initiator of an establishment agreement, not shorter than 30 days from the day on which the initiative about conclusion of the agreement was made known, some trade union organisations do not join negotiations in accordance with the procedure specified above, only those trade union organisations that have joined the negotiations are authorised to continue them. The negotiations are conducted in accordance with the procedure specified above. The condition for these negotiations is the participation of at least one representative trade union organisation referred to below. If a trade union organisation is established before an agreement is signed, it shall be entitled to join the negotiations.

An establishment agreement is made by all the trade union organisations that participated in the negotiations of the agreement or at least all the establishment’s trade union bodies referred to below, that participated in the negotiations. A representative establishment’s trade union body shall be a trade union organisation which is an organisational unit or member organisation of a multi-establishment trade union organisation recognised as representative within the meaning of Act on Tripartite Commission for Socio-Economic Issues and provincial social dialogue commissions, provided that its members represent at least 7% of employees, or at least 10% of employees. If none of the establishment’s trade union bodies satisfies these requirements, a representative establishment’s trade union body shall be the organisation having the largest number of employees as its members. In calculating the number of employees who are members of the trade union organisation, only those employees who were members for at least six months before the beginning of negotiations of an establishment agreement are included. If the employee is a
member of several trade union bodies, he or she may only be counted as a member of the one indicated by him or her.

Before signing an establishment agreement, the establishment’s trade union body may lodge its written objections to the members negotiating that agreement, as to the fulfilment of representativity criteria by another trade union organisation. The employer also has the right to object. In this event, the trade union body objected to, can apply to a district court – the labour court having jurisdiction over the registered office of the employer – for confirmation of its representativity. The court decides within 30 days of the submission of the application, in accordance with the provisions of the Code of Civil Procedure relating to non-litigious proceedings.

The provisions of an establishment agreement cannot be less favourable for employees that the provisions of the multi-establishment agreement that applies to them. In consideration of the financial situation of the employer, the parties to an establishment agreement may agree on suspension of applicability of the whole or a part of that agreement with a given employer, as well as the multi-establishment agreement or one of them, for a period no longer than three years. If the employer is covered only by one multi-establishment agreement, the arrangements relating to the suspension of applicability of that agreement or certain provisions may be reached by the parties authorised to make the establishment agreement.

The arrangement referred to above must be registered in the register of establishment agreements or multi-establishment agreements, as appropriate. Further, the parties to the arrangements must make the suspension of applicability known to the parties of the agreement. To the extent and for the period specified in these arrangements, the terms of a contract of employment or other instruments serving as the basis for the establishment of an employment relationship, arising from a multi-establishment agreement and establishment agreement, do not apply at law. An establishment agreement may cover more than one employer if those employers form the same legal person.

Negotiations of an establishment agreement shall be conducted by an appropriate body of the legal person; and all the establishment’s active trade union bodies active. If the establishment’s trade union bodies belong to the same association, federation or confederation, the body designated by that association, federation or confederation is authorised to negotiate. In the event of a merger of establishment’s trade union bodies, where at least one of those organisations signed an establishment agreement, their rights and duties shall be subrogated by the organisation established as a result of merger. In the event of dissolution of all trade union organisations that signed an establishment agreement, the employer may stop applying the whole or a part of that agreement on the expiry of a period of time equal at least to the period of termination of the agreement.

Main features

In 2005, collective labour agreements extended to a total of 119,604 employees. The downward tendency in the number of collective agreements concluded also seems set to continue. Of the 220 single-employer collective agreements recorded in 2005, 152 had been concluded following the termination of previous ones; in other words, almost 70% of collective agreements were continuations of previous ones, and only 30% were entirely new ones.

As at late 2005, as well as the single-employer collective agreements, there were 165 multi-employer agreements, which are tracked by the Minister of Labour. In January 10, 2007 there were 166 multi-employer agreements, but only 137 of them were in force. The register of agreements covers about one million employees of around 4,350 employers.

According to the data released by the National Labour Inspectorate (Państwowa Inspekcja Pracy, PIP) in the past two years, it is increasingly seldom that collective agreements include provisions more favourable to employees than the minimum stipulated in labour laws. Of the 220 in-house collective agreements registered in 2005, 27 included more favourable provisions on remuneration for overtime than the Polish Labour Code, 45 more favourable provisions on remuneration for work on Sundays and statutory holidays, and 65 more favourable provisions on remuneration for night time work. As regards aggregate working time, only two agreements provided for longer recreational leave than the minimum required under the Labour Code. For employees performing particularly onerous or dangerous tasks, 14 collective agreements guaranteed extra leave and 13 agreements shorter working times. Four collective agreements guaranteed periods of notice for employment termination in excess of the statutory minimum, and one agreement provided for shorter working times.
The majority of collective agreements provided for anniversary awards and for severance benefits for retiring employees and for ones quitting work for health reasons in excess of the minimum stipulated by employment law.

It is becoming an established trend to simplify the rules governing remuneration, with the effect that all extras and bonuses (for instance, bonuses recognising duration of employment or work in noxious conditions) are being eliminated as stand-alone benefits and incorporated into the basic salary. The remuneration schemes now being adopted by Polish employers are geared at motivating employees to work more effectively and efficiently. Accordingly, the remuneration plans are increasingly likely to incorporate elements such as commissions tied to actual performance or profits.

Much as in previous years, the collective agreements regulated, first and foremost, remuneration terms for employees (remuneration systems, pay package components and their value) and the principles governing acquisition and collection of additional work-related benefits (anniversary awards, severance benefits for employees leaving on account of age or poor health, ‘golden handshakes’, annual bonuses and the like). Some collective agreements also extended certain benefits to retired employees (in-kind benefits such as free coal deliveries, free transportation, etc). Others extended benefits to family members of employees killed in accidents at work (funeral costs, special posthumous benefits).

It was relatively common for collective agreements to deal with social matters and with health and safety at work (details concerning meals at work and personal protective equipment for example). Some agreements dealt with further training for employees, hiring procedures and execution of employment contracts, and with human resource policies (including employee assessments and promotions).

The parts of collective agreements dealing with the mutual obligations of the employer and employees typically laid the groundwork for relations between the employing entity and the in-house union organisations, ranging from practical issues (provision of office space and/or infrastructure to the unions) to procedural ones (dispute settlement).

5. Collective disputes
The main regulation of collective disputes is in the Act on solving collective labour disputes, of 23 May 1991, with further amendments. A collective dispute originates on the day that the party representing employee interests notifies the employer of demands concerning conditions of work, wages or social benefits as well as union rights and freedoms of employees or other groups of people who have the right to found trade unions, if employer does not accept all the demands within a period specified in the demand, not less than three days. The notification determines the subject of the demands covered by the dispute. The party who initiates the dispute may warn that in the case of non-acceptance of the demands, a strike will be declared. The strike may not begin before the expiry of 14 days from notification. If the course of the mediation justifies the belief that it will not lead to a settlement of the dispute before the expiry of these time periods, the organisation that initiated the dispute may conduct a warning strike but only once, and for a time limit of no longer than two hours.

The employer begins negotiations immediately in order to settle the dispute by an agreement, while notifying the competent regional labour inspector that a collective dispute has occurred. Negotiations end upon the signing of an agreement by the parties, and where no agreement is reached, by drawing up the records of differences indicating the position of each party. If the party which initiated the dispute sustains its demands, the parties conduct the dispute with the assistance of an impartial person, the "mediator". A mediator is agreed upon by the parties to the collective dispute. The mediator may be a person from a list from the minister competent for labour issues in agreement with representative trade union organisations and employers' organisations.

If the parties to the collective agreement do not reach agreement on the mediator within five days, further proceedings are conducted with the participation of a mediator indicated, on a proposal of one of the parties, from the list referred to above.

If in the course of the proceedings the mediator ascertains that the settlement of the dispute requires detailed or additional establishments connected with the subject of the dispute, they shall so inform the parties. If in connection with the demand covered by the dispute it is necessary to examine the economic and financial situation of the establishment, the mediator may propose appropriate expertise. The establishment pays the costs of the expertise, unless the parties decide otherwise.
If the measures referred to above have been taken, the mediator may request that the trade union organisation postpones the date of the strike if this may have an effect on the settlement of the dispute.

The mediation proceedings end with an agreement signed by the parties, and when no agreement is reached, with drawing up the records of differences indicating the positions of the parties. These acts are carried out with the participation of the mediator. The lack of an agreement settling the collective dispute entitles a strike to be commenced.

The party to the collective dispute representing the interests of employees may attempt to settle the dispute by submitting it to a social arbitration committee, instead of exercising the right to strike. A dispute affecting one establishment is submitted to the Social Arbitration Committee of a provincial court, which comprises a labour and a social insurance court. A dispute affecting more than one establishment is submitted to the Social Arbitration Committee of the Supreme Court. The committee is composed of a presiding judge, appointed from among the judges by the presiding judge of the court, and six members, of whom three are appointed by each party. The parties should endeavour to appoint people who are directly not affected by settlement of the dispute. The presiding judge of the court assigns the date of the session without delay and informs the parties to the dispute or their representatives, of this date. If the settlement of the dispute requires special knowledge, the committee may seek the advice of experts. The decision of the committee is taken by a majority vote. The decision is binding, unless any party decides otherwise before submitting the dispute to the committee. The Council of Ministers determines by regulation detailed procedures to be followed before the social arbitration committee.

**Strikes**

According to article 17 Act on solving collective labour disputes, a strike is a collective work stoppage by employees for the purpose of settling a dispute concerning conditions of work, wages or social benefits as well as union rights and freedoms of employees or other groups of people who have the right to found trade unions.

A strike is the last resort and may not be declared without having previously exhausted all possibilities for settlement of the dispute in accordance with the rules of mediation and arbitration. The strike may be declared without observance of these rules when the illegal acts of an employer prevented negotiations or mediation, or when the employer has terminated the employment contract with the trade union representative responsible for leading the dispute. When taking the decision on declaring the strike, the party representing the employees’ interests shall ensure that demands are commensurate with the losses that the strike will entail. Participation in a strike is voluntary.

Any work stoppage because of the strike that constitutes a hazard to human lives or health or to state security is prohibited. Strikes are prohibited at the Agency of Internal Security, the Intelligence Agency, in units of the Police, Armed Forces of the Republic of Poland, Prison Service, Frontier Guard, Custom Service as well as units of the fire brigades. People employed in state authorities, government and self-government administration, courts and public prosecutor's offices, do not have the right to strike.

A strike in the establishment is declared by the trade union organisation after approval by the majority of voting employees, where at least 50% of employees employed in the establishment participated in voting. A multi-establishment strike is declared by the trade union organisation after approval by the majority of voting employees in each establishment in which the strike is to take place, where in each of these establishments at least 50% of employees participated in voting. At least five days advance notice of the strike must be given.

During the strike, the management of the establishment shall not be prevented from performing duties and exercising rights in relation to employees who do not take part in the strike; nor from ensuring the protection of the property of the establishment and the continued operation of the structures, equipment and installations, the interruption of which could constitute a threat to human life or health or to the resumption of the normal activity of the establishment. The leaders of the strike shall cooperate with the management of the establishment to the extent necessary to ensure the protection of the property of the establishment and the continued operation of the structures, equipment and installations referred to above.
In order to defend the rights and interests of workers who do not have the right to strike, the trade union of another establishment may declare a solidarity strike not exceeding half a working day. Participation in a strike organised in compliance with the provisions of the Act on solving collective disputes shall not constitute a breach of the employee's duties. During the strike organised in compliance with the provisions of this Act, employees retain their right to social benefits, as well as to other rights arising from the employment relationship, with the exception of the right to remuneration. The length of the work stoppage is calculated on the basis of the length of employment in the establishment. Trade unions decide on the formation and use of strike funds. In order to defend the rights and interests of employees, after the procedure of negotiation has been exhausted, forms of protest other than strike that do not endanger human life or health, and do not involve a work stoppage, can be authorised. Employees who do not have the right to strike are entitled to the above right. Farmers have the right to protest action in forms determined by farmers’ trade unions.

There is no provision for lock-out in Polish labour law.

III. EMPLOYEES’ REPRESENTATION SYSTEM IN THE UNDERTAKING

1. General issues

There is a mixed system of employee representation in Poland. It is because only the biggest trade union organisations are entitled to set up works councils. Where they exist in establishments, they have the right either to set up works councils by themselves or to appoint candidates for members of the works council. This regulation means that in practice works councils are an extension of the trade union and at the same time they are bodies directly linked to the trade union in single-channel representation.

Where there are no trade union bodies at the establishment, members of the works council are elected by employees from candidates appointed by employees themselves. This means that besides trade union bodies there will also be an independent works council – dual-channel representation.

Polish labour law does not use the terms "undertaking" or "workplace", but uses the term employer. Therefore the Act on informing and consulting obliges employers with at least 50 employees to create a works council. No matter how many undertakings one employer has, there will always be one works council at one employer.

Apart from the trade unions, there are several forms of employee representation in Poland:

- employees’ self-government which exist in state-owned enterprises;
- works council set up for information and consultation reasons;
- work safety and hygiene commission; and
- that set up in certain specific situations, where there are no trade union bodies at the employer’s establishment.

Because of the fact that works councils have been established recently, it is difficult to describe their relationship with trade unions. The relationship will mostly depend on the way the works council is established and this also determines whether a council is dependent of the trade union or not. A conflict between employee representatives can occur particularly when a works council is established by general elections.

A division of competences is not clear. Article 28 Act on trade unions gives a trade union a right to information and consultation, similar to the one of works councils. A solution can be found in article 5 Convention 135 of the International Labour Organisation on Protection and Facilities to be Afforded to Workers, from 1971. According to this article, if in the same undertaking there are both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade
unions concerned or their representatives, and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives.

2. Legal basis and scope
The legal basis for the existence of trade unions is the Act on trade unions, from May 23, 1991. According to article 26, an establishment trade union organisation shall have the right to:

- adopt a position on individual employee matters within the scope regulated by labour law provisions,
- adopt a position towards the employer and workers’ self-government authority on matters regarding collective rights and interests of employees,
- maintain control over the observance of provisions of the labour law within the establishment, in particular safety and health rules and regulations,
- manage activities of the social labour inspection and cooperate with the state labour inspection; and
- take care of living conditions of old age pensioners and disability pensioners.

The legal basis for employees’ permanent representation at workplace level is the Act on Information and Consultation of Employees, dated April 7, 2006 (Act on informing and consulting). Passage of this Act is a consequence of the transposition of Directive 2002/14/EC of 11 March, 2002 into the Polish legal system. There was no regulation regarding employees’ permanent representation in Polish labour law until the Act on informing and consulting was adopted. Employee representation according to the Act on informing and consulting is called “the works council”. According to article 1 item 2 of this Act, the setting up of a works council is the obligation of employers who carry on economic activity and have at least 50 employees (until 23 March 2008, it was at least 100 employees).

According to article 1 item 3 Act on informing and consulting this Act has no effect in state-owned enterprises where employee self-government has been established, mixed enterprises, with at least 50 employees and state-owned film institutions. Instead, the right to receive information and hold consultations belongs to the employee self-government.

3. Capacity for representation
According to article 30 of the Act on trade unions if there is more than one trade union organisation operating in the establishment, each of them shall protect the rights and represent the interests of its members. An employee who is not a trade union member has the right to protect their rights under the same rules applicable to trade union members if the trade union organisation selected by that employee agrees to protect his employee rights.

4. Composition
Article 3 item 1 of the Act on informing and consulting states that the works council is comprises of three members where there are 50 to 250 employees, five members from 251 to 500 employees and seven members if there are more than 500 employees. There can be some modifications to the number of members. Given the fact that each trade union organisation, according to article 3 item 2, has the right to elect at least one member of the works council, there can be a situation where the number of trade union organisations is larger than the number of members of the works council as specified above. In such a situation, each trade union organisation has the right to elect one member of the works council where the number of unions is bigger than the number of council members.

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42 According to article 1 Act of July 10, 1985 on mixed enterprises, mixed enterprise can be established in the way of connected different kind of common property in order to develop joint economic activity and effective use of common property and scientific-technological inventions.
Article 7 of the Act on informing and consulting regulates the procedure to decide the number of works council members. The employer’s staff levels are determined on the basis of the average number of people employed on an employment contract in the last six months prior to the date of notification of the election of the works council members. Where the enterprise has been operating for less than six months, the numbers of employees in the subsequent months is added, and divided into the relevant number of months. All employees are counted, including those on temporary contracts and those working less than full time. According to article 7 item 2 of the Act on informing and consulting the only exceptions are young adults.

The Act on informing and consulting provides two ways of establishing works councils. The first way is to establish a works council through trade unions. Where at a particular employer one trade union organisation operates, the management board of the organisation shall elect members of the works council and notify the employer (article 4 item 1 point 1 Act on informing and consulting). This regulation means that works councils are in practice an extension of the trade union. Where at a particular employer more than one trade union organisation operates, the organisations shall jointly elect members of the works council and notify the employer. The rules for the appointment and operation of the works council are set out by trade union organisations by mutual agreement. In the event of a failure to reach the agreement above within 30 days of the commencement of negotiations, the trade union organisations shall notify the employer and the members of the works council are elected by employees from among the candidates submitted by trade union organisations following the rules specified in articles 9 and 10 of the Act on informing and consulting. Any costs incurred in connection with the election and operation of the works council are borne by the trade union organisations.

According to article 4 item 4 of the Act on informing and consulting, members of a works council at an employer at which no trade union organisation operates are elected, depending on the employer’s staff levels, as follows:

1. for an employer with up to 100 employees – members of the works council are elected by employees from among the candidates submitted in writing by a group of at least 10 employees; and
2. for an employer having more than 100 employees – members of the works council are elected by employees from among the candidates submitted in writing by a group of at least 20 employees.

The works council is dissolved and the mandate of its members expires following the lapse of six months from the date on which the employer at which no trade union organisation has operated, is notified in writing of the establishment of a trade union organisation and of the number of members of the organisation who are its employees. An election of members of the works council is held by the employer when there is a written request of a group representing at least 10% of employees. The employer notifies the employees of the date of the election and the deadline for the submission of candidates for membership of the works council. This shall be made no later than 30 days prior to the election date. The deadline for the submission of candidates for members of the works council shall be 21 days. The works council referred to in article 4 item 4 of the Act on informing and consulting is dissolved and the mandate of its members expires following the lapse of six months from the date on which the employer at which no trade union organisation has operated, is notified in writing of the establishment of a trade union organisation and of the number of members of the organisation who are its employees. These provisions do not apply if the term of office of the works council expires within less than 12 months. Any costs incurred in connection with the election and operation of the works council through this procedure are borne by the employer.

According to article 9 of the Act on informing and consulting, passive voting rights are vested in all employees who have been employed by an employer for an uninterrupted period of at least one year, unless the employer has conducted its activity for a shorter period of time. The employment period includes the period of employment at a previous employer if the change of employer was pursuant to article 231 of the Act of 26 June 1974 – Labour Code (hereinafter “Labour Code”), and in other cases if, pursuant to separate regulations, the new employer became the party to the existing employment contract by operation of law. An employee who is the sole person in charge of an establishment or their deputy, a member of a collective body which manages the establishment, a chief accountant, a legal counsel or a juvenile worker cannot vote.
The election of members of the works council is conducted by an electoral committee, and is direct and held by secret ballot. It is valid if at least 50% of people employed by the employer have cast their vote. Where less than 50% of employees have cast their vote during the election, a re-election is held after 30 days of the election and is deemed valid irrespective of the number of employees casting their vote. The candidates who receive the largest number of votes become members of the works council. Where candidates for members of the works council receive an equal number of votes and the number of vacancies is smaller than the number of candidates, the members of the works council are re-elected by employees from among these candidates.

According to article 11 of the Act on informing and consulting the term of office of members of the works council is four years.

5. Protection granted to the members

According to article 32 of the Act on trade unions, without the consent of the board of the establishment trade union organisation, the employer cannot terminate the employment relationship either with or without notice of:

- a member of the board of the establishment trade union organisation referred by name in the board resolution;
- any other employee who is a member of the establishment trade union organisation entitled to represent the organisation before the employer, or the authority or a person who performs activities in the area of the labour law on behalf of the employer,

nor unilaterally change working or pay conditions to the detriment of the employee referred to unless separate regulations provide for this. This protection is available for the period specified in the resolution of the board and for an additional period corresponding to half of the period specified by the resolution, but not longer than one year.

According to article 17 of the Act on informing and consulting, an employer may not terminate the employment contract with an employee who is a member of the works council throughout the latter’s term of office, unless the works council consents to this. The employer may not unilaterally change any terms and conditions of work or pay to the disadvantage of an employee who is a member of the works council throughout the latter’s term of office, unless the works council consents, except for cases when it is allowed under the relevant provisions of other Acts. An employee who is a member of the works council has the right to take a leave of absence, while retaining their right to receive remuneration, for such time as is necessary to participate in the carrying out of the tasks of the works council which cannot be carried out outside working hours, unless they take a leave of absence for any other reason. This protection lasts only during membership of the works council, i.e. from the day of being elected to the first meeting of a newly elected works council. Membership in the works council expires upon termination or expiry of the employment contract, resignation of membership or dismissal by the trade union organisation.

Regulations concerning the protection of works council members against notice to terminate or termination of the contract, do not apply if the employer declares bankruptcy or is under liquidation (article 41 Labour Code). In the case of collective redundancies, members of the works council are still protected against notice to terminate or termination of the contract. The employer can only terminate the condition of work or payment, but can not lower remuneration.

In the case of a breach by an employer, article 17 of the Act on informing and consulting sets out that an employee with a contract of employment for an indefinite period, may, in conformity with article 45 of the Labour Code, request the labour court to declare the notice of termination ineffective, demand reinstatement, or demand compensation. An employee hired on a temporary contract can only demand compensation.

The Act on informing and consulting adopted a rule commonly applied in Polish law to protect representatives of employees. The same rules concern members of trade unions (art. 32 Act on trade unions), where a consent of the board of the establishment trade union is needed to terminate the employment relationship with a protected member of the trade union.
The situation is similar with the European Works Council (article 37 of the Act on European Works Councils), members of the special negotiating body, representatives body and employees of the management body of a European joint-stock company (article 116-117 Act on European Joint-stock Company) as well as members of a special negotiations group representative body and employees of the administrative board of a European Cooperative Society (article 96-99 Act on European Cooperative Society). In these cases, an agreement to dismiss a protected employee is given by the company trade union organisation representing him, and if the employee is not represented by any trade union – they cannot be dismissed without the agreement of the regional labour inspector.

The basic difference between the protection of members of the works council and the protection of other employee representatives, is that the protection of other representatives lasts a year after their term of office, while protection of works council members lasts only during their term of office.

6. Working of the body and decision-making

Article 11 item 3 of the Act on informing and consulting says that the works council shall appoint the chairperson from its members and adopt its rules and regulations. The issue of decision-making is regulated by the rules adopted by the works council.

Means

The costs of elections and the activity of the works council are covered by those who established it (article 6 Act on informing and consulting). Where the council is established by employees in a general election from the candidates presented by employees, all the costs are covered by the employer. If a council is established by a trade union or through general elections from the candidates chosen by the union, all the costs of election and council’s activity will be covered by the union. The Act on informing and consulting does not define cost coverage. Both doctrine and practice show these costs are usually: accommodation, technical equipment i.e. computer, telephone, fax (including maintenance payments), office materials, etc. Any costs related to the works council’s election are the expenses necessary to provide the proper conditions for the elections to be conducted: impartiality, in secrecy and generality.

According to article 17 of the Act on informing and consulting, member of a works council can be given paid release from work for a period necessary to participate in the meetings of the works council, which cannot be done after working hours. Members of works councils cannot be released from work where they are already released on another basis e.g. membership in a trade union (article 32 Act on trade unions).

Release is given by the employer. It means that the employee cannot leave his place of work arbitrarily to fulfil his duties in a works council. The employee can demand to be released, but he can be released only under the control of the employer or his representative. When the employer does not want to release the representative from work or he postpones his decision, it can be regarded as discrimination or obstruction of the council’s activity and regarded as a misdemeanour – according to article 19 of the Act on informing and consulting.

The right to be released from the obligation of performing work for the term of office in the board of the establishment trade union organisation is granted to:

- one employee for a number of hours per month equal to the number of members employed in the establishment if their number is below 150;
- one employee if the trade union has between 150 to 500 members employed in the establishment;
- two employees if the trade union is from 501 to 1000 members;
- three employees if the trade union is from 1001 to 2000 members employed; and
- one more employee for each new thousand if the establishment trade union has more than 2000 members;

Depending on the request of the board of the establishment trade union organisation, the release from performing work shall be granted with or without the right to remuneration. The Council of Ministers shall specify, by regulation, the procedure of release from performing work and the scope of rights assigned to the employee during the release. An employee has the right to be paid release from work to
perform a casual activity resulting from their union function if such an activity cannot be performed during their free time.

According to article 15 of the Act on informing and consulting, the works council can use the help of experts. A works council does not need the agreement of the employer to decide whether to appoint an expert. The decision to appoint an expert is made by the council in accordance with its regulations. If the regulations do not cover this, an expert is appointed by the decision of the majority of members. Experts are obliged not to disclose any confidential information of the company. The costs of experts’ help are covered according to article 6 of the Act on informing and consulting and are compensated by those who established the council. According to article 5, item 5, if a works council is established by a trade union or from candidates chosen by the union, the council together with the employer can settle different rules of cost coverage for necessary expertise.

7. Role and rights
The Polish legislator gave the works council and employer the right to freely form their relationship by common agreement. The works council agrees with the employer upon the rules and procedure for the communication of information and undertaking of consultations; the procedure for the settlement of disputes; the rules for the distribution of costs incurred in connection with the election and operation of the works council appointed, including of costs incurred in connection with the commissioning of necessary expert opinions; and the rules for the distribution of costs incurred in connection with the commissioning of necessary expert opinions. It may also agree upon the number of members of the works council other than the one specified in article 3 item 1, which, however, may not be less than three; upon rules for the distribution of costs incurred in connection with advisory services provided to the work council by people with specialist knowledge; and on rules for the granting of leave of absence to members of the works council depending on the employer’s staff levels.

These arrangements should provide for a framework for information and consultation of employees that is no less favourable than the one laid down in the Act, and that takes into account the interests of the employer and employees. In the event of a failure to make these arrangements, the relevant provisions of the Act apply.

Information
According to article 13 item 1 of the Act on informing and consulting the employer shall provide the works council with information on:

1. recent and probable development of the employer’s activities and economic situation;
2. the situation, structure and probable development of employment, and on any measures envisaged with a view to maintaining current staff levels; and
3. measures likely to lead to substantial changes in work organisation or in contractual relations.

According to article 13 item 2 the employer must provide information if any changes are anticipated or action is planned, or upon a written request by the works council. It means that the council can demand information on the matters above whenever necessary. The works council has also the right to demand further information during consultation. The employer must provide the information at such time, in such way, and with such content, as is appropriate to enable the members of the works council to acquaint themselves with the subject matter, and analyse the information.

The works council may pass its opinion, which requires approval of the majority of members and each member of the works council may pass their dissenting opinion which should be presented. The council’s opinion is not binding and employer does not have to act in conformity with it.

Consultation
According to article 14 of the Act on informing and consulting, the employer consults the works council on the following matters:

- recent and probable development of the employer’s activities and economic situation:
• the situation, structure and probable development of employment; and
• on any measures envisaged with a view to maintaining current staff levels state.

Consultation takes place at such time, in such a way and with such content as are appropriate to enable the employer to take action in the subject matter of consultation. Consultation should be held at the relevant level of management and representation, depending on the subject under discussion. On the basis of information supplied by the employer, opinion formulated by the works council and, where applicable a dissenting opinion of a member, should be taken into consideration. The works council should have the right to meet the employer and obtain a response, and the reasons for that response, to any opinion it might formulate. Consultation should end by reaching an agreement between the works council and the employer. It should be mentioned that the Act does not foresee what should be done when an agreement cannot be reached. It seems the decision will then be taken by the employer.

The works council and the employer shall hold consultation in good faith, taking into account the interests of both parties.

According to article 16 of the Act on informing and consulting, the works council and the experts which help it shall be obliged not to disclose any information obtained in connection with the carrying out of their tasks, that constitute business secrets and has been expressly provided to them by the employer in confidence. The confidentiality obligation in respect of the information obtained shall continue to apply even after the expiry of their term of office, but not longer than for a period of three years. In specific cases, the employer shall not be obliged to communicate information to the works council when the nature of that information is such that, according to objective criteria, it would seriously harm the functioning of the undertaking or establishment, or would be seriously prejudicial to it.

8. Other representation bodies

In Polish labour law there is only one kind of common employees representation established on specific issues. It is called the work safety and hygiene commission. According to article 23712 paragraph 1 of the Labour Code, an employer employing more than 250 employees shall set up a work safety and hygiene commission (“the BHP commission”), as an advisory and opinion-giving body. It shall consist, in equal proportions, of the employer’s representatives, including the employees of the BHP service and the physician providing preventive medical care to employees, and the employees’ representatives, including the public labour inspector.

The task of the BHP commission is to survey working conditions; periodically evaluate the level of work safety and hygiene; give opinions on measures for prevention accidents at work and occupational diseases taken by the employer; to offer suggestions concerning the improvement of working conditions; and to cooperate with the employer in the fulfilment of the latter’s duties as regards work safety and hygiene.

In connections with carrying out these tasks, the BHP commission can use analyses and opinions of external specialists, where agreed with the employer; to offer suggestions concerning the improvement of working conditions; and to cooperate with the employer in the fulfilment of the latter’s duties as regards work safety and hygiene.

According to article 23712a of the Labour Code, employee representatives in the BHP commission are elected by the establishments’ trade union bodies, and where there are no such bodies at the employer’s establishment, by the employees according to the procedure adopted in the employing establishment.

There is only one form of union representation above-enterprise level in Poland. There is neither regulation concerning the creation of common bodies representing employees at above-enterprise level, nor does regulation March 23, 2008 give the possibility of activity at this level for the workers councils. There are no obstacles for members of workers councils to meet informally, for example to exchange experiences, but they do not have any competency to act together towards the employers.

9. Protection of rights

According to article 19 item 1 of the Act on informing and consulting any person who: prevents the establishment of a works council; does not provide the information about employee levels; does not hold or obstructs the election of members of the works council; does not inform or consult the works council
EMPLOYEE REPRESENTATIVES IN AN ENLARGED EUROPE

on matters specified in the Act, or obstructs consultation; or discriminates against any member of the works council in connection with their carrying out of tasks related to information and consultation, shall be liable to a penalty of restricted liberty or a fine.

If, in the length of election period and even after the expiry of this term, but not longer than for a period of three years, any member of the works council, or any expert who assists it, discloses any data which has been expressly provided to them by the employer in confidence, will be liable to a penalty of restricted liberty or a fine. This offence shall be prosecuted at the request of the employer as the aggrieved party.

Proceedings in cases referred to above are conducted under the Act of 24 August 2001 – Code of Proceedings in Cases Prosecuted as Minor Offences. In cases referred to in article 19.1, a labour inspector shall act as the public prosecutor.

IV. EMPLOYEES’ PARTICIPATION IN CORPORATE BODIES

In Polish labour law, employees’ representation in corporate bodies as well as the employees involvement in external decision that affect the undertaking exists only in state-owned enterprises. According to article 30 Act on state enterprises of 25 September 1981, the bodies of a state enterprise are: the general meeting of employees (delegates), employee council and the director of the enterprise.

Composition and functions
The general meeting holds its sessions at least two times a year. General meetings have entitlements to (article 10): adopt statutes at the direction of the enterprise’s director; pass resolutions in case of split profit destined for the staff; evaluate annually the operation of the employees’ council and enterprise’s director; pass resolutions concerning plans for the enterprise; pass resolutions at the direction of the employees’ council. The general meeting also has the right to pass opinion in all cases linked with the enterprise. The employees’ council comprises 15 members, but statues may set another number of members. Members of the employees’ council are elected by all employees. The term of office of members of the employees’ council is two years.

The role of the employees’ council is (art. 24):

- setting up and changing the enterprise year plan;
- accepting a yearly report and balance sheet;
- passing resolutions on investments;
- giving agreement for establishing or acceding to holding company or other organisational structures set by law, or purchasing its stocks (shares), as well as passing resolutions on leaving or resolving these structures and selling its stocks (shares);
- giving agreement to give back the fixed assets of an enterprise to a legal person or individual to use the assets in a form set by civil law;
- passing resolutions on joining or dividing enterprises;
- passing resolutions to build enterprise housing;
- passing resolutions on changing the activity of the enterprise;
- passing resolutions on division of funds that remain at the enterprise’ disposal and ways to use them;
- giving agreement to dispose fixed assets being used by enterprise and to give donations;
• deciding on entering, as a corporate member, social organisations;
• passing resolutions on clubs of technique and rationalisation; and
• passing resolutions to conduct a referendum in an enterprise; and choosing a representative to
  the council of enterprises association.

Employees’ councils also have the right to pass resolutions on the appointment and recall of the director
of the enterprise and other managers according to the Act on state enterprises. Employees’ councils have
also right (article 25, 27, 28) to:

- pass opinion in all cases linked with the enterprise and the management of the enterprise;
- object to initiatives, proposals and remarks in all cases linked with the enterprise; and
- control all activity of the enterprise, particularly rational management of enterprise
  property. According to article 29 of this Act, employees’ councils hold sessions at least
  once a quarter.
PORTUGAL

The Portuguese system of industrial relations has undergone far-reaching changes in the last thirty years as a result of:

- The establishment of democracy in 1974 following the end of the regime of Salazar, which radically changed the whole economic, social and political foundation of industrial relations; and
- Economic changes with a renewal of structures marked by the entry into the European Community (1986) of a country with major regional disparities and facing the social challenge reflected by a lower standard of living than the other European countries.

In this context, employees’ representation in undertakings was introduced in its current form fairly recently, after the 1974 revolution, through union representatives at the workplace and workers’ committees.

As regards industrial relations, the system is predominantly centralised. Nevertheless, specific legal provisions and collective agreements exist for the Autonomous Regions of Madeira and Azores. Both islands have specific administrative and legislative powers according to the Constitution (arts. 227-228). The legislative power depends on the existence of a specific regional interest. However, in relation to the approval of the recent Labour Code, legal literature considered that the Autonomous Regions had not the possibility of legislating on the subjects regulated by the Labour Code given that it was qualified as an Act from the general Republic43.

I. ECONOMIC AND SOCIAL FRAMEWORK

Some economic data

Economic structures continue to lag behind those of the rest of Europe despite a gradual convergence which has significantly slowed since 2002. The Portuguese economy has grown at an average rate over the last few decades, although in recent years GDP growth has been decreasing. Low points were experienced in 1983 (-0.2%), 1984 (-1.8%), 1993 (-1.4%) and 2003 (-1.1%)44.

GDP annual growth rate between 1981 and 2005

<table>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>GDP growth (%)</td>
<td>4.8%</td>
<td>2.6%</td>
<td>2.8%</td>
<td>2.1%</td>
</tr>
</tbody>
</table>

Source: Banco de Portugal (Portuguese Central Bank)

Average labour productivity45 grew from 68.7% (1995) to 72% in 1999 and 2000, but in 2005, it had decreased to 65.3% (estimate). The low productivity levels might be related to the nature of investment in physical capital, the low level of human resource qualifications, the accumulated deficit of education and training, the low level of dissemination and use of new technologies, flaws connected to strategic and organisational elements and the informal nature of the economy46.

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44 Livro Verde sobre as relações laborais, Ministério do Trabalho e da Solidariedade Social, 2006, p. 39.
45 Determined according to the ratio between the GDP and the employed population.
46 Livro Verde sobre as relações laborais, cit., pp. 42-43.
Productive structure

Small and micro-undertakings occupy a leading position. According to DGEEP\(^{47}\) data from 2003, 93.2% of establishments had less than 20 employees. Also 97.7% of the undertakings had less than 50 employees, employing 56.4% of workers, and 64.5% have four or less employees. Undertakings with 100 or more employees are only 0.9% of the total number, although they employ 33.7% of workers. Finally, undertakings with 500 or more employees make up only 0.1% and employ 16.7% of the workers\(^{48}\).

There are, however, some major public and private groups, especially in the energy, telecommunications and banking sectors.

The employment rate in the service sector has been increasing, reaching 57.5% of the employed population in 2005. Conversely, agricultural employment has decreased by about 20%. The industrial sector remains with about 30% of the employed population. However, between 1998 and 2005, manufacturing sector employment decreased at an annual average rate of 2.3%, namely in the textiles industry where it reached an annual average rate of 4.5%.

Labour market

The most recent evolution of the Portuguese Labour Market can be summarised in the following table:

### Key Employments indicators in Portugal

<table>
<thead>
<tr>
<th></th>
<th>2004 Average</th>
<th>2005 Average</th>
<th>1st Qt 2006</th>
<th>2nd Qt 2006</th>
<th>3rd Qt 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity rate %</td>
<td>52.2</td>
<td>52.5</td>
<td>52.6</td>
<td>52.8</td>
<td>52.9</td>
</tr>
<tr>
<td>Men</td>
<td>58.1</td>
<td>57.9</td>
<td>58.1</td>
<td>58.3</td>
<td>58.3</td>
</tr>
<tr>
<td>Women</td>
<td>46.7</td>
<td>47.4</td>
<td>47.4</td>
<td>47.6</td>
<td>47.9</td>
</tr>
<tr>
<td>Unemployment rate %</td>
<td>6.7</td>
<td>7.6</td>
<td>7.7</td>
<td>7.3</td>
<td>7.4</td>
</tr>
<tr>
<td>Men</td>
<td>5.8</td>
<td>6.7</td>
<td>6.5</td>
<td>6.4</td>
<td>6.2</td>
</tr>
<tr>
<td>Women</td>
<td>7.6</td>
<td>8.7</td>
<td>9.1</td>
<td>8.3</td>
<td>8.9</td>
</tr>
</tbody>
</table>

Notes: For reasons based on the rounding of figures the totals may not correspond to the sum of the partial figures set up.

Source: INE’s general statistic data

Self-employment is also substantial\(^{49}\). Although the majority do not employ anyone\(^{50}\), the rate of self-employment with workers is stable\(^{51}\). Part-time work is not noteworthy. In 2004, the part-time work rate was 5.6% (2.9% male and 8.2% female).

One of the most significant changes concerns non-permanent employment, including fixed-term labour contracts. The precarious employment rate has increased during recent years from about 9% of the employed population (in 1992) to 14% (18.7% male and 21.1% female) in 2005.

In 2005, there was stagnation in total employment and the unemployment rate increased\(^{52}\). At the same time, there was an increase in the share of long-term unemployment, whose levels are now higher than in the previous years. The unemployment rate stood at 7.6% in 2005, a 0.9 percentage point rise from 2004. Similarly to 2004, the change in the male unemployment rate was similar to that of the female unemployment rate, with a simultaneous increase in youth unemployment, which reached 16.1% in 2005.

\(^{47}\) Direcção Geral de Estudos, Estatística e Planeamento.

\(^{48}\) Cf. Livro Verde sobre as relações laborais, cit., p. 44.

\(^{49}\) In absolute numbers (thousands), it was 1244.8 (in 1998) and 1204 (in 2005).

\(^{50}\) 945.6 thousands (in 1998) and 903.8 (in 2005).

\(^{51}\) 299.2 thousands (in 1998) and 300.3 (in 2005).

\(^{52}\) The following considerations and numbers belong to the Annual Report 2005 of Banco de Portugal (Portuguese Central Bank).
In this age group, the unemployment rate is far higher in individuals with higher educational qualifications (college degree), but the unemployment duration for this group is traditionally quite low.

In 2004, only 49% of the population between 20 and 24 years old had completed high school (39.4% male and 58.8% female). Regarding population between 25 and 64 years old, only 23% (23.5% male and 27% female) has, at least, the complete high school education.

II. INDUSTRIAL RELATIONS

1. Key issues
Portugal had since 1933, a corporatist organisation combining employees and employers’ representatives. Union representation was unitary (“legal monopoly”) and could not carry out the activity within undertakings. At the end of the 1960s, semi-clandestine organisations were set up and penetrated the corporatist structures, leading in 1970 to Intersindical, the forerunner of CGTP.

The “carnation revolution” in April 1974 put an end to the corporatist structures, liberalised the labour movement and led to the spontaneous establishment of workers’ committees. During 1974-1975, trade union freedom, the right to strike and to bargain became accepted. In 1976, the “legal monopoly” of the CGTP-IN ended, opening the door to the creation of a new confederation by agreement between socialists and social democrats in 1978: the UGT.

Arts. 55 to 57 of the Constitution of 1976 have since then guaranteed trade union freedom, the right to strike and the right to bargain. Arts. of Decree-Law 215-B/75 regarding “legal monopoly” were expressly revoked and substituted by others admitting a plural union representation. Nowadays, the freedom of trade unions is developed in arts. 475, and the Labour Code.

2. Social partners
Trade union pluralism is marked by the existence of two main confederations whose positions have historically been shaped by their political tendencies: CGTP has been shaped by “horizontal” unions, a unitary culture and a strong communist component; while UGT resulted from an agreement between the socialists and social democrats and has from the outset been made up of “vertical” and occupational unions. However, the trade unions and political parties grew apart to some extent at the end of the 1980s. In spite of that, there has been little dialogue between these two confederations, whose strategies have largely diverged. CGTP has concentrated itself on collective agreement policy and on the defence of rights and employees with a strong “rank-and-file” organisation. UGT has focused on national conciliation and dialogue, becoming the main partner of the government and employers, signing most of the tripartite agreements that followed one another between 1990 and 1996.

A corporative motivation led to the appearance of trade unions oriented to the representation of professional and managerial staff, during the 1980s, which conducted to the later establishment of confederations such as FENSIQ.

Subsequently, independent unions started to proliferate as a negative response to the so-called “directing philosophy” and political parties influence, leading to the establishment of confederations such as CSI and USI.

The competition is largely established between the two main confederations (UGT and CGTP). Nevertheless, the development of new union tendencies has sharpened the opposition in the negotiation procedures.

53 Livro Verde sobre as relações laborais, cit., pp. 54-57.
54 This reference corresponds to the current numbering of the Constitution, after its subsequent amendments.
In parallel, the freedom to set up employers’ associations was introduced in 1975 by Decree Law 215-C/75, although no reference is made to them in the Constitution. Now, these provisions can be found in arts. 506 (and following) of the Labour Code.

Unions

In 2006\(^{55}\), the number of active trade union organisations, formally constituted and registered in DGERT\(^{56}\), was 421 corresponding to 348 unions, 27 federations\(^{57}\), 39 leagues\(^{58}\) and seven confederations\(^{59}\).

Only CGTP and UGT are represented in the Standing Committee for Social Conciliation (Comissão Permanente de Concertação Social), a tripartite body of the Economic and Social Council (Conselho Económico e Social), and their affiliated unions are responsible for almost all collective bargaining.

The other confederations are largely occupational unions in the service sector and, in particular, in the public sector regarding mostly professional and managerial staff. About half of the active unions are affiliated or participants in CGTP or UGT and only 5% of the other half are connected to CNSQ, CGSI, CSI and USI (see below)\(^{60}\).

Despite the significant modifications felt in the union structures that led to many mergers in the 90’s, the number of trade unions is, in 2005 (420), very similar to the one of 1995 (425) and noticeably superior to the one of 1985 (380) when the trade union density was considerably higher\(^{61}\). Regarding territorial distribution, data from 2004 show that most union structures are located in the main coastal cities. The recent Labour Code\(^{62}\) allows, in art. 475.3, federations, leagues and confederations to directly represent employees who are not represented in unions, according to their by-laws.

Estimates of trade union density vary widely and are not completely reliable\(^{63}\). Nevertheless, there is no doubt that trade unionisation has declined sharply after peaking in the late 1970’s and in the first half of the 1980’s, increasing from 52% of employees in 1974-78 to 59% in 1979-84. After that, it has fallen to 44% in 1985-90 and to 36% in 1991-95\(^{64}\). At the present time, the number of trade union members is estimated at 1.1 million\(^{65}\). There are no official and recent data concerning union density, but there is some consensus that this rate is somewhere between 20% and 30%, probably closest to the first number\(^{66}\).

The decline in trade union density in the 1990’s, largely affecting the CGTP, took place mainly in the industrial sector. Trade union numbers have been maintained in the service sector, which had, between 1991 and 1995, close to two-thirds of unionised employees\(^{67}\). The decline affects all activities, except education (teachers), banking and insurance. The public sector continues to be highly unionised, which might be connected to the higher stability and protection of labour relations. Employees with precarious labour contacts are the least unionised\(^{68}\).

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\(^{55}\) The following numbers are presented in Livro Verde sobre as relações laborais, cit., pp. 65-69 (source: DGERT) and do not include the islands of Madeira and Azores.

\(^{56}\) Direcção Geral do Emprego e das Relações de Trabalho.

\(^{57}\) Association of unions of the same profession or sector of activity (art. 476. b of the Labour Code).

\(^{58}\) Association of unions of regional basis activity (art. 476.c of the Labour Code).

\(^{59}\) National association of unions (art. 476.d of the Labour Code).

\(^{60}\) MARIA DA CONCEIÇÃO SANTOS CERDEIRA, Dinâmicas de transformação das relações laborais em Portugal, Cadernos de Emprego e Relações de Trabalho n.º 02, MAET/DGERT, Lisboa, 2004, p. 151.

\(^{61}\) After 1989, 93 unions and 11 federations were extinct, but many others were formed — Livro Verde..., cit., pp. 66-67.

\(^{62}\) Approved by Act 99/2003, of August 27th, which entry into force in 1 December 2003.

\(^{63}\) The following numbers are presented by CONCEIÇÃO SANTOS CERDEIRA, op. cit., pp. 151-154.

\(^{64}\) The last two percentages might decrease to 35% and 30%, respectively, if we do not include the numbers referring to the independents with no workers, since the majority of them are not really independent. Cf. CONCEIÇÃO SANTOS CERDEIRA, op. cit., p. 153.

\(^{65}\) This number differs from the one presented by EIRO corresponding to 1.2 million.


\(^{67}\) The last data available concerning the trade union density according to the activity sector are from 1995. See CONCEIÇÃO SANTOS CERDEIRA, op. cit., pp. 152-156.

\(^{68}\) Cf. Livro Verde..., cit., p. 68. Source: DGERT, MTSS.
Trade union confederations

- **CGTP-IN** (Confederação Geral dos Trabalhadores Portugueses—General Confederation of Portuguese Workers) is the Portuguese Confederation that is closest to the “masses syndicalism” and represents approximately 40% of the unions formally constituted. It is well established all over the country, representing a wide variety of sectors, namely the industrial ones, although older workers with labour contracts for an undetermined period are its main supporters. The increase in fixed-term contracts and other forms of precarious labour, as well as the reform of many unionised workers, has been responsible for the loss of a significant number of supporters. According to its figures, it has 136 unions (affiliated or cooperating ones), 29 leagues and 12 federations. Its main federations are FESETE (textiles), FNSFP (public administration), FEQUIMETAL (metallurgy, chemistry and pharmacist), FENPROF (teachers), FEPES (commerce-services), and FESTRU (urban transports). It is affiliated to the ETUC (European Trade Union Confederation).

- **UGT** (União Geral dos Trabalhadores—General Workers’ Union) stands for a much smaller number of union organisations than CGTP (about 57 affiliated or cooperating unions), mostly vertical unions of national basis, few federations (about six, including both affiliated and cooperating ones) and no leagues. It represents largely white-collar workers, namely in the financial sector and among office and commercial workers. It is affiliated to the ETUC (European Trade Union Confederation) and to the ITUC (International Trade Union Confederation).

- **CPQTC** (Confederação Portuguesa de Quadros Técnicos e Científicos—Portuguese Confederation of Technical and Scientific Office Workers) was set up in 1988 and is connected to CGTP.

- **CNSQ/FENSIQ** (Confederação Nacional de Sindicatos dos Quadros—National Confederation of the Office Workers’ Unions) was set up in 1992 and is connected to UGT.

- **CSI** (Convenção Sindicale Independente—Independent Union Convention) was set up in 1990.

- **USI** (União dos Sindicatos Independentes—Independent Union League) was set up in 2001.

- **CGSI** (Confederação Geral de Sindicatos Independentes—General Confederation of the Independent Unions) was set up in 2001.

Employers’ organisations

In 2006, the number of employers’ associations, formally constituted and registered in DGERT, was 534, corresponding to 497 basic employer’s associations (activity sector associations with different geographical areas), 21 federations, nine leagues and seven confederations. Still, if we consider that about 185 associations are not active, the real number of basic employer’s associations should be reduced to 312.

Only CIP, CCP, CAP, CTP are represented in the Standing Committee for Social Conciliation (Comissão Permanente de Concertação Social), a tripartite body of the Economic and Social Council (Conselho Económico e Social).

Regarding territorial distribution, in 2004, most of the employer’s representation structures are located in the main coastal cities, such as Lisbon (56.4%), Porto (17.5%) and Aveiro (3.5%), but there is relevant representation in some interior areas: Leiria (4.7%), and Braga (3.5%).

Many undertakings are not affiliated in any employer’s organisation and many basic employers’ associations are not members of any confederation.

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69 Livro Verde sobre as relações laborais, cit., pp. 71-72.
70 Direcção Geral do Emprego e das Relações de Trabalho.
71 An organization of employer’s associations belonging to the same sector of activity (art. 508.b of the Labour Code).
72 A regional organization of employer’s associations (art. 508.c of the Labour Code).
73 A national organization of employer’s associations (art. 508.d of the Labour Code).
74 These data can be consulted in CONCEIÇÃO SANTOS CERDEIRA, op. cit., p. 149.
Employers’ organisations

- CIP (Confederação da Indústria Portuguesa — Confederation of Portuguese Industry) was set up in 1974. It is an umbrella organisation for two federations, 42 general and regional employers’ associations and about 27 enterprises (affiliated or cooperating ones)\(^7\). It is a member of BusinessEurope (Confederation of European Business).

There are also two industry associations which chiefly represent the interests of enterprises:

- AEP (Associação Empresarial de Portugal\(^7\) — Portuguese Business Association) in the north
- AIP (Associação Industrial Portuguesa — Portuguese Industrial Association) based in Lisbon.

In addition,

- CCP (Confederação do Comércio e Serviços de Portugal — Portuguese Confederation of Commerce and Services), was set up in 1976 and is affiliated to EUROCOMMERCE. It represents about 80% of basic employers’ associations in the retail trade and about 50% in the wholesale trade. Since 1995, its by-laws allow not only the direct affiliation of associations but also, in some cases, of enterprises.
- CAP (Confederação dos Agricultores de Portugal — Confederation of the Portuguese Agricultures) tends to represent large landowners.
- CNA (Confederação Nacional da Agricultura — National Confederation of Agriculture) tends to represent small and medium-sized agricultural concerns.
- CTP (Confederação do Turismo Português — Confederation of the National Tourism).
- CPMPME (Confederação Portuguesa das Micro, Pequenas e Médias Empresas — Portuguese Confederation of the SME)
- CORPA (Confederação das Organizações Representativas da Pesca Artesanal — Confederation of the Representative Organisations of Artisan Fishing).

3. Joint bodies

According to art. 56.2(d) of the Constitution, union associations have the right to participate in organisations aimed to social conciliation. This organisation is the Economic and Social Council (art. 92.1 of the Constitution), a consultation body regarding economic and social policies.

The Standing Committee for Social Conciliation (Comissão Permanente de Concertação Social), which is a tripartite body is of particularly importance in relation to labour issues. A series of tripartite agreements were negotiated and signed in the Standing Committee for Social Conciliation Council from 1986 onwards, although they are not mandatory. CGTP did not sign these agreements until 1997, except for those on safety and vocational training. However, these tripartite or bilateral agreements did not reflect meaningfully in the content of the subsequent collective bargaining\(^7\).

Other relevant types of agreements were made by the entities of the Standing Committee for Social Conciliation which has been very active during the last two years.

4. Collective bargaining

Collective bargaining is governed by arts. 531 to 563 of the Labour Code. The labour laws can be set aside by collective agreements, except when stated otherwise (art. 4 of the Labour Code).

There are three types of collective agreements (art. 2 of the Labour Code):

- Collective Contracts (contratos colectivos) — agreements entered into between union associations and employers associations;

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\(^{73}\) According to its figures presented in May 2006.

\(^{76}\) Former Associação Industrial Portuense.

EMPLOYEE REPRESENTATIVES IN AN ENLARGED EUROPE

- Collective Labour Agreements (acordos colectivos) — agreements entered into between union associations and multiple employers for different undertakings;
- Employer’s Agreements (acordos de empresa) — agreements signed by union associations and an employer for one undertaking or establishment.

The unions are the only employees’ representatives that are entitled to enter into collective labour agreements (art. 56.3 and 4 of the Constitution and art. 477.a of the Labour Code), including confederations.

The collective agreements are only binding to the employers who sign them and to those registered in the signatory employer’s association, as well as to the employees in their service who are members of the signatory unions. There are no rules on the representativeness of trade unions and employers’ associations, consequently agreements do not have an erga omnes effect and apply only to the contracting parties. All unions, all employers’ associations and also the employers themselves, can sign collective agreements regardless of their representativity.

The negotiation process begins with the presentation of a draft proposal by one of the parties to the other to enter into a collective agreement. The entity receiving such proposal shall reply in writing within 30 days. A lack of response means the proponent can request conciliation (art. 545 of the Labour Code) and constitutes a serious infringement (art. 686 of the Labour Code).

The scope of collective agreements may be enlarged, completely or partially, through an extended regulation issued by the minister responsible for labour issues (art. 575 of the Labour Code), when the economic and social circumstances justify it, in relation to:

- employers of the same sector of activity and employees of the same or similar profession, as long as they perform their activity in the geographic area and within the professional and sectoral scope determined in the agreement;
- employers and employees of the same sector and profession, as long as they perform their activity in a geographic area different from that in which such agreements apply, and there are no unions or employer’s associations and the identity of the social and economic circumstances is verified.

Undeniably, collective agreement coverage of employees is chiefly ensured by extension procedures.

Main features

Formal collective bargaining is very centralised. Sector level bargaining (collective contracts) is indisputably predominant and represents about 86% of the employees covered by collective regulation instruments. Only about one-fifth (18.1%) were employer’s agreements and collective labour agreements, which represented merely 9% of the employees covered. Employer’s agreements are important especially in the transport, storage, communications and fishing sectors. Collective labour agreements can be found essentially in the financial sector, as well as in electricity, water and gas companies. The sectoral distribution of collective agreements is not homogeneous, because in some sectors there are high numbers of employees who are not covered by them.

An analysis of the evolution of collective regulation instruments shows that those with a contractual source have been increasing and state intervention, through extension and minimum conditions’ regulations, has been decreasing.

78 Unless there has been another agreed deadline or a longer deadline indicated by the proponent.
79 It constitutes 44.5% of the collective regulation instruments.
80 Including employees covered by extension procedures applied to such collective contracts.
81 Livro Verde..., cit., p. 85.
The number of employees covered by collective regulation instruments was, in 2006, 1,511,669\(^\text{82}\). The signatories of more than 80% of collective agreements are CGTP and UGT affiliated unions and in almost equal shares, with some advantage to CGTP\(^\text{83}\).

Traditionally, the content of collective bargaining largely involves pay\(^\text{84}\). In recent years, the parties have stated to pay more attention to other issues\(^\text{85}\). In many cases, the rules of collective agreements are to the same as the legal ones in existence when they were signed, and even when the law has been changed in a mandatory manner they remain the same.

Practical arrangements may not always conform to the legal or conventional rules, especially regarding working time and contract qualification.

5. Collective disputes


Conciliation is the most frequently used method, particularly in collective agreement bargaining procedures and collective redundancies. Conciliation is provided, when requested, by a service supervised by the ministry responsible for labour issues, advised, whenever necessary, by the relevant services of the ministry responsible for the sector of activity.

Voluntary arbitration is uncommon. Compulsory arbitration, for which there has been formal provision since 1992, has not been applied. However, this situation will probably change in the near future. The presence of social judges in labour courts, for which there has been provision since 1976 in the Constitution (art. 207.2) and Decree Law 156/78, of June 30\(^\text{86}\), reinforced through arts. 67 and 88 of Act 3/99, of January 31\(^\text{87}\), has never taken place.

Strikes

A real evaluation of Portuguese labour conflicts is not easy, but the level appears to be low. The number of strikes has been decreasing over the last decade, except in the public sector, although this is not true with regard to the number of employees involved or the number of days of work lost, which increased significantly in 2002 as a consequence of the reform of labour and social security laws. The manufacturing sector was the most affected (49.7% of the total number of strikes and 53.7% of the total days not worked).

The main reasons are related to traditional subjects, such as salaries and working time conditions, although collective bargaining, employment, and health and safety at work are also relevant\(^\text{88}\).

The immediate result regarding claims acceptance seems also to be low. However, the data available were determined through employer evaluations made soon after the end of the conflict\(^\text{89}\).

\(^{82}\) Source: DGERT (Direcção Geral do Emprego e das Condições de Trabalho).

\(^{83}\) Livro Verde..., cit., p. 90. Source: MTSS/DGERT.

\(^{84}\) Conceição Santos Cerdeira, op. cit., pp. 173 and 180.

\(^{85}\) The analysis published in Livro verde..., cit., pp. 99-134, felt upon 65 collective agreements from all sectors of activity, selected according to type variety criteria (collective contracts, collective labour agreements and employer’s agreements), numbers of workers of the undertaking or activity sector and variety of signatories unions. All of them were still in force in 2005, but many entered into force years before.

\(^{86}\) Livro Verde..., cit., p. 173; CONCEIÇÃO SANTOS CERDEIRA, op. cit., pp. 140-147.

\(^{87}\) Livro Verde..., cit., p. 173.
IV. EMPLOYEE REPRESENTATION IN THE WORKPLACE

1. General issues
The Constitution⁸⁸ and Portuguese labour legislation⁹⁰ provide for a dual system of representation of employees in the undertaking with different origins and legitimacy:

- **trade union representatives** elected by the unionised workers of the undertaking; and
- **the workers’ committee**, which is independent from the unions, representing all the workers of the undertaking (unionised and non-unionised).

The trade union representatives in the undertaking stand for the respective union association, connecting employees (especially those who are unionised) to their union and representing them, as well as the union, in negotiations with the undertaking’s management. The workers’ committee represents all employees.

Theoretically, the trade union representatives mostly control observance of the legal and conventional regulations in the enterprise and establish the connection between the union and their associates. Conversely, the workers’ committees have the right to “scrutinise the undertaking’s management”, and it intends to defend the interests of all the undertaking’s employees. However, in practice, these roles are often mixed and there are some overlapping prerogatives⁹⁰. There is empirical evidence that union representation is more widespread than workers’ committees. In addition the union representation usually dominates the workers’ committee.

The unions associations are the only employees’ representatives entitled to enter into collective labour agreements.

In practice, only a small percentage of undertakings have employee representation structures. According to 2000 data, only 22.7% of undertakings have employee representative structures and only 14.7% have workers’ committees or unions committees⁹¹. This is partly a consequence of the large number of micro and small undertakings.

The application of the provisions on workers’ committees has been patchy since the 1980s. Trade union representation is, in practice, the most relevant channel of employee representation. At 31.12.2005, there were only 192 workers’ committees, 15 subcommittees and 6 co-ordination committees⁹². Today workers’ committees are to be found only in public sector enterprises, large enterprises, the stock exchange and banking.

The reasons for this lie chiefly in political and social history. At the time of the 1974 revolution there was a spontaneous boom in workers’ committees in enterprises. These committees were set up as a counterweight to the political power of the CGTP (Intersindical at that time) and lost some of their attraction, therefore, when the UGT was set up in 1978, despite their recognition in the Constitution⁹³. Now, employers show some reluctance towards employee involvement, and there is a lack of employee initiative on these issues because of lack of information and fear of retaliation. Lastly, competition between the workers’ committees and the unions contribute to minimising the role of the first⁹⁴.

It is possible and normal in practice to have both union representatives and a workers’ committee in a workplace where some employees are union members and others are not, although it is not legally required.

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⁸⁸ Arts. 54 to 57.
⁹² Cf. Livro Verde sobre as relações laborais, cit., p. 70. Source: DGERT.
⁹³ ANTÓNIO MONTEIRO FERNANDES, op. cit., pp. 714-716.
⁹⁴ P. ROMANO MARTINEZ, Direito do trabalho, cit., pp. 1028-1029.
2. Trade Union representation

The Constitution (art. 55) and the Labour Code (arts. 496 to 504) enshrine the right of trade union action in enterprises via:

- union deputies (“delegados sindicais”);
- union committees (organisations of union deputies of the same union in an undertaking or establishment); and
- multi-union committees95 (organisations of representatives of union committees of employees of a confederation, as long as they cover at least five union representatives, or of all union committees of the undertaking or establishment)96.

The union representation is not unitary, but plural. Consequently, it is theoretically possible to have in the same undertaking more than one multi-union committee.

All enterprises are covered by the right of trade union activity, and there are no statutory thresholds.

3. Composition and working

The undertaking’s union branch or section is the group of employees of an undertaking or establishment that are members of the same union. The union deputies are elected and removed by the undertaking’s unionised employees forming an undertaking’s union branch or section, in the terms of the by-laws of the respective unions, by direct and secret ballot. Afterwards, the management of the union notifies the employer, in writing, of the identity of the union representatives97. However, in practice, the union deputy is often appointed by the union itself.

Union committees may be created in undertakings that have various establishments or when justified by the number of representatives elected.

Multi-union committees may be created whenever there are representatives from more than one union in the undertaking.

The maximum number of union representatives is determined according to the unionised number of employees in the undertaking (art. 500 of the Labour Code):

- less than 50 unionised workers: one member,
- 50 to 99 unionised workers: two members,
- 100 to 199 unionised workers: three members,
- 200 to 499 unionised workers: six members,
- 500 or more unionised workers: the number of members is the result of the formula $6 + \left(\frac{n - 500}{200}\right)$, where $n = \text{number of employees}$98.

The term of office is set in the trade union’s statutes.

The unions and the employer’s associations have the active legitimacy to act in court in relation to claims affecting the collective interest they represent. In some cases, they can also act in court to represent an employee with his consent (art. 5 of the Labour Procedure Code — Código de Processo do Trabalho99).

With regard to the protection of health, safety and hygiene at work, art. 44.1 of the Labour Procedure Code allows worker’s representatives, including unions, to file a preliminary injunction requesting the necessary measures to prevent or avoid the risk.

In procedures initiated for the imposition of the fines set out in the Labour Code, the union representing employees in relation to whom an infringement has been committed may intervene (art. 640 of the Labour Code).

95 “Comissões Inter-sindicais”.
98 The result is always rounded-up to the nearest whole number.
99 Decree-Law 480/99, of November 9th.
In relation to an administrative procedure, art. 53 of the Administrative Procedure Code (Código de Procedimento Administrativo\textsuperscript{100}) states that the unions do not have the necessary legitimacy to initiate it or to intervene in it. However, this provision was considered unconstitutional\textsuperscript{101}.

Neither of these legitimacy aspects is applicable to union deputies, union committees or multi-union committees, but only to the union itself, because they do not have legal personality or capacity.

Union representatives are entitled to convening workers’ meetings at the workplace. Only the union committees or multi-union committees can call mass meetings of personnel at the workplace during working hours observed by the majority of the workers (counted as actual working time) up to a maximum limit of 15 hours per year, as long as they guarantee the operation of services of an urgent and essential nature. They may also call mass meetings outside working hours of the majority of the workers, without detriment to the normal operation of shifts or overtime work. However, the workers can have these meetings at the workplace without their representatives’ intervention, when convened by one-third or 50 of the workers of the respective establishment. External trade union officers may attend these meetings.

4. Means

The general rule of art. 452 of the Labour Code establishes that the employer cannot finance the operation of the employees’ collective representation structures.

Premises must be made permanently available for union representatives in undertakings or establishments with over 150 employees, when requested (art. 501 of the Labour Code). In small undertakings or establishments, the employer must make available for union deputies (delegados sindicais), when requested, an appropriate space for their activity.

Employees’ representatives are entitled to distribute information concerning the employees’ interests, as well as displaying such information in an appropriate space assigned for such purpose.

Every workplace union representative is entitled to paid time-off rights to perform the duties that have been assigned to them. Each union deputy has at least five hours per month and this figure is increased to eight hours per month for representatives who are members of a multi-union committee.

Absences which exceed time-off rights as a result of necessary and undelayable acts associated to their duties are considered justified and taken into account but are not paid. Portuguese labour law does not provide for paid release for trade union training.

The Labour Code only refers to the possibility of external assistance from one expert during collective redundancies procedure. However, nothing is said about the expert financing. The assistance by experts financed by the undertaking is admitted when related to the establishment of an European Works Council or when regarding the involvement of employees in an European Company. In both cases, Portugal has chosen to limit the funding to cover one expert only.

Role and rights

The unions associations are the only employees’ representatives that are entitled to enter into collective agreements (art. 477.a of the Labour Code), which is based in the Constitution (art. 56.3 and 4).

Information and consultation

The 1997 constitutional reform extended the right of information and consultation to union representatives (art. 55.6).

The Labour Code has introduced for the first time in Portuguese labour legislation a specific provision on information and consultation rights of union representatives at the undertaking or establishment. Art. 503.2 of the Labour Code is an almost literal reproduction of art. 4.2 of the Directive 2002/14/EC. It establishes that information and consultation covers:

\textsuperscript{100} Decree-Law 442/1991, of November 15th.

\textsuperscript{101} Decision of the Constitutional Court 118/97, of February 19th.
– information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;
– information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, namely where there is a threat to employment;
– information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations.

The union representatives should request this information, in writing, and it should be given, also in writing, within 10 days, unless due to its complexity, a longer period of up to 30 days is justified.

The information and consulting procedures are conducted by both parties to achieve an agreement for all decisions of the employer concerning his direction and organisation powers.

Nonetheless, the practical arrangements for information and consultation do not apply to undertakings with less than 51 employees, nor to establishments with less than 20 employees. This means that in practice these information and consultation procedures will not take place in approximately 97% of Portuguese’s undertakings.

The unions have the right to participate in undertaking restructuring processes, although in apparently more limited terms when compared with the workers’ committees since this right embraces, in particular, training programs and working conditions’ modifications.

The union representatives should also receive adequate information concerning part-time work in the company (art. 187.2.b LC).

In some situations, the union representatives should be informed only if the employee is a member of the union:
– contracting (indicating the underlying legal reason) or termination of fixed-term work,
– reduction or exclusion of rest periods,
– individual dismissal.

Lastly, various prerogatives of the workers’ committees pass, in their absence, to the trade union representatives, in particular:
– information and consultation procedures in cases of collective redundancy,
– information and consultation procedures in cases of lay-off for unsuitability,
– consultation prior to the definition, organisation and modifications of work schedules,
– the employment audit,
– temporary reduction of the normal work period or suspension of the labour contract.

During bargaining, each of the parties should allow the other to access information and data on request to the extent that this does not harm their own interests. The employer should provide reports and published accounts of the undertaking, as well as employment data mentioning the number of employees, organised by professional category, involved in the process and within the scope of the agreement to be entered.

102 According to article 91 of the Labour Code, the number of employees is calculated on the basis of the average of the previous calendar year. In the year of start-up of a business, this threshold is determined on the particular day when the fact that determines the respective regime occurred.
Protection granted to the members of workers’ representative structures

Portugal legislation provides a set of guarantees to give special protection to all workers’ representatives’ in order to enable them to perform their duties.

The Labour Code (art. 453) starts with a general principle of non-discrimination. It prohibits and considers null and void any agreement or employer’s act (e.g. lay-off, transfer) that harm in any way the employee due to the exercising of rights regarding participation in collective representation structures, or being member of a union.

The employees elected to the collective representation structures cannot be transferred without their consent, except when such transfferral is a result of the total or partial moving of the establishment. When that occurs, prior notification should be given to the committee of which they are members.

Protection is also provided in cases of disciplinary proceedings and dismissal in several ways:

- If the employee elected to the collective representation structure is suspended from work, he is not barred from performing his duties. The same applies when there is a reduction in the normal work period or suspension of the labour contract.

- A disciplinary sanction is unfair when it is due to the fact the employee exercised their representation functions or was a candidate for the worker’s representation body and compensation is payable.

- The dismissal of an employee who is a candidate to a body of a union association, as well as that of an employee who performs or has performed duties in such a body, within three years, is presumed to be without just cause.

- After a dismissal, if a preliminary injunction to suspend it has been filed, the court will only rule unfavourably if there is a serious possibility that there is just cause.

- If the court concludes that there was no just cause, the dismissed employee has the right to choose between reinstatement in the company or compensation.

5. Workers’ Committees

The Constitution (art. 54) and the Labour Code (arts. 461 to 470 LC) enshrine the right of workers to set up workers’ committees (comissões de trabalhadores) “for the defence of their interests and democratic action in enterprises”.

Employees have the right to create in each undertaking, including the public sector, and independently of the number of employees, a workers’ committee (art. 461 LC). The number of employees of the undertakings or establishments is relevant only to determinate the number of members of the workers’ committees and sub-committees (arts. 464-465 of the Labour Code).

Employees can create workers’ sub-committees in undertakings with geographically disperse establishments.

It is also possible to create co-ordination committees to improve intervention in economic restructuring or to articulate activities of workers’ committees within undertakings in a dominant or group relationship.

Composition

Workers’ committees are composed solely of employees’ representatives. The number of members of workers’ committees cannot exceed the following (art. 464 LC):

- in micro and small undertakings\textsuperscript{103} — up to two members;

\textsuperscript{103} According to article 91 of the Labour Code, micro undertaking is the one that employs a maximum of 10 employees; small undertaking is the one that employs more than 10 and up to 50 employees; medium undertaking is the one that employs more than 50 and up to 200 employees, large undertaking is the one that employs more than 200 employees.
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– in medium sized undertakings — up to three members;
– in large undertakings with 201 to 500 employees — three to five members;
– in large undertakings with 501 to 1000 employees — five to seven members;
– in large undertakings with more than 1000 employees — seven to 11.

The number of members of workers’ sub-committees cannot exceed the following (art. 465 of the Labour Code):

– in establishments with 50 to 200 employees — three members;
– in establishments with more than 200 employees — five members;
– in establishments with less than 50 employees — one member.

Capacity for representation

The workers’ committee represents all the employees of the undertaking, including all types of contract relationships. Only contract and temporary agency workers are not represented by the workers’ committee of the company where they temporarily work, but rather by the workers’ committee (when existing) of their employer’s undertaking or of the agency.

The workers’ sub-committees represent all employees of the establishment in the same terms.

The workers’ committees acquire legal personality by registration of their by-laws with the ministry responsible for labour issues. Their legal capacity includes all rights and duties necessary or convenient for the pursuit of the objectives established by law (art. 462 of the Labour Code). Consequently, the Civil Procedure Code \(^\text{104}\) (art. 5.2) recognises them, in general, as having legitimacy to act in court. This is confirmed by art. 85.r of Act 3/99, of January 13\(^\text{r}\), that refers explicitly to the workers’ committees, regarding their relationship with the co-ordination committees, the undertaking or its employees.

When the protection of health, safety and hygiene at work, is at stake, art. 44.1 of the Labour Procedure Code (Código de Processo do Trabalho)\(^\text{105}\) allows worker’s representatives, including workers’ committees, to file a preliminary injunction requesting the necessary measures to prevent or avoid risks.

In relation to an administrative procedure, legal literature has considered that workers’ committees have legitimacy to initiate and intervene in an administrative procedure, according to art. 53 of the Administrative Procedure Code (Código de Procedimento Administrativo)\(^\text{106}\).

Election of members

The members of the workers’ committee are elected by the employees of the undertaking (or of the establishment in the case of workers’ sub-committees) in direct and secret ballot and following the principle of proportional representation (arts. 340-342 of Act 35/2004).

Lists must be drawn up by groups of workers obtaining, at least, 20% (or 100) signatures. In the case of elections to the workers’ sub-committees, only 10% of signatures are necessary. The workers cannot sign or be candidates for more than one list.

All the employees of the undertaking (or of the establishment in the case of workers’ sub-committees) are entitled to vote and can be elected, regardless of the type of employment contract relationship, age or position. In practise these rights are exercised mostly by permanent employees.

The elections must be convened with ample publicity, indicating the time, place, schedule and subject, with at least 15 days prior notice. The undertaking’s management body must be informed.

The electoral committee must publish the election results within 15 days and inform the undertaking’s management body.

The election results and the by-laws of the workers’ committee have to be published in Boletim do Trabalho e Emprego. Only after that, the workers’ committee is able to start its activity.

\(^{104}\) Approved by Decree-Law 44 129/1961, of December 28\(^{th}\).
\(^{105}\) Decree-Law 480/99, of November 9\(^{th}\).
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The term of office may not exceed **four years**, but re-election is allowed (art. 343 of Act 35/2004).

**Working of the body and decision-making**

The workers’ committees are governed by the **by-laws** they have approved (art. 329 of Act 35/2004). The by-laws shall govern: the rules concerning the electoral committee and the workers’ committee that are not legally regulated (members’ substitutions); the operating methods of the workers’ committee, including decision-making issues when they result in a draw; the binding rules, which shall demand the signature of the majority of members with a minimum of two; financing issues; and the by-laws modification procedure.

An obligation to inform employees regularly is not specified and there are limits regarding informing employees when the information disclosed to the workers’ committee is confidential (art. 458 LC).

The workers’ committees are entitled to convening **mass meetings** of employees at the workplace **outside working hours** of the majority of the workers, without detriment to the normal operation in the case of shifts or overtime work (art. 468.1 LC).

They may call mass meetings of personnel at the workplace **during working hours** of the majority of the workers up to a maximum limit of 15 hours per year, as long as they guarantee the operation of services of an urgent and essential nature.

**Means**

The general rule of art. 452 of the Labour Code establishes that employers cannot finance the operation of the employees’ collective representation structures. This provision is reinforced by art. 329.1.f) of Act 35/2004, which refers fully to workers’ committees, forbidding financing from other entities than the undertaking’s workers.

The undertaking’s management shall make available to the workers’ committees or sub-committees adequate **premises**, as well as the **material and technical resources** necessary to pursue their activity (art. 469.1 LC).

The workers’ committees or sub-committees are entitled to **distribute information** concerning the employees’ interests, and **display such information** in an appropriate space assigned for such purpose.

Every workers’ committee, sub-committee or co-ordination committee is entitled to **paid time-off** to perform properly their duties (arts. 454 and 467 of the Labour Code).

The workers’ committees and the co-ordination committees have rights of 25 hours monthly. The sub-committees benefit from eight hours per month. A new regime was established with regard to micro-undertakings allowing the reduction to half of these time-off rights.

In undertakings with more than 1000 employees, the workers’ committee can choose an overall amount determined according to a formula (credit of hours=number of members of the workers’ committees x 25 hours monthly). This option must be approved by unanimity as well as the terms of distribution of the time-off rights among the various members and no more than 40 hours monthly can be given to any one of them.

In state-owned undertakings with more then 1000 employees, the workers’ committees can use one of its members for half his normal work period as long as unanimity rule is observed107.

The **absence** of the members of the general body of representation that exceed the time-off rights and that are given to the performance of their duties are considered justified and taken into account as effective time service, but are not paid.

There is no provision for specific training for representatives.

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107 In this case, there is no option to choose for an overall amount determined according to the formula mentioned in the text.
As regards the external assistance from experts, financed by the undertaking, this is same as for union representatives.

**Role and rights**

Portuguese workers’ committees have prerogatives ranging from information to participation, including consultation, “scrutiny of management” and the management of company welfare schemes. Nevertheless, the divergence between these legal prerogatives and actual practice should be borne in mind.

**Information**

The workers’ committees have the right to receive information necessary to perform their functions. This provision is set out in art. 356 of Act 35/2004 which defines the subjects of the information right, covering economic and financial matters: general plans of activity and budget, production organisation and its implications for the level of use of the workforce and plant, supply position, forecasts of the volume and administration of sales, employee management and its fundamental criterion, undertakings’ accounting position, financing methods, tax and tax-related charges, plans to modify business objectives or company capital and plans to redeplo the enterprise’s production activity.

The members of the workers’ committee should request, in writing, the information that should be given, in writing, within eight days (for complex information it can be up to 15 days (art. 358 of Act 35/2004).

Other additional information rights are set out, such as:

- information regarding part-time work in the company;
- contracting (indicating the underlying legal reason) or termination of fixed-term work;
- overtime hours records;
- reduction or exclusion of the rest periods;
- individual dismissal;
- information regarding the use of temporary workers.

**Consultation**

The workers’ committees have a right of consultation and its written opinion (not binding) is mandatory before decisions are taken in respect of:

- regulation of remote surveillance methods at the workplace;
- handling biometrical information;
- internal regulations approval;
- changing the basic criteria for occupational grading and promotion;
- definition or modification of work schedules applicable to all or to the majority of employees;
- reduction or exclusion of rest periods;
- preparation of the annual leave plan;
- changing the workplace as a result of moving of undertaking or establishment;
- all measures that substantially reduce the number of employees, that substantially affect their working conditions or are likely to lead to substantial changes in work organisation or in labour contracts;
- the closure of the establishment or production lines; and
- dissolution or insolvency.

The workers’ committee must give its opinion within 10 days after receiving the written request from the employer or the information demanded or meeting with the employer. This period is reduced to five days when the issue is the approval of internal regulations.

Other prerogatives of the workers’ committees are:

- information and consultation procedures in cases of collective redundancy;
- information and consultation rights in the event of transfer of the undertaking or establishment explained below;
- information and consultation procedures in cases of lay-off for unsuitability;
- information and consultation procedures in cases of temporary reduction of the normal work period or suspension of the labour contract due to a fact concerning the employer;
– annual and multi-annual training plans performed by the employer;
– the employment audit;

The workers’ committee has the right to participate in undertaking restructuring processes (art. 54.5.c of the Constitution and arts. 363-364 of Act 35/2004).

The co-ordination committee also has the right to participate in undertaking restructuring processes when they concern undertakings of the sector to which belong the majority of the workers’ committees it coordinates.

Both committees have a right to be consulted and to issue a prior opinion. Secondly, they shall be informed on the evolution of subsequent action and on the final restructuring project, which cannot be approved without their prior opinion. Thirdly, they have the right to meet the company’s body responsible for the restructuring project. Finally, they can give suggestions, criticise or make a claim to the undertaking’s management or to other authorised entity.

The workers’ committee or the co-ordination committee shall give their opinion within 10 days after receiving the written request from the employer.

**Scrutiny of management (“controlo de gestão”)**

The workers’ committees have a right to “scrutiny of management” (with exceptions in respect of activities connected with public or military services), which allows them to control the undertaking’s management in same way (arts. 359-362 of Act 35/2004):

– evaluate and issue an opinion on the undertaking’s budget and keep up with its execution;
– promote the suitable use of technical, human and financial resources;
– promote measures contributing to the improvement of the undertaking’s activity;
– present recommendations for, or criticisms of, apprenticeships, continuous professional training of workers, improvements to the working environment and health and safety conditions; and
– defend the legitimate interests of employees before management and supervisory bodies of the enterprise and the competent authorities.

**Relations with undertaking management**

The Workers’ Committee has also the right to regularly meet management to discuss and analyse subjects connected with their rights. These meetings must take place at least once a month (art. 355 of Act 35/2004). The same is applicable to sub-committees in relation to the directors of the respective establishments.

**Protection granted**

Members of workers’ committees, sub-committees and co-ordination committees have the same protection as workplace union representatives in the terms described above.

**Other forms of representation in the same undertaking**

Employees can create workers’ sub-committees in undertakings with geographically disperse establishments. The by-laws of the workers’ committee regulate how this workers’ committees and workers’ sub-committees work together. The workers’ committee can delegate some of its prerogatives to the workers’ sub-committee. The workers’ sub-committee should inform the workers’ committee on the affairs considered relevant to the development of its activity and should establish communication between the employees of the establishments and the workers’ committee.

The workers’ committees can create co-ordination committees to improve intervention in an economic restructuring or to coordinate activities of workers’ committees within undertakings in a dominant or group relationship (art. 461 of the Labour Code) and will approve their by-laws. However, 10% (or 100) of the employees of the undertaking can decide on the participation of the respective workers’ committee on the institution of a co-ordination committee. The by-laws of the workers’ committee shall regulate coordination between this entity and the co-ordination committee.
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The members of the European Works Council shall inform the employees’ representatives of the establishments or undertakings of the group about the information received from the undertaking’s management and the results of consultation.

Codetermination rights
In the public sector, the workers’ committees can elect employees’ representatives to corporate bodies (art. 362 of Act 35/2004). However, the number of employees that can be elected and the determination of the specific corporate body they will be appointed to is set by the by-laws of the public corporate entity.

The workers’ committee shall be entitled to manage or take part in the management of the enterprise’s welfare schemes.

Other bodies of representation
There are other employees’ representative structures:


– the employees’ representatives for health, safety and hygiene at work which have information and consultation rights restricted to these subjects (arts. 272.3.d and 275 of the Labour Code and 186, 239.d, 253-254 of Act 35/2004),


However, until the end of 2005, employees’ representatives for health, safety and hygiene at work had been elected in only 185 undertakings. No more than 12 members of European Works Councils have been elected in undertakings or establishments belonging to an undertaking or to a group with European scale, and these do not have headquarters in Portugal. One procedure for information and consultation of workers was established in a group of undertakings which has its headquarters in Portugal108

IV. EMPLOYEES PARTICIPATION IN THE CORPORATE SUPERVISORY BOARD

Employee participation in corporate bodies is only recognised in the public business sector (arts. 54.5.f and 89 of the Constitution).

According to art. 362 of Act 35/2004, workers’ committees can elect employees’ representatives to the corporate bodies of public companies. However, the number of employees that can be elected and the determination of the specific corporate body they will incorporate are set by the by-laws/statutes of the public corporate entity, which are defined by decree-law.

The development of the general rules regarding employees’ participation on the governing bodies of public companies could be found in Decree-Law 29/84, of January 20th, which changed some of the provisions of Decree-Law 260/76, of April 8th, on public companies. Nevertheless, it was revoked by Decree-Law 558/1999, of December 17th, which abolished the stipulations regarding employee participation in the corporate board of public companies. Consequently, there has been no further legislation on this subject, making its practical application almost impossible.

Although this participation right has been set out in theory since 1979, it has almost never been applied. The privatisation of the vast majority of public enterprises since 1989 has drastically reduced the group of

108 Livro verde…, cit., p. 70.
companies where this right of participation, in theory, could have some impact. The legislation on public companies from 1999 has practically obliterated this right since it has eliminated the specific regulation.

The legal protection is the same as that applicable to all employees’ representatives.

In addition, the treatment of confidential information and the responsibility of representatives are regulated by the provisions applicable to all employees’ representative structures (arts. 458-460 of the Labour Code).¹⁰⁹

**Representation of employees in the board of European Companies**


With regard to the situation prior to transposition, no changes have been noticed in practice because sufficient time has not elapsed since the end of implementation in 2005, and no SE has been registered in Portugal. Nevertheless, there is one difference on the theoretical legislative level. Before the Directive’s implementation, Portuguese law admitted workers’ participation at the level of governing boards only in public companies. Consequently, after the transposition, Portuguese legislation has, for the first time, a participation regime in private companies, which may introduce a new element into Portuguese industrial relations.

If the parties decide to establish arrangements for employees’ participation by agreement, they should mention the substance of those arrangements, namely the number of members in the SE’s management or supervisory body who the employees or their representatives will be entitled to elect, appoint, recommend or oppose, and the necessary procedures (art. 18 of Decree-Law 215/2005).¹¹⁰

In the case of an SE established by means of transformation, the agreement shall provide for at least the same level of participation as the one existing within the company to be transformed into an SE (art. 16.2 of Decree-Law 215/2005).¹¹¹

When standard rules are applicable, employees’ participation in an SE is governed by arts. 29 to 32 of Decree-Law 215/2005 which implement annex part 3 of the Directive.

**V. INVOLVEMENT AND EMPLOYEES’ PARTICIPATION IN DECISIONS THAT AFFECT THEM IN THE UNDERTAKING**

**Procedures to prevent difficulties**

Workers’ committees have a right of consultation and it is compulsory for them to issue an opinion prior to decisions being taken, within 10 days after receiving the written request from the employer, in respect of (art. 357 of Act 35/2004):

– all measures that reduce substantially the number of employees, that substantially affect their working conditions or that are likely to lead to substantial changes in work organisation or in labour contracts;

¹⁰⁹ Concerning the responsibility due to the abusive exercise of rights by the members of the workers’ committees, sub-committees and co-ordination committees, see also art. 470 of the Labour Code.

¹¹⁰ They should also mention when the agreement shall be renegotiated, namely if the number of employees has changed, modifying the number or distribution of the management or supervisory bodies of the SE which the employees or their representatives will be entitled to elect, appoint, recommend or oppose (art. 16.1.d of Decree-Law 215/2005).

¹¹¹ As we can see, by comparing the text of article 16.2 of Decree-Law 215/2005 with article 4.4 of the Directive, the scope of the first one is more restrict than the last, since it should apply to all elements of employees’ involvement and not only to participation.
– the closure of the establishment or production lines.

They also have a right of “scrutiny of management” in order to defend the interests of workers before the management and supervisory bodies of the enterprise and the competent authorities and a right to intervene in the reorganisation of undertakings (arts. 360, 363-364 of Act 35/2004).

Workers’ committees, or failing them, workplace union representatives, must also be informed and consulted in cases:

– of collective redundancy (art. 419 of the Labour Code);

– of temporary reduction of the normal work period or suspension of the labour contract due to facts concerning the employer, namely when market, structural, technological, catastrophes or other occurrences seriously affect the normal operation of the undertaking (arts. 335-338 of the Labour Code). These measures can also apply following the undertaking being declared in financial difficulties or, with the necessary modifications, in a recovery process (art. 349 of the Labour Code).

**Insolvency procedures**

Workers’ committees have a right of consultation and it is compulsory for them to issue an opinion prior to decisions being taken, within 10 days after receiving the written request from the employer, in respect of the dissolution of the enterprise or an insolvency-ruling petition or the closure of the establishment (art. 357 of Act 35/2004).

They also have a right of “scrutiny of management” in order to defend the interests of workers before the management and supervisory bodies of the enterprise and the competent authorities and a right to intervene in the reorganisation of the undertaking (arts. 360, 363-364, of Act 35/2004).

The Insolvency and Undertakings’ Recuperation Code (Código da Insolvência e da Recuperação de Empresas)\(^{112}\) allows the workers’ committee to intervene in the insolvency procedure:

– art. 37.7 establishes the obligation to communicate the insolvency declaration to the worker’s committee;

– art. 66.3 states that one of the members of the creditors commission must represent the employees and is designated by the worker’s committee or, in its absence, by the employees themselves;

– art. 72.6 states that the employees have the right to be represented in the creditors assembly by three members belonging to the worker’s committee or, in its absence, designated by the employees;

– art. 75.3 gives the worker’s committee the right to be notified of the time and place of the creditors assembly meeting;

– art. 156.1 gives the worker’s committee a consultation right regarding both the accounting report and the insolvency plan.

However, legal literature criticises the exclusion of the unions’ representatives during this procedure, resulting in inefficiency in these provisions, because of the low influence of workers’ committees, in practice, within Portuguese industrial relations\(^{113}\).

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\(^{112}\) Approved by Decree-Law 35/2004, of March 18\(^{th}\), and altered by Decree-Law 200/2004, of August 18\(^{th}\).

Termination of labour contracts as a result of closing the undertaking after a judicial ruling of bankruptcy shall be preceded by the process set out for cases of collective redundancy (art. 391 by reference to 419 of the Labour Code), with the necessary adjustments, where the workers’ committees, or failing them, workplace union representatives, must be informed and consulted.

However, one exception is when the undertaking is considered a micro one (employs a maximum of 10 employees). In this case, the only legal obligation is to inform the employees of the undertaking’s closure with 60 days advance notice (art. 390.4 of Labour Code). One of the necessary adjustments concerns the content of the negotiation procedure. The safeguard measures to avoid the collective redundancy or to reduce the number of workers affected, mentioned in art. 420 of the Labour Code, are not applicable to the bankruptcy situation, even when the employer has other establishments besides the one that is being closed.

The guarantee of payment of employee’s credits arising from the labour contract, its breach and termination that cannot be paid by the employer due to bankruptcy or financial difficulties shall be assumed by Fundo de Garantia Salarial (Salary Guarantee Fund) — art. 380 of the Labour Code. This payment is limited to the credits that became due in the six months prior to the filing of the suit or to the presentation of the conciliation’s request and that have been claimed at least three months before its forfeiture (art. 319 of Act 35/2004).

**Operations affecting shareholders**

Workers’ committees have a right to information about plans to modify the business objectives or company capital and plans to redeploy the enterprise’s production activity (art. 356.i of Act 35/2004).

In the event of transfer of the undertaking or establishment, art. 320 of the Labour Code determines that both transferor and transferee shall inform the workers’ representatives114 of the date and reasons for the transfer, the legal, economic and social consequences for the employees and the projected measures in relation to them.

This information shall be provided in writing, in good time, before the transfer is carried out and, if such is the case, at least 10 days prior to the consultation.

The consultation with a view to reaching an agreement shall take place when the transferor or the transferee envisages measures in relation to his employees as a result of the transfer.

Nevertheless, the infringement of information rights of the workers’ committee when a transfer of undertakings occurs is considered only a minor infringement (art. 675 of the Labour Code) and there is no consequence set out in cases of failure to comply with the consultation procedure. There is no reference in the Portuguese law to the irrelevance of arguments concerning the decision being taken by an undertaking controlling the employer in order to implement art. 7.4 of the Directive.

The collective labour agreement that binds the transferor continues to apply up to its expiry, for at least 12 months, unless replaced by another contractual collective labour regulation instrument (art. 555 of the Labour Code).

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114 In the absence thereof, they shall inform the employees themselves.
ROMANIA

Romania is a parliamentary republic with a total area of 238,391 km² and a population of 21,610,213. Romania is divided into 41 counties (“județe”) and the capital, Bucharest. Territorial autonomy is rather low in the area of labour relations. The decisions and management of economic, social and labour policies belong mainly to the government and to the public central administration bodies subordinated to the government with specific responsibility in these areas.

In 1989, the year of the Romanian communist regime’s fall, the labour legislation in force was based on the principles of the centralised economy and socialist ideology. During the communist period the social dialogue and representation of the employees in the workplace have been deprived of their real meaning and role. The democratic evolution Romania had after the fall of the communist regime determined a real reform for both individual and collective labour relationships. The principles and legislation of the social dialogue and representation of employees were radically changed. The new legislation was adopted in accordance with the new democratic standards, by taking into account the principles of the social market economy and the political, economic and acquis communautaire requirements, in the context of Romania’s accession to the European Union.

I. ECONOMIC AND SOCIAL CONTEXT

Some basic economic data
The Monitoring Report of the European Commission of September 2006 indicated that Romania has made considerable efforts to complete its preparation for European Union (EU) membership. The report indicates that Romania is “sufficiently prepared to meet the political, economic and acquis criteria by 1 January 2007”. The most relevant measures adopted during the past three years are: relaxation of the fiscal regime, improvement in tax collection, liberalisation of the labour market, and ensuring freedom of agreements in labour relations.

There has been a continuous increase in GDP. The growth rate was very high in 2004, decreased in 2005 and it was forecast to slightly increase in 2006 and 2007. Inflation decreased from 45.7% in 2000 to 6.6% in 2006.

**Gross value added per branches (% of all branches)**

<table>
<thead>
<tr>
<th>Branch</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture hunting and fishing</td>
<td>12.4</td>
<td>14.7</td>
<td>12.6</td>
<td>13.0</td>
<td>14.3</td>
<td>10.1</td>
</tr>
<tr>
<td>Industry (including energy)</td>
<td>30.5</td>
<td>30.5</td>
<td>31.0</td>
<td>28.2</td>
<td>28.2</td>
<td>27.7</td>
</tr>
<tr>
<td>Construction</td>
<td>5.5</td>
<td>5.9</td>
<td>6.4</td>
<td>6.5</td>
<td>6.7</td>
<td>7.3</td>
</tr>
<tr>
<td>Trade, transport and communication services</td>
<td>25.2</td>
<td>23.4</td>
<td>22.5</td>
<td>22.7</td>
<td>23.1</td>
<td>n.a.</td>
</tr>
<tr>
<td>Business activities and financial services</td>
<td>13.0</td>
<td>14.2</td>
<td>15.2</td>
<td>13.4</td>
<td>15.8</td>
<td>n.a.</td>
</tr>
<tr>
<td>Other services</td>
<td>13.5</td>
<td>11.3</td>
<td>12.3</td>
<td>16.1</td>
<td>11.8</td>
<td>n.a.</td>
</tr>
</tbody>
</table>

**Labour market**

In 1990 the employed population was more than 10.84 million people. The decline of the number of employed people began in 1992 and in 1999 increased slightly, up to 9.14 million in 2005.
Employment by sector (agriculture, industry, services) as % of total employment

<table>
<thead>
<tr>
<th>Year</th>
<th>Employment share of agriculture</th>
<th>Employment share of industry</th>
<th>Employment share of services</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>36.4</td>
<td>29.5</td>
<td>34.1</td>
</tr>
<tr>
<td>2003</td>
<td>35.7</td>
<td>29.8</td>
<td>34.5</td>
</tr>
<tr>
<td>2004</td>
<td>31.6</td>
<td>31.2</td>
<td>37.2</td>
</tr>
<tr>
<td>2005</td>
<td>32.2</td>
<td>30.3</td>
<td>37.5</td>
</tr>
</tbody>
</table>

The number of self-employed people decreased in the agriculture sector and increased in industry and especially in the services sectors. The European trend of increasing flexibility in the labour market by encouraging fixed-term contracts and part-time work has also occurred in Romania, although the growth of the share of these forms of employment is very slight.

The unemployment rate has increased since the fall of the communist regime. The former regime did not recognise the existence of any social problems, including unemployment. The economic and social changes have resulted in a large number of dismissals in the huge factories and plants that became inefficient. In 1991 the unemployment rate was 1.6% and increased to 11.2% in 2000. The unemployment rate decreased afterwards, due to the progress of the Romanian economy preparing to access the European Union, as well as to the migration of the labour force to other European countries, Canada and in United States of America.

Unemployment rate

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7.5</td>
<td>9.3</td>
<td>11.4</td>
<td>11.2</td>
<td>9.0</td>
<td>10.2</td>
<td>7.6</td>
<td>6.8</td>
<td>5.8</td>
<td>5.4</td>
</tr>
</tbody>
</table>

The number of the early school leavers has been around 22% in recent years. However, according to the Romanian Labour Code, the employer is obliged to ensure vocational training for his employees every two years or three years (depending on the number of employees). Further training can therefore be accessed by employees who early left school.

II. INDUSTRIAL RELATIONS

1. Key elements
The Romanian legal system is based upon the continental system of codification. The hierarchy of the normative acts is established by the Romanian Constitution (“Constituţia României”). It lays down the basic principles and rules in the field of industrial and labour relations: the freedom of work, the right to measures of social protection, the freedom of association in trade unions and employers’ associations, the right to collective labour bargaining and the right to strike.
All the legislation is elaborated and issued on grounds of, and in conformity with, the constitutional provisions. The most relevant laws in the area of industrial and labour relations are:

- the Romanian Labour Code – Law no. 53/2003 ("Codul Muncii"); Law no. 54/2003 on trade unions ("Legea sindicatelor");
- Law no. 356/2006 on employers’ organisations ("Legea patronatelor"); Law no. 109/1997 on the organisation and functioning of the Economic and Social Council ("Legea privind organizarea şi funcţionarea Consiliului Economic şi Social");
- Law no. 130/1996 on labour collective agreements ("Legea privind contractul colectiv de muncă");
- Law no. 467/2006 establishing the general framework for workers’ information and consultation ("Legea privind stabilirea cadrului general de informare şi consultare a angajaţilor");
- Law no. 168/1999 on settlement of labour conflicts ("Legea privind soluţionarea conflictelor de muncă").

2. Social partners

Unions

Under Romanian law, the trade unions (“sindicatele”) are set up for the purpose of defending the rights provided in national legislation, in international agreements, treaties and conventions Romania is a party to, as well as in collective labour contracts, and for the purpose of promoting their professional, economic, social, cultural, and sports interests. The trade unions are independent from the public authorities, political parties, employers and employers' organisations. The legal status, setting up, organisation and functioning of trade union organisations are laid down by Law on trade unions no. 54/2003 ("Legea sindicatelor").

Employees (“salariaţii”) as well as public servants (“funcţionarii publici”), with several exceptions, have the right to set up trade union organisations and to join them. Self-employed people, cooperative members, farmers, and trainees have the right to join a trade union organisation. For the setting up of trade union at least 15 people from the same branch or profession is required, even if they carry on their activity at distinct employers. No person may be constrained to be or not to be a part of, to withdraw or not to withdraw from a trade union organisation. A person may only belong to one trade union organisation at the same time. Trade union membership rate in Romania decreased from approx. 90% in early 1990’s to 44% in 2002.

The trade union organisations are entitled to defend the rights of their members (deriving from labour legislation, statutes of the public servants, collective labour contracts and individual labour contracts, as well as agreements regarding the labour relations of the public servants) before the courts, jurisdiction bodies, and other state institutions and authorities.. To this end, trade unions have the right to undertake any action provided by law, including bringing an action to the court on behalf of their members, without an express mandate from the person concerned. The action may not be brought or continued by the trade union organisation if the person concerned opposes the trial.

The trade union organisations may set up associations depending on the criterion of the branch of activity, of the profession or on the territorial criterion. Therefore two or more trade union organisations set up at different units from the same branch or profession can be associated with a view to constituting a trade union federation, as can two or more trade union federations from different branches of activity or professions. The trade union organisations constituted by association, may delegate representatives to deal with the administrative management of the units, to assist or represent their interests in all cases, at the request of the trade union organisations in their structure. At the national level there are five trade union confederations (see table below).

Employers

The employers’ organisations (“patronate”), on the other hand, are autonomous organisations of the employers (“angajatori”), without a political character, set up as private law legal persons. The employers’ organisations represent, support and defend the interests of their members in relations with the public authorities, trade unions and other legal and natural persons, depending on their objectives and
purpose, both at national and international level, according to their own statutes and in accordance with the provisions of the law.

The legal status, setting up, organisation and functioning of the employers’ organisations are laid down by Law on employers’ organisations no. 356/2001 (“Legea patronetelor”). A number of at least 15 registered legal persons or natural persons authorised for functioning according to the law may constitute an employers’ organisation. Employers’ organisations may also be set up with a number of at least five members in the branches where they hold over 70% of the production. The employers’ organisation are set up by economic activity and organised in sections, divisions, branches and at national level. The employers’ organisations may set up their own territorial organisational structures, with or without legal personality. The territorial organisational structures without legal personality carry on their activities on the basis of the employers' organisation status which they belong to.

The employers’ organisations designate, according to the conditions of the law, representatives in the negotiation and conclusion of the collective labour contracts, in other treaties and agreements in relations with the public authorities and trade unions, as well as the tripartite structures of management and social dialogue. They are also consulted by the government regarding the initiation, drawing up and promotion of programmes for development, restructuring, privatisation, liquidation, and economic co-operation; and participate in the structures for the co-ordination and administration of the programmes with the European Union. At the request of their members, the employers' organisations can represent them in the event of conflicts of rights.

The employers’ organisations may be set up as unions, confederations or in other associative structures. Two or more employers’ organisations may constitute employers’ organisation unions or federations. Several employers’ organisations unions or federations may be associated as employers’ organisation federations. There are 12 confederations of employers’ organisations and two associations of employers’ organisations representative at national level.

The following table sets out information about the main trade union and employer organisations:

<table>
<thead>
<tr>
<th>Unions</th>
<th>Full name and details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cartel ALFA</td>
<td>National Confederation of Trade Unions (Confederaţia Naţională Sindicală Cartel ALFA - CNS Cartel ALFA). 1,000,000 members.</td>
</tr>
<tr>
<td>FRATIA</td>
<td>National Confederation of Free Trade Unions in Romania (Confederaţia Naţională a Sindicatelor Libere din România FRÂŢIA - CNSLR-FRÂŢIA), 800,000 members.</td>
</tr>
<tr>
<td>BNS</td>
<td>National Bloc of Trade Unions (Blocul Naţional Sindical - BNS)</td>
</tr>
<tr>
<td>CSDR</td>
<td>Confederation of Democratic Trade Unions in Romania (Confederaţia Sindicatelor Democratice din România - CSDR)</td>
</tr>
<tr>
<td>MERIDIAN</td>
<td>National Trade unions Confederation (Confederaţia Sindicală Naţională MERIDIAN - CSN MERIDIAN)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employers</th>
<th>Full name and details</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACPR</td>
<td>Alliance of Employers’ Confederations in Romania (Alianţa Confederaţiilor Patronale din România)</td>
</tr>
<tr>
<td>UPR</td>
<td>Union of Employers’ Organisations in Romania (Uniunea Patronatelor din România). Association of employers’ organisations representative at the national level but not active at present.</td>
</tr>
<tr>
<td>CONPIROM</td>
<td>Confederaţia Patronală din Industria României”</td>
</tr>
<tr>
<td>CNPR</td>
<td>Confederaţia Naţională a Patronatului Român</td>
</tr>
<tr>
<td>CNIPMMR</td>
<td>Consiliul Naţional al Întreprinderilor Private Mici şi Mijlocii</td>
</tr>
<tr>
<td>UGIR</td>
<td>Uniunea Generală a Industriaşilor din România</td>
</tr>
<tr>
<td>UGIR 1903</td>
<td>Uniunea Generală a Industriaşilor din România 1903</td>
</tr>
<tr>
<td>Co.NPR</td>
<td>Consiliul Naţional al Patronilor din România</td>
</tr>
<tr>
<td>PNR</td>
<td>Patronatul Naţional Român</td>
</tr>
</tbody>
</table>
3. Joint bodies

The Economic and Social Council (“Consiliul Economic și Social”) is an autonomous public institution of national interest, established for the purpose of facilitating social dialogue at national level and ensuring stability and social peace. The Economic and Social Council has a consultative role and its organisation and functioning are regulated by Law no. 109/1997. It is a tripartite institution, being composed of an equal number of representatives of employers, employees and government. Thus, from among the 45 members of the institution, each partner appoints 15 members. The representatives of the employers and employees are appointed by the trade unions and employer’s associations that meet the representation criteria at the national level.

It examines and formulates advisory opinions on draft normative acts (laws, government decisions and regulations), and on draft programs and strategies - the initiators of any normative act being obliged by the law to request the advisory opinion of the Council; signals to the government the occurrence of social and economic processes calling for the elaboration of new laws and regulations; upon request of the government or parliament or on its own initiative, analyses and studies the area of social dialogue.

Government Decision no. 314/2001 created within ministries and prefect’s offices consultative social-dialogue commissions (“comisii de dialog social”) in order to carry on the social dialogue among the public administration, trade unions and employers’ organisations. These commissions have a tripartite character, being composed of representatives of the employers, employees and public administration. The representatives of the public administration are appointed by the minister (“ministru”) or prefect (“prefect”) and the representatives of the employers and employees are appointed by the trade unions and employers’ associations that meet the representation criteria at national level.

Social dialogue commissions’ activity has a consultative character and aims to assure collaboration among employers, employees and public administration and provide information concerning any problems raised in the ministry’s or administration’s area of activity and social partners’ interest, as well as consultation regarding any legislative initiatives or other economic and social initiatives.

There are also other institutions where the social dialogue is carried on, although the social dialogue is not their main scope and activity. Thus, the National Agency of Employment (“Agenția Națională pentru Ocuparea Forței de Muncă”), the National Council of Adults’ Training (“Consiliul Național de Formare Profesională a Aduților”), National House of Health Insurances (“Casa Națională de Asigurări Sociale de Sănătate”), National House of Pensions and other Social Insurance Rights (“Casa Națională de Pensii și Alte Drepturi de Asigurări Sociale”), and their territorial components are managed in accordance with the tripartite principle. The boards of these institutions are composed of representatives of the employers, employees and public administration. In some cases, the parties’ representatives are joined by others (e.g. representatives of pensioners). All these institutions are meant to facilitate the social dialogue.

4. Collective bargaining

Key issues

Romanian legislation regulates the procedure of collective bargaining (“negociere colectivă”), the conclusion and effects of labour collective agreements, as well as the settlement of conflicts related to collective bargaining. Thus, title VIII of the Romanian Labour Code refers to “Labour collective agreements” (“Contractele collective de muncă”) and title IX regulates “Labour conflicts” (“Conflictele de muncă”). These provisions are developed by specific legislation, respectively Law no. 130/1996 on labour collective agreements (“Legea privind contractul colectiv de muncă”) and Law no. 168/1999 concerning the settlement of labour disputes (“Legea privind soluționarea conflictelor de muncă”).
According to Romanian legislation (Law on collective agreements and Labour Code), the legal provisions concerning employees’ rights have a minimal character in respect of the conclusion of the collective labour agreement; the collective labour agreement must comply with the imperative provisions of the law (e.g. its clauses shall not establish the level of minimum wages lower than that provided by the law). Thus, the collective labour agreement shall not worsen the employees’ statute in comparison with the legal provisions. If the collective agreement grants the employees more advantages than the law does, the employer is compelled to observe its provisions and grant his employees at least the same rights.

The authority of the collective labour agreement is similar to the authority of the law when the parties negotiate the individual labour contract they are compelled to conclude. The clauses of the collective agreement have a minimal character in respect of the rights and obligations settled by the individual labour contract, so that the individual labour contracts shall not contain clauses stipulating inferior employee rights as compared to the rights fixed by the collective labour agreements.

Collective labour agreements may be concluded at the level of the employer, group of employers, activity branch and at national level. However, the negotiation of the labour collective agreement is compulsory only at employer level, and then only if the employer has at least 21 employees.

The law does not require the social partners to conclude labour collective agreements, whatever level the negotiation takes place and whether it is compulsory or optional. Where no labour collective agreement is concluded at employer level, the activity is not blocked because the collective agreements concluded at superior levels are applicable. If no labour collective agreement is concluded at any level, the parties’ rights and obligations remain regulated by the legislation in force and by the individual labour contracts, the conclusion of which is, in all cases, compulsory.

The law establishes the principle according to which the social partners are represented in collective bargaining by those trade unions and employers’ associations that meet the representation criteria expressly provided by the law referring to the number of employees represented and the territorial distribution of the employers associations and trade unions (Articles 15 and 17). However, the social partners may be represented by their organisations that do not have representation criteria if such organisations are affiliated to an association of employers or to a trade union which is representative at superior level (Articles 16 and 18).

The Law on labour collective agreements lays down that the collective labour agreements concluded in compliance with the legal provisions are binding on the parties (Article 7 par. 2). The collective labour agreement is concluded in writing for a determined period, not less than 12 months. The parties may agree to prolong its effects, with the same clauses or with other clauses agreed by them.

Any collective agreement comes into force on the date of its registration. The parties may agree the application date to be subsequent to the registration date (Article 25 par. 3). The collective labour agreement concluded at employer level shall be registered at the territorial department of labour and social protection (“direcția teritorială de muncă și protecție socială”) in the area of competence of which the respective employer is situated. Collective labour agreements concluded at the level of a group of enterprises, at the level of a branch of activity or at national level shall be registered at the Ministry of Labour, Family and Equal Opportunities (“Ministerul Muncii, Familiei și Egalității de Șanse”). The registration of the collective labour agreements may be refused only in one of the cases expressly listed by the law, referring to the lack of evidence on representation conditions, lack of signatures or lack of detail about the employers to whom the contract is to be applied. The collective labour agreements concluded at national level or at the level of branch of activity must be published in the Romanian Official Gazette within 30 days of their registration. However, the agreements are applicable from the registration date, irrespective of their publication.

As regards the interpretation and application of labour collective agreements’ clauses, “joint commissions” (“comisii paritare”) may be established at enterprise level. According to the National Labour Collective Agreement (NLCA - “Contractul Colectiv de Muncă Unic la nivel Național” CCMUN)\textsuperscript{115}, in case of differences related to clauses in the collective agreement, the employer and the trade unions shall try to settle them within the joint commissions constituted in the enterprise and then,

where some differences are not settled, within the joint commissions constituted at the level of each branch of activity (Article 96 par. 5 NLCA). The joint commissions are entitled to interpret the respective collective labour agreement’s clauses in conformity with the actual conditions and possibilities of the enterprises at one of the parties’ demand.

Main features

Collective labour agreements may be concluded at the level of the employer, group of employers, activity branch and at national level. According to the Law on labour collective agreements, at each one of these levels there may be concluded only one labour collective agreement (Article 11 par. 2).

Although negotiation and conclusion of labour collective agreement at national level are not compulsory, since 1996 (the year the actual Law on collective labour agreements entered into force) there has been each year a collective labour agreement applicable at national level. At present, the number of branches of activity listed in the national collective agreement is 32, but not all of them are covered by collective agreements. In 2005 the number of employers with more than 21 employees was 24,207 (state 3,305, mixed 1,243, private 19,226, others 433) and the number of collective agreements and amendment Acts concluded at employer’s level and registered at the territorial departments of labour and social protection was of 10,936. In 2006 there were 9,133 collective agreements and amendment acts concluded at employer’s level registered.

The Law on labour collective agreements lays down that collective labour agreements shall not contain clauses stipulating inferior employee rights as compared to the rights set out in collective labour agreements concluded at superior levels (Article 8 par. 2). Those clauses of the collective labour agreements that breach the clauses of the collective agreements concluded at superior levels are null and void. Where the parties do not agree, only the court of law is competent to declare such clauses as null and void, following the demand of an interested party.

The collective labour agreements concluded at enterprise level provides rights and obligations for all the employees of that enterprise irrespective of the date when they were employed and their affiliation to a trade union.

Collective labour agreements concluded at the level of a group of employers or branch of activity grant protection for all the employees of the employers who are members of that group or branch of activity. The parties have the legal obligation to determine and provide within the clauses of the collective agreements concluded at the level of a branch of activity and group of enterprises, the list of enterprises where the agreement concluded is to be applied. Collective labour agreements concluded at national level apply for the benefit of all the employees of all the employers in the country.

The legislation generally stipulates some of the clauses that may be included in collective labour agreements but, as a general rule, does not limit the contractual liberty of the parties. According to the law, the parties negotiate at least remuneration, duration of working time, work programme and work conditions. However, the labour collective agreement may regulate other rights and obligations, including the protection of people elected in trade union bodies or designated as representatives of the employees.

As a general rule, Romanian legislation allows all aspects of labour relations to be included in collective bargaining. Thus, collective bargaining is ruled by the principle of parties’ complete liberty in settling the content of a collective labour agreement, as long as it does not breach the minimum legal standards provided for employee rights or the clauses of any collective agreements concluded at superior levels.

As an exception, negotiations at the level of budgetary institutions shall not refer to employees’ rights which are granted by law and the amount of which is expressly established by legal provisions (wages, holidays, etc.).

5. Collective disputes

Romanian legislation identifies as “conflicts of interests” (“conflicte de interese”) all the conflicts between the social partners related to the initiation and carrying on of collective bargaining. Such conflicts may be settled only through the specific procedures expressly provided by the law: conciliation, mediation and arbitration. The law courts have no competency to settle conflicts of interests. During any
disputes the law courts (labour law courts) may only intervene if a strike was declared or continued by breaching the legal provisions and, as a consequence, stop the illegal strike.

1. **Conciliation** ("conciliere"). The procedure of conciliation is compulsory for the parties. Where there is a dispute the representative trade union or, as the case may be, the representatives of the employees have the obligation to inform the Ministry of Labour, Family and Equal Opportunities, by its territorial departments, in view of conciliation. The Ministry only has the obligation to organise parties’ meeting in view of reaching an agreement and to summon the parties to participate in the conciliation. Where, as a consequence of the debates, an agreement with regard to the settlement of the claims formulated is reached, the parties shall finalise the collective labour contract, therefore ending the dispute. If the agreement is only partial, in the report there shall be written down the claims on which agreement was reached and the ones left unsettled, together with the points of view of each party referring to the latter.

2. **Mediation** ("mediere"). The procedure of mediation has an optional character for the parties. Where the dispute has not been fully settled as a consequence of the conciliation organised by the Ministry of Labour, Family and Equal Opportunities, the parties may decide, by consensus, to initiate the mediation procedure. The mediators ("mediatori") are elected by mutual agreement by the parties in the dispute from among mediators appointed annually by the minister of labour, family and equal opportunities, with the agreement of the Economic and Social Council. The mediation procedure is established by the collective labour contract concluded at national level. At the end of the procedure the mediator draws up a report with regard to the dispute, to state his opinion on the possible claims left unsettled. The report is sent to each party, as well as to the Ministry. The parties may agree to follow the mediator’s recommendations, but they are not obliged to.

3. **Arbitration** ("arbitraj"). The arbitration procedure has an optional character. For the entire duration of the dispute the parties in conflict may decide by consensus that the formulated claims be subject to the arbitration of a commission. The arbitration commission consists of three arbitrators ("arbitri"). The parties and the Ministry each appoint an arbitrator from a list of arbitrators established once a year by the minister, with the consent of the Economic and Social Council. The procedure of the arbitration commission is established by a regulation approved by ministerial order. The arbitration commission convenes the parties and the arbitration commission delivers a final judgement. The judgement may be appealed in front of the civil law court only for nullity aspects. The judgement of the arbitration commission is compulsory for the parties and constitutes a part of the collective labour contract. Beginning with the date when the judgement was delivered by the arbitration commission the dispute is ended.

Conflicts of rights ("conflicte de drepturi") are any labour conflicts whose object is the exercise of rights or the meeting of certain obligations deriving from laws or other regulations, as well as from the collective or individual labour contracts – conflicts referring to the employee rights. Conflicts related to the breach or nullity of a collective labour agreement, or of clauses of such agreement, represent conflicts of rights. The conflicts of rights are settled by the competent labour law courts.

**Strikes**

Romanian legislation lays down the right to strike only for employees. The exercise of this right is limited only to disputes related to collective bargaining. The strike ("greva") is permitted only if the procedures provided by the law to overcome collective bargaining deadlock have been followed. The strike may be declared only if it has been notified to the management of the unit by the organisers 48 hours before and the decision to declare the strike has been taken by the number of employees mentioned by the law. Thus, such decision may be taken either by the representative trade union organisations, participants in the dispute, with the agreement of at least half the number of the members of the respective trade unions or, for the employees of the units where representative trade unions are not organised, by secret ballot, with the agreement of at least one quarter of the number of the employees of the unit or, as the case may be, of the sub-unit, department or group of employees where the dispute started.

Issues which caused labour disputes include: salary (from 47.7% in 2002 to 62.5% in 2006), labour organisation (2.9% in 2002, 7.2% in 2003 to 1.6% in 2005), working conditions (8.1% in 2002, 5.0% in 2004, 14.2% - 2005, 12.5% - 2006), working time (8.7% in 2002, 4.2% in 2003 8.3% in 2006).
Neither the Romanian Constitution nor labour legislation provide for the employers’ right to lock-out. It is forbidden for the employer to resort to lock-out.

III. EMPLOYEES’ REPRESENTATION SYSTEM IN THE UNDERTAKING

1. General issues
According to the Romanian Labour Code (“Codul Muncii”), “the law regulates the modalities of consultations and permanent dialogue between the social partners in order to ensure the climate of stability and social peace” (Article 214). The Labour Code then lays down general rules in the field of employee representation in the workplace. The provisions of the Labour Code are detailed and developed by other legislative acts (see above in industrial relations issues), among others: Law no. 467/2006 establishing the general framework for workers’ information and consultation (“Legea privind stabilirea cadrului general de informare și consultare a angajaților”) and Law no. 217/2005 on establishment, organisation and functioning of the European Works Council (“Legea privind constituirea, organizarea și funcționarea comitetului european de întreprindere”).

Works councils were regulated during the communist regime in the context of the centralised economy and socialist ideology. After 1989 they were abolished. Nowadays, representation of employees in the workplace is carried out by: trade unions representatives (“delegații sindicali”), (the most usual type) and employees’ elected representatives (reprezentanți aleși ai salariaților”).

2. Legal basis and scope
All forms of representation are laid down by the legislation and labour collective agreements for all employees, irrespective of their sector of activity, legal status or size.

The system of union representation at workplace level has both a legal and collective agreements basis. The establishment, rights and obligations are provided mainly by the Romanian Labour Code (“LC” - Title VII “Social dialogue” – “Dialogue social”, chapter II “Trade unions” – “Sindicatele”, articles 217 to 223) and the Law on Trade Unions (“LTU”). Rights and obligations of the trade unions are also established or increased by the parties’ agreement within the collective labour agreements.

Where the employer has more than 20 employees and only if none of the employees is a trade union member, the interests of these employees can be promoted and defended by representatives specially elected and authorised for this purpose. However, in such a situation the election of employee representatives is not compulsory. The election, rights and obligations of such employees’ representatives are provided by the Romanian Labour Code (“LC” - Title VII “Social dialogue” – “Dialogue social”, chapter III “Employees’ representatives” – “Reprezentanții salariaților”, articles 224 to 229)

3. Capacity for representation
The trade unions represent their members’ rights and interests in both individual and collective labour relationships. As regards collective bargaining, the employees may be represented only by the trade unions that meet the representation criteria at the specific level the collective negotiation is carried out (“sindicat reprezentative”). The trade union that meets such representation criteria represents all employees irrespective of whether or not all they are members of the trade union.

The representatives the employees of a company may elect, where none are members of a trade union, have the capacity to represent all the employees in that company in both individual and collective labour relationships.

The trade union organisations are entitled to defend the rights of their members before the courts, jurisdiction bodies, other state institutions and authorities. To this end, trade unions have the right to undertake any action provided by law, including bringing an action to the court on behalf of their members, without an express mandate from the person concerned. The action may not be brought or continued by the trade union organisation if the person concerned opposes the trial. The trade union may also represent its members in the courts where such representation is required by them.
Although the attributions of the employees’ representatives are similar to those of trade unions, they cannot carry out activities which are, according to the law, exclusive to trade unions. For instance, they cannot participate in the negotiation of the collective labour agreement and have no capacity to represent employees in the courts.

4. Composition

The trade union representatives are appointed in accordance with the rules provided within each trade union constitution and internal regulations (“statute”). The law only sets out a restriction with regard to people convicted of offences being elected to the management body of a trade union organisation.

The election and legal status of the elected employee representatives is regulated by the Labour Code (Article 224 to 229). The employee representatives are elected in the employees’ general meeting, based on a vote by at least half the total number of employees. Employee representatives must be at least 21 years of age and have worked with the employer for at least one year continuously. This condition of the length of service is not required for the election of employee representatives in newly established companies.

The number of elected employee representatives is mutually agreed upon with the employer, in relation to the number of his employees. No other details are set out in the Labour Code. On the other side, the national collective agreement or branch collective agreements do not refer to the procedure of employee representative elections. The length of the term of office of the employees’ representatives shall not exceed two years.

5. Protection granted to the members

The members of the elected management bodies of the trade union organisations cannot be dismissed for the duration of their office, except when the dismissal is ordered for disciplinary reasons. Moreover, within two years from the end of the term of office, the representatives elected in the management bodies of trade union organisations may not have their individual labour contract or relationship changed or terminated, be dismissed for reasons including being professionally unfit. Trade union members who are not elected in the management bodies do not benefit from such rights. However, the law prohibits the dismissal of an employee for exercising any rights he/she has a trade union member.

Employee representatives also have protection against dismissal in connection with carrying out their duties (Article 229 LC). The time allowed to the employee representatives to carry out their duties is 20 hours per month and shall be deemed as actual working time, and paid accordingly (Article 228 LC).

The representatives of employees in European companies have the same rights as the members of the elected management bodies of trade union organisations and employees’ elected representatives.

6. Working of the body and decision-making

The trade unions have the right to establish their own regulations, to organise their administration and activities and to formulate their own action programmes, within the law. The setting up, organisation, functioning, reorganisation and cessation of the activities of a trade union organisation are regulated by its statutes. Such statutes include provisions related to the management bodies, the duration of their terms of office and the adoption of decisions. The public authorities and employers’ organisations are forbidden to interfere in any way to limit or interrupt the exercising of such rights.

The functions of the elected representatives, the way such functions are to be carried out, as well as the duration and the limits of their terms of office are established by the employees’ general assembly.

Means

The members elected in the management bodies of the trade union may be paid by the union. For the period during which the person elected is paid by the trade union, their individual labour contract or, as the case may be, the labour relation is suspended, and that person shall preserve his/her previous position and place of work, as well as the length of service. In his/her position another person may be employed only with an individual labour contract for a fixed term. When the person returns to the position
previously held, he/she shall be provided a wage which cannot be lower than the one which could have been obtained under conditions of continuity in that position.

The members elected to the management bodies of trade union organisations whose individual labour contracts are not suspended and who are, consequently, working directly in the unit as employees, have the right to a shorter work schedule by three to five days for trade union activity, without affecting their wage rights. The number of days accumulated per year and the number of the people who may benefit from these are established by the collective labour contract.

Trade union members who are not elected in the management bodies do not benefit from these rights.

The rights and obligations of the trade unions are also established or increased by collective labour agreements. For example, the National Labour Collective Agreement lays down the employer’s obligation to grant the trade union a room and furniture necessary to carry out their activities, as well as access to office equipment and administrative facilities; to contribute to the common funds for carrying out collective negotiations at the company, branch and national levels; and to grant trade union representatives time-off up to a total amount of five paid days a month.

As distinct from the trade unions, elected representatives are not granted these facilities or resources.

The time devoted to the employee representatives to carrying out their functions is 20 hours a month and is deemed actual working time, and paid accordingly (Article 228 LC). The legislation does not provide for the possibility of suspension of such elected representatives’ labour contracts while being paid by some other source. The number of paid days off granted to employees’ elected representatives is therefore higher than that provided for the trade unions representatives.

7. Role and rights

The Labour Code lays down the obligations of the participants in labour relations to inform and consult one another, in compliance with the law and the collective labour contracts, in order to ensure proper progress (Article 8 par. 2 LC). One of the main obligations of the employer is to consult with the trade union or, as the case may be, the employee representatives on the decisions likely to substantially affect their rights and interests (Article 40 par. 2 let. e LC).

The trade union or employee representatives have the right to be consulted by the employer when drawing up the collective schedule of annual holidays (Article 143 par. 1 LC), health and safety measures (Article 174 par. 3 LC), internal rules – e.g. working time, disciplinary rules, and other employer’s and employees’ rights and obligations in accordance with individual labour contracts and collective labour agreements (Article 257 LC).

The employer who is a legal entity and has more than 20 employees is obliged to draw up and apply annual vocational training plans, after consulting with the trade union or employee representatives (Article 191 par. 1 LC).

For the purpose of defending their rights and promoting the professional, economic, social, cultural or sports interests of members, the representative trade union organisations shall receive from the employers or their organisations the necessary information for the negotiation of collective labour contracts or, as the case may be, for concluding agreements with regard to labour relations, according to the conditions of the law, as well as those regarding the setting up and use of funds for the improvement of conditions at the workplace, labour protection and social utilities, insurance and social protection (Article 30 par. 2 LTU).

According to the National Labour Collective Agreement (Article 87 par. 1 NLCA), to ensure the trade unions can exercise their rights, the employer is obliged to grant them access to the necessary information and documents. Trade union delegates also have the obligation to keep confidential information and documents defined as such.

The decisions of the board of administrators (“consiliu de administrație”) and of other bodies assimilated to these, regarding the problems of professional, economic, social, cultural, and sports interest, shall be communicated in writing to the trade union organisations, within 48 hours (Article 30 par. 3 LTU). The National Labour Collective Agreement lays down that both employers and trade unions shall communicate to each other in due time the decisions regarding all important aspects in the field of labour relations (Article 87 par. 2 NLCA).
The trade union or employee representatives, as the case may be, have the right to be consulted and informed in advance if the employer intends to carry out collective dismissals (“concederi colective”) (Article 69 to 72 LC), or in case of a transfer of the company, the unit, or parts thereof, (“transfer de întreprindere”) prior to the transfer, by both transferor and transferee, as regards the legal, economic, and social consequences for the employees (Article 170 LC) – see below sections 4.1 and 4.2.

The labour collective agreements also provide for the consultation of trade unions in establishing flexible working programs (Article 13 par. 2 NLCA), medical examinations (Article 31 par. 1 NLCA), and the use of the social fund of the enterprise (Article 97 par. 3 NLCA). In addition the trade union representatives have the right to ensure that employees’ rights laid down in the labour collective agreement are being observed, the employers being obliged to grant them access to the enterprise (Article 99 and 105 NLCA).

The employees’ representatives have the following main functions:

- to see that the employees’ rights are complied with, in accordance with the legislation in force, the applicable collective labour contract, the individual labour contracts, and the company’s rules and regulations;
- to participate in the drawing up of the company’s rules and regulations;
- to promote the employees’ interests concerning wages, work conditions, working time and rest time, labour stability, as well as any other professional, economic and social interests related to labour relationships; and
- to notify the labour inspectorate about the non-observance of the provisions of the law and the applicable collective labour contract.

The duties of the employee representatives, the way these are carried out, and the length and limits of their term of office shall be established during the employees’ general meetings, according to the law.

The functions of employee representatives are similar to those of trade unions. However, they cannot carry out activities which are, according to the law, exclusive to trade unions. Employee representatives only have powers related to internal day-to-day issues. As regards collective bargaining, where no trade union is constituted at the enterprise level; or no trade union is constituted at the level of the said enterprise achieves the representation conditions provided by the law, the employees elect their representatives. Such special elected representatives only have the power to carry out collective negotiations and sign the collective agreement.

In addition, the employers are not obliged to invite the elected representatives to meetings of the board of administrators (“consiliu de administrație”) to discuss problems of professional, economic, social, cultural, and sports interest.

8. Other representation bodies

To implement the provisions on information and consultation of workers, health and safety at work committees (“comitete de securitate și sănătate în muncă”) are set up and function in employers’ undertakings (Article 19 of Law no. 319/2006 on safety and health at work (“Legea sănătății și securității în muncă”) and Articles 179 to 181 LC). The Labour Code lays down that health and safety committees must be established by employers who are legal entities and have at least 50 employees. The health and safety committee is composed of workers’ representatives with specific responsibilities in the area of safety and health at work, employer’s representatives and the physician specialised in safety and health at work.

As regards the health and safety at work committee, the workers’ representatives are appointed by the trade unions established at employer level which meet the conditions to be representative at this level, and only where such a trade union does not exist at this level can workers’ representatives be directly elected.

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116 The establishment, functioning and attributions of the labour safety and health committee are laid down in the Methodological norms issued for the implementation of Law no. 319/2006, approved by Governmental Decision no. 1425/2006 (Official Journal no. 882/30.10.2006), Article 57 to 67.
EMPLOYEE REPRESENTATIVES IN AN ENLARGED EUROPE

by the employees. In addition, the employers’ organisations and trade unions organisations may establish joint services for safety and health at work at branches or sectors of activity, groups of employers or employer level (Article 19 par. 4 NLCA).

European Works Council

The establishment of works councils (“comitete de întreprindere”) as bodies of representation of employees at workplace level is regulated only for:

- companies and groups of companies of EU dimension with headquarters in Romania; or

- European companies which do not have headquarters in one of the EU Member States but have designated a representative in Romania or where the Romanian establishment or subsidiary has the greatest number of employees from among the establishments or subsidiaries in EU Member States.

Law no. 217/2005 on establishment organisation and functioning of the European Works Council (“EWC”) ("Legea privind constituirea, organizarea și funcționarea comitetului european de întreprindere") lays down rules concerning the establishment of either the EWC or employees’ information and consultation procedures in companies of EU dimension.

9. Protection of rights

Generally, non-observance by the employer of the rights of employee representatives can result in civil liability for damages. In some cases, this is defined by the law as an offence – “contraveneție” (Article 47 of Law no. 217/2005 on establishment organisation and functioning of the European Works Council) and the employer may be fined by the labour inspector.

10. Codetermination rights

The legislation expressly provides for some cases of codetermination. Workloads (“norme de muncă”) are prepared by the employer with the consent of the trade union or employee representatives, where specific technical rules for workloads do not exist (Article 129 par. 1 LC). Such technical rules have only been adopted in specific areas such as the public health system.

The consent of the trade union or employee representatives is also necessary when, under exceptional circumstances, weekly rest days are granted on a cumulative basis, after a period of continuous activity not exceeding 15 calendar days (Article 132 par. 4 LC). The employer can reject the employee’s request for unpaid vocational training leave only with the consent of the trade union or employee representatives (Article 150 par. 2 LC). The instruction of employees on health and safety must be made by the employer using specific means mutually agreed upon by the employer together with the health and safety committee and the trade union or employee representatives (Article 176 par. 2 LC).

The labour collective agreements also lay down some cases of codetermination:

- the establishment of measures to improve labour conditions (Article 19 par 3 let. b NLCA);
- wage incentive systems (Article 37 par. 2 let. b NLCA);
- unpaid leave where there is temporary diminution or interruption of the enterprise’s activity for a period of upto 15 days per year (Article 43 par. 5 NLCA); and
- decisions on issues related to vocational training (Article 83 and 84 NLCA).

Where either a preliminary disciplinary inquiry or a professional evaluation takes place, a representative of the trade union - if the employee is a member - must participate in the designated commission (Article 75 par. 2 and 77 par. 2 NLCA).
IV. EMPLOYEES’ PARTICIPATION IN CORPORATE BODIES

Under Romanian legislation, there are no rules on the participation of the employees in the company’s supervisory or administrative bodies. According to the Law on trade unions, employers are obliged to invite the elected representatives of the representative trade union organisations to the meetings of boards of administrators (“consiliu de administraţie”) when problems of professional, economic, social, cultural, and sports interest are to be discussed (Article 30 par. 1 LTU).

There is no legal provision giving the right to vote to the trade union representatives in the employer’s board of administrators. The National Labour Collective Agreement (“NLCA”) states that the trade union representatives have observer status and they do not have voting rights (Article 86 par. 1 NLCA). The employer is obliged to invite the trade union representatives at least 72 hours before the meeting, as well as to communicate them the meeting’s agenda and grant them access to the documents concerning the professional, economic, social, and cultural issues to be discussed (Article 86 par. 2 NLCA).

The trade unions representatives participate in the corporate board meetings but are not members of the board. They do not participate in taking the decisions. They are only invited to the meetings.

The law refers only to the employer’s obligation to invite them to the board of administrators’ meetings. No reference is made as regards the supervisory boards or other bodies corresponding to the dualist system of company administration, because this has only very recently been introduced into the Romanian legislation (from 1st January 2007) and therefore the chance of finding companies with a dualist system of administration in Romania is very low. When the number of such companies increases, the legislation may be amended so as to make reference to the employer’s obligation to invite trade unions’ representatives to the meetings of the supervisory boards or other bodies corresponding to the dualist system.

V. EMPLOYEE INVOLVEMENT IN EXTERNAL DECISIONS THAT AFFECT THE UNDERTAKING

Under Romanian legislation employees are not involved in any external decisions affecting the undertaking. The legislation provides for their involvement (information and consultation procedures) only when decisions affecting their rights and interests are taken by the employer, such as transfer of undertaking, restructuring of the company (reorganisation), etc.
SLOVAKIA

The first independent and sovereign state of the Slovaks was a common state with the Czechs, the so-called First Czechoslovak Republic, which arose after the First World War. The First Czechoslovak Republic was a democratic state and its economy was one of the twenty most developed and successful economies in the world. In 1948, the communist party took power. Democracy was replaced by a totalitarian regime and the market economy by a centrally-planned economy. The economy significantly slowed down. The velvet revolution in 1989 re-established human rights and freedoms and began the rapid transfer from a centrally-planned economy and state-owned resources to a market economy and plurality of (mainly private) ownership. The transformation process was accompanied by a sharp economic decline. On 1st January 1993, Czechoslovakia split into two states - the Slovak Republic and the Czech Republic.

The Slovak Republic is a unitary state with one government, one system of ministries and one parliament. The "Národná rada Slovenskej republiky" (National Council of the Slovak Republic), the Slovak parliament, is the only body authorised to adopt the Constitution and Acts. All other law issued by, for example government, must be in compliance with and based on the Act. Some powers of the state are decentralised and endowed to local self-governance in Slovakia at municipal and regional level, within the scope of law adopted by national parliament.

I. ECONOMIC AND SOCIAL CONTEXT

Some basic economic data

The first year of the independent Slovak economy brought higher inflation and further economic decline. Unemployment reached more than 14%. The deficit in public finances was more than 30% of GDP. This resulted from the division of the Czechoslovak currency, tax reform, and the interruption of economic relationships and processes. However economic reforms, as well as successful foreign policy, have borne fruit. Since 2000, the GDP has continuously grown (3.2% growth in 2001 up to more than 6% in 2006 and 7% was expected in 2007). Overall inflation has decreased; it fell from 12.2% in 2000 to 2.8% in 2005. Real wages have increased (by 6.3% in 2005). Unemployment fell to less than 13% in the third quarter of 2006, the lowest unemployment rate in last seven years, although unemployment is still high and "a nightmare" of Slovak governments, the Slovak economy and the social situation. At the beginning of 2007, analysts forecasted further growth in the Slovak economy.

Since the 1990s there has been an increase in the percentage of the tertiary sector’s (services) contribution to GDP and a decreasing or stagnation of the contribution from agriculture. In 2005, the sector of services created 62.1% of GDP; industry and construction created 32.6% (in 2004 it was only 24.5%) and the primary sector of agriculture created 5.3%. In 2004, the share of small and medium-sized enterprises (SME) of GPD was 39.6% and 45.1% on added value industry. In terms of employment, 59.6% of employees were employed in the tertiary sector; 34.7% in industry and construction and 5.7% in agriculture in 2005.

The growth in GDP in recent years is a result of aggregate growth of productivity factors, and reflects the influence of increased levels of foreign direct investments, especially in the automotive industry (investments of for example Volkswagen, PSA Peugeot Citroen, KIA Motors, Getrag Ford Transmissions). These were attracted by generous state subsidy, a cheap workforce and a low tax rate (19% flat rate).

Percentage of high tech products on the export is only 4.6%, while in EU-15 it is 17.7%. Another shortage is the fact that it is still oriented to energy- and other material sources highly demanding sectors of "traditional" industry. Slovak economy is four-time more energy-demanding than economies of EU-15 in average.
Very problematic in terms of economic and social situation are regional disparities. Whilst region of Bratislava is slightly above average of EU-15, other Slovak regions are far behind (with extremely lagging behind region of Prešov with only 28.8% of EU-15).

Labour market

One of the biggest problems in social and economic terms is the high level of unemployment, especially in some regions. Despite the fact that “evidenced unemployment” has decreased more rapidly in recent years, this decrease was not accompanied by an appropriate increase in the percentage of employment.

Those aged 15 to 24 made up 34% of the total number of unemployed in 1994 compared with 22.5% in 2004. Those aged 25 to 49 represents 60% of all long-term unemployed people. Those aged 50 to 64 made up 7.5% of the unemployed in 1994, but 16.1% in 2005.

Educated Slovaks have usually no problem finding a job in the same country or abroad, but people with low levels of education, and particularly those from marginalised communities, who have low levels of education, lack of Slovak language, and have often been unemployed long term or have never worked, find it difficult to work. Those with low levels of education make up 75% of all unemployed people.

II. INDUSTRIAL RELATIONS

1. Legal basis and key issues

The right of workers to organise themselves in trade unions ("odborové organizácie") and the right of trade unions to further organise in higher-level organisations ("odborové zväzy") as well as the right of employers to organise themselves in representative organisations ("organizácie zamestnávateľov") and also in higher-level federations ("zamestnávateľské zväzy") is recognised under the Constitution of the Slovak Republic ("Ústava Slovenskej republiky").

Clause 37 (1) of the Constitution guarantees the right of each person to freely form organisations with others for the protection of his/her economic and social interests. This right is detailed in "Zákon č. 83/1990 Zb. o združovaní občanov" (Act no. 83/1990 Coll. on Association of Citizens). The Constitution protects trade unions as well employers’ organisations under Clause 37, under which the “activity of the trade union organisations and the formation and activity of other organisations for the protection of economic and social interests may be restricted only by law and only where this entails a measure in a democratic society which is necessary for the protection of state security, public order or the rights and freedoms of others”. The Constitution specifically protects trade unions in Article 37 (2), under which “trade union organisations are formed independently of the state; and to restrict their number and/or favouritism of some of them in a plant or industry is not admissible”.

2. Social partners

Unions

The largest and most powerful national-level organisation of trade unions is the "Konfederácia odborových zväzov Slovenskej republiky" (Confederation of Trade Unions of the Slovak Republic, KOZ). It represents 35 trade union organisations of second/branch level from private (e.g. chemical, metallurgy, energy, construction, textile and other industries, transport, agriculture, telecommunication, finance etc.) as well as the public sector (e.g. teachers, scientists, the police and firemen). It covers more than 90% of trade unionists and represents more than 400,000 employees.

Trade union density is estimated to be around 30%. Trade union membership is higher in the public sector than in the private/business sector. Since the 1990s the number of trade unions members has been decreasing, especially in private sector. There are a number of reasons for this decrease: including disappointed expectations of the trade unions, which were exaggerated in the process of transformation of the economy and privatisation; the shift to individualism in the whole of society; the rejection of
everything connected the communist era, including collectivism, and in some cases also the fact that 1% of the wages of trade union members are paid to the trade union.

Employers

The situation of employers was similar until 2004, when the (at the time) biggest national-level organisation of employers split up. A number of big employers and second-level organisations of employers left the original "Asociácia zamestnávateľských zväzov a združení Slovenskej republiky" (Federation of Employers’ Associations, AZZZ) and formed a new employers’ representatives’ organisation at national level, the "Republiková únia zamestnávateľov" (National Union of Employers, RUZ).

AZZZ was established in 1991 and until 2004 it was the major national-level employers’ representatives’ organisation and the only employers’ representative in the framework of tripartite bodies. Its aim is to protect and promote the common commercial interests of its members. Similar to KOZ, AZZZ and RUZ comment on proposed legislation, lobby on the process of decision making regarding economic and business issues, provide training programmes, consultations and organise seminars and conferences. AZZZ represents employers/undertakings of chemical, pharmaceutical, paper and glass industry, producers of heat and energy, transport, agriculture and the food industry, producers of distilleries/liquors, private hospitals and doctors, Association of Self-Employed and others. It is estimated that more than 220,000 are employed by employers associated in AZZZ.

RUZ represents employers employing more than 310,000 employees in electricity supply and gas production and distribution, financial, insurance and banking sector, travel agencies and sales, electrotechnic industry, textile industry, construction, transport, postal services and telecommunication, the main producers of sweets/confectioners, soft drinks and mineral waters and others.

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<thead>
<tr>
<th>Union Organisation</th>
<th>Details of membership</th>
<th>Number of members</th>
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<tbody>
<tr>
<td>KOZ</td>
<td>Confederation of Trade Unions of the Slovak Republic. Most powerful national-level union organisation with 35 sector/branch level trade union organisations with public and private sector membership.</td>
<td>400,000 (90% of trade unionists)</td>
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</thead>
<tbody>
<tr>
<td>RUZ</td>
<td>New employers organisation formed by split from AZZZ in 2004. Organises across industry and service sectors.</td>
<td>Employers with 310,000 employees</td>
</tr>
<tr>
<td>AZZZ</td>
<td>Was the largest employer organisation until a split in 2004. Organises across industry and service sectors.</td>
<td>Employers with 220,000 employees</td>
</tr>
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3. Joint bodies

In Slovakia there has been tripartism since 1991. The tripartite body was guided by its statute and rules adopted by the tripartite body itself (between years 1991 to 1998 and 2004 till January 2007) and was governed under the law, namely "Zákon č. 106/1999 Zb. o hospodářskom a sociálnom partnerstve" (Act no. 106/1999 Coll. on Economic and Social Partnership (between 1999 and 2004)). On 9th February 2007, the Slovak parliament passed a new law "Zákon č. 103/2007 Z.z. o trojstranných konzultáciách na celoštátnej úrovni" (Act on Tripartite Consultations on the National Level, which became effective on 1st April 2007 (Act no. 103/2007 Coll.)).

Since April 2007 the main tripartite body has been the "Hospodárska a sociálna rada Slovenskej republiky" (Economic and Social Council of the Slovak Republic), where social partners meet and discuss together with representatives of government issues of economic and social policy, proposals of labour legislation and the state budget. Resolutions of the tripartite body are not legally binding; they are recommendations to Slovak government. One of outcomes of negotiations in tripartite body are so called "národné generálne dohody" (National General Agreements) that govern the relationship between social partners and government, mainly establishing duties of government in the process of the implementation of economic and social reforms.
It has 21 members, seven of them representatives nominated by the “Vláda Slovenskej republiky” (Government of the SR), seven nominated by national-level employer representatives’ organisations and seven nominated by national-level employee representatives’ organisations. An employer organisation is deemed to be the national-level one if it represents/associates employers from different sectors of the economy or is active in more than five regions and represents/associates employers who employ at least 100,000 employees. An employee organisation is deemed to be the national-level one if it represents/associates at least 100,000 employees from different sectors of the economy. Under the new Act on Tripartite Consultations on National Level, employers’ as well as employees’ organisations are obliged to prove that they meet this criteria if their representativity is disputed by representatives of the government or a social partner. Neither representatives of government nor the social partners may dispute the representativity of the employers’/employees’ organisation before the lapse of 12 months after its representativity was established.

4. Collective bargaining

Legal basis and key issues

Collective bargaining is governed under "Zákon č. 2/1991 Zb. o kolektívnom vyjednávaní" (Act no. 2/1991 Coll. on Collective Bargaining). Collective bargaining has quite a long tradition in Slovakia and plays an important role in social dialogue. Its aim is to conclude "kolektívna zmluva" (Collective Agreements). Collective Agreements should provide employees with protection and with additional rights and advantages than attached to them under the labour law. Collective Agreements may not restrict rights and advantages guaranteed to employees under the labour law. Provisions of Collective Agreements restricting rights or advantages of employees guaranteed under the law are deemed null and void.

Collective Agreements are concluded (i) at the plant-level (between employer and the trade union active in the undertaking) ("podnikové kolektívne zmluvy") and (ii) at the branch-level – so-called "kolektívne zmluvy vyššieho stupňa", collective agreements of upper tier (between branch employers’ and trade unions’ organisations). Collective Agreements concluded at plant-level apply only to the respective plant. The Collective Agreements of upper tier (or branch-level collective agreements) apply to all plants/employers and their employees, who were represented at branch-level collective bargaining. Only trade unions (among employee representative bodies eligible to be established and active under Slovak law) are entitled conduct collective bargaining and enter into Collective Agreements with the employer or employer representatives. Each trade union and employer is entitled to conduct collective bargaining (regardless of how many employees they represent or employ and without any other condition).

In the framework of collective bargaining and conclusion of Collective Agreements, trade unions must represent all employees of the employer (even those who are not members of trade unions). Under Slovak law, a Collective Agreement entered into between a trade union and an employer shall apply to all employees of the employer. This fact is often criticised by trade unions due to the fact that employees do not have to be members of trade unions (and therefore do not financially support the unions) but profit from all the advantages negotiated by trade unions in process of collective bargaining.

Under the Collective Agreements working conditions, including wage/salary and other remuneration conditions, the relationship between employers and employees, and the relationship between employers, their representatives and associations and trade unions organisations and associations in a way which is most advantageous for employees can be agreed. There is a principle that the most advantageous provision for employees (notwithstanding whether established under the law, Collective Agreement or employment contract) shall apply. That means that the Collective Agreement is invalid in any part under which rights of, and advantages for, employees are less than under the law; and individual employment contracts similarly invalid in any part where this is the case.

Rights and obligations agreed under the Collective Agreement are legally binding and enforceable. If the employer breaches the provisions of the Collective Agreement, the trade union may ask "Ministerstvo práce, sociálnych vecí a rodiny SR" (Ministry of Labour, Social Affairs and Family of the SR) to appoint a mediator or an arbiter (unless the trade union and employer agree on the mediator/arbiter). Similarly where there is disagreement regarding entering into a Collective Agreement or in the case of a dispute concerning a breach of the Collective Agreement, a mediator may propose a solution to the dispute, but it will be only a recommendation. The decision of an arbiter is, however, binding to the parties (trade union and employer) and the parties must obey it. The only possible way to avoid acceptance and obey the arbitrator’s decision is to appeal the arbitrator’s decision before the respective "krajský súd" (Regional
Court) claiming that the arbitrator’s decision breaches the law or a Collective Agreement. However, the appeal submitted to the Regional Court has no suspension effect.

Main features

Members of KOZ, AZZZ and/or RUZ regularly bargain at the branch level with the aim of entering into Upper Tier Collective Agreements. The national structures of KOZ, AZZZ and RUZ almost never enter into these negotiations as their members have sufficient ability as well as (not just legal) capacity to negotiate/bargain for Upper Tier Collective Agreements. However, especially KOZ, but also AZZZ and RUZ provide training on collective bargaining to its members.

The Upper Tier Collective Agreements are usually entered into for one or more years. However, if entered into for longer, these are usually slightly amended each year (at least in respect of wage increases). Upper Tier Collective Agreements must be registered within the Ministry of Labour and the Ministry issues notification on its conclusion in the "Zbierka zákonov" (Collection of Deeds (Z.z.)), it is possible to monitor their number. In 2002 there were more than 60 Upper Tier Collective Agreements (together with amendments to the Upper Tier Collective Agreements entered into in previous years for more than one year); in 2003 it was 53; in 2004 46; in 2005 44 and in 2006 there were 56. The fluctuation in the number of Upper Tier Collective Agreements is mainly due to the fact that some of them are agreed for longer time periods (more than a year). The social partners believe that branch-level collective bargaining will play an important role also in future; but that the importance of the plant-level collective bargaining will increase.

The social partners estimate that around 35% or 40% of all employees are covered by collective agreements. The exact number is not available. There are more employees covered under collective agreements than those who are members of trade unions because (i) in almost all cases of undertakings where the trade union is active a Collective Agreement is entered into between employer and trade unions and (ii) collective agreements apply to all employees of the undertaking/employer, not only to trade union members.

The main topic of all collective bargaining in Slovakia is wages/salaries and conditions of remuneration. Almost all Slovak employees want to see higher increases in wages bargained under the Collective Agreements, better Collective Agreements and more successful trade unions. In addition to pay increases, more relaxed working time (flexible working time, reduction in working hours, more paid time off for different occasions such as weddings, funerals or the birth of a child) and better redundancy pay are the focus of bargaining. In recent years, mainly as a result of the influence of the EU, provisions on gender equality have started to appear in Collective Agreements. With regard to health and safety at work, and training and education of employees, Collective Agreements usually copy provisions of law.

5. Collective disputes

Arbitration and mediation procedures for solving disputes that arise during collective bargaining are established under Act no. 2/1991 Coll. on Collective Bargaining. Any dispute between a trade union (or branch-level trade union organisation) and an employer (or branch-level employers' representatives organisation), which is result of (i) reluctance of one of these parties to enter into the Collective Agreement (either at plant- or branch-level) or (ii) a breach of the existing provisions of the Collective Agreement by either party shall be deemed to be a collective dispute, which should be dissolved through special mediation or arbitration procedure. Mediation must always precede arbitration. The decision of a mediator stands only as a recommendation; whereas an arbiter’s decision on a dispute is binding on the parties. Mediators as well as arbiters are selected by the committee of the Ministry of Labour, Social Affairs and Family. The mediation procedure ends with a proposal of dispute solution, which does not have to be respected by the parties to the dispute. Unless the dispute is settled in the period of 30 days after the commencement of mediation, it is deemed to be unsuccessful. Mediation can be followed by arbitration or strike/lock-out. The arbiter’s decision in the process of arbitration can be petitioned before the court only if the decision contradicts to law or the relevant Collective Agreement.

Strikes

The right to strike ("štrajk") is guaranteed under the Constitution of the Slovak Republic, according to Clause 37. Slovak law prohibits strikes and lock-outs ("výluka") to take place during war, or in
exceptional situations announced by the government. The only Act containing conditions for strikes is Act no. 2/1991 Coll. on Collective Bargaining.

Under the Act on Collective Bargaining, a strike can be commenced during the process of Collective Agreement negotiations in some circumstances (see following regarding unlawful strikes). The strike can be announced by trade union, where a simple majority of all employees of the employer have met and agreed to commence the strike. No one can force an employee to join or not to join a strike. Employees may freely decide whether to go on strike or work despite the strike. During the strike, participants are not paid. However, for pension purposes, strike days are considered to be work days. During the strike, the employer is not allowed to employ other workers to carry out the work of striking employees.

A strike is unlawful if:
(i) it was not preceded by the mediation procedure;
(ii) it continues in spite of the fact that arbitration has started;
(iii) it commenced in spite of the fact that a simple majority of all employees did not meet and vote for the strike;
(iv) it was commenced for a purpose other than to conclude a collective agreement;
(v) it takes place during period of state of war or similar exceptional situation.

In addition strikes by the following groups of workers are also unlawful:
- employees of hospitals and health and social care institutions if the strike would jeopardise life or health;
- employees working at nuclear power stations, oil and gas pipelines systems; and
- judges, public prosecutors, members of armed forces, firemen and rescue services, employees managing flying operation in airports and employees of telecommunication services if life or health can be endangered as a result of strike.

Only the Regional Court may decide whether strike is lawful or unlawful.

The legality of lock-outs is governed by the same principles. Nonetheless, no lock-out has ever occurred in the Slovak Republic in recent years. More strikes took place, but usually were not very successful. The current Slovak government proclaims to be social democratic and to closely co-operate with KOZ. Important amendments to the Labour Code ("Zákon č. 311/2001 Z.z., Zákoník práce" Act no. 311/2001 Coll.) and social policy are being prepared, meeting the requirements of trade unions. Employers' representatives do not agree with many of proposed amendments and it seems that to find a compromise will be difficult.

III. EMPLOYEES’ REPRESENTATION SYSTEM IN THE UNDERTAKING

1. General issues
From the creation of the Slovak Republic in 1993 until 2002, the trade unions had the monopoly to represent employees. In 2002, the new Labour Code reintroduced "zamestnanecké rady a zamestnanecký dôverník", work councils and work trustees. However, works councils/trustee could only be active in workplaces where no trade union was established. This changed in July 2003, when amendments to the Labour Code allowed for the creation of the work council also at workplaces where a trade union is established. The possibility of coexistence of the trade union and the work council at one workplace and the division of rights of involvement between them established under the law was strongly criticised by the trade unions. The unions were not only afraid that their monopoly to represent employees was removed but also that representation of employees by work councils in isolation cannot represent employees and protect their interests effectively. The very last amendment to the Slovak Labour Code of 28th June 2007, took effect on 1st September 2007, and strengthened the employees’ representatives’ (and especially trade unions’) position.

Under the law, employees are entitled to be involved in the decision-making process of the employer, relating to their economic and social interests, either directly or through the relevant trade union, work council or work trustee (Article 229 (1) of the Labour Code). Employees have the right to be provided with information on the economic and financial situation of the employer and the projected development of its activities, and to comment on this information (Article 229 (2) of the Labour Code). Employees
participate through the trade union, work council or work trustee by co-decision making, consultation, receiving information and supervisory activity (Article 229 (4) Labour Code).

Under the Labour Code, there are two “types” of employee representative ("zástupcovia zamestnancov") in Slovakia, namely trade unions and work councils/trustees. In cooperatives ("družstvo"), where members of a cooperative are also employees, employees are represented by a special body elected by the General Meeting of the cooperative. Detailed specification of this special body, its competencies, membership, rules for its establishment etc. is agreed at the General Meeting.

If there is an active trade union and work council/trustee at one workplace, according to the last amendment of Slovak Labour Code, trade unions are entitled to conduct collective bargaining, co-decision making, supervision and receive information. Work council/trustees are entitled only to consultation and information.

2. Legal basis and scope
The legislative basis for employee representation in the workplace is set out under Clause 37 (1) of the Constitution, which guarantees the right of each person to form freely organisations with others for the protection of his or her economic and social interests. The “Zákonník práce” (Labour Code) and the “Zákon č. 83/1990 Zb. O združovaní občanov” (Act no. 83/1990 Coll. on Association of Citizens) govern the formation of trade unions. The Labour Code governs the formation of work council/work trustee, competencies of trade unions and work councils/trustees at the workplace, and the obligations of an employer towards trade unions and work councils.

3. Capacity for representation
One or more trade unions as well as work council/trustee may be active at the same workplace. The number of trade unions is not, and cannot, be limited under the law; the only applicable limit is the fact that at least three employees must establish the trade union. The trade union represents its members. The only exception is collective bargaining, when it represents all employees. However, there can only be one active work council/trustee at the workplace as the work council/trustee represents all employees of the employer.

Trade unions, as well as work councils/trustees, can be established in almost all sectors and at all workplaces. The legal regulation of employees' representation does not apply to (i) employees/workers of religious organisations and (ii) professional soldiers. The religious organisations are free to set up their internal affairs in respect of employees' representation as they wish, as regulation under the Labour Code does not apply to them (Article 52a of the Labour Code). Under "Zákon č. 346/2005 Z.z. o štátnej službe profesionálnych vojakov ozbrojených síl SR" (Act no. 346/2005 Coll. on State Service of Professional Soldiers of Armed Forces of the SR), professional soldiers are not allowed to set up trade unions or organise themselves in trade unions (their other constitutional rights are also restricted based on the nature of their service).

Due to the fact that trade unions are deemed to be associations of citizens and thus legal entities with full legal capacity, the trade unions can sue/act before the court as well as represent/advocate an employee in court proceedings against an employer. Trade unions can also enter into collective agreements with an employer/undertaking and/or any other agreements with any third parties. The only restriction to the extent that trade unions can act regards the obligation to establish more protective conditions for employees than guaranteed under the law in collective agreements.

On the other hand, the capacities of the work council are restricted only to the undertaking. Work councils are not considered to be legal entities and thus have no legal capacity outside the undertaking. The work council is not allowed to act before the court (either as a party in the proceedings or as a representative of one of the parties – employee). Work councils are not entitled to collectively bargain nor to enter into agreements. The work council can act only if the law (the Labour Code) authorises them to do so, e.g. an employer must seek their consent (if the trade union is not active at the workplace) in certain situations, must consult with them, inform them and enable them to perform controlling activities.

In respect of the Labour Inspector ("inšpekcia práce"), anyone can address it (even on an anonymous basis) and the Labour Inspector should review each petition. Therefore the trade union as well as the work council (or its members) can address it.
4. Composition

Internal rules of the trade union organisation governing election/appointment of its officials as well as mutual relationship of trade union, officials of the trade union and its members, are established under the "štatút" (Statute of the trade union). Trade unionists are free to agree these rules as they wish; the law does not restrict them in this aspect.

Work council/trustee conditions of establishment, and the election of its members, are governed under the Labour Code. The work council can only be established at an undertaking with at least 50 employees. A work trustee can be established at an undertaking with at least five employees and less than 50 employees. Their rights and duties, as well as legal status, are the same as those of the work council. An employer must enable of the election of members to the work council or election of a work trustee if asked to do so by at least 10% of all employees. Each employee of the employer, who has worked for at least three months for the employer (at this undertaking), is entitled to vote for members of the work council or for the work trustee. Members of the work council or work trustee can be any employee of the employer over 18 years old, who has been employed for at least three months, not a relative of an employer and who does not have a criminal record. Members (or trustees) are elected for four years in secret and direct elections by employees on the basis of a list of candidates proposed by 10% of all employees. The election is valid if at least half of all employees vote. The members of the work council shall be the candidates who received the most votes.

The number of work council members is determined by the agreement of the election committee and the employer. The law states the minimum number of members: three where there are at least 50 and less than 100 employees; from 101 up to 500 employees, at least one additional member per each hundred employees; from 501 to 1000 employees at least one additional member; and from 1001 employees, one additional employee per thousand employees. If an appropriate number of members are not elected, the employer organises a second round of elections in the next three weeks. If even after second round of elections a sufficient number of members is not elected, the work council is not established. New elections can be held twelve months after the second round of unsuccessful elections. Employees' trustees must be elected by a simple majority of votes of employees who voted in elections.

The employer covers the expenses of the election of work council/trustee. The work council/trustee ceases to exist after:

(i) the lapse of four years election period,
(ii) resignation of members of the council/trustee,
(iii) revocation of members of the council/trustee by a simple majority of voting employees; and
(iv) after the number of all employees employed at undertaking falls to below 50 (or five in the case of a trustee).

In first three cases members remain in office until a new council/trustee is elected. Membership of the work council and the office of trustee cease to exist after (i) termination of his/her employment contract; or (ii) resignation or revocation by a simple majority of voting employees.

5. Protection granted to the members

Employees' representatives are protected against measures which could harm them, (for example, termination of their employment contract) and which were motivated by their office, during the term of their office and for one year after its expiration. Their employment contract may only be terminated with the consent of other employee representatives, otherwise the termination is invalid. It is valid only if the reason for termination was one recognised by law and the court has decided that it is not fair to require the employer to further employ this employee. When transferring an undertaking or part of the undertaking, the legal status and office of employee representatives are preserved (Article 31 (8) of the Labour Code).

The employer shall only relieve an employee of long-term performance of his duties as an employees' representative with the agreement with employees' representatives. The employer must provide him/her with a salary. After expiry of his/her office, an employer shall provide him/her with the same job at the same workplace. If this is not possible due to the fact that this job is no longer there, or the workplace has closed, the employer shall provide him/her with another work corresponding to the employment contract (Articles 136 (3) and 157 of the Labour Code).
6. Working of the body and decision-making

Internal rules of the process of decision-making of the trade union are established under the statute of the trade union. Trade unionists are free to agree these rules as they wish; the law does not restrict them in this aspect. In the same way, the law does not establish the rules for the decision-making procedure of the works council; it is left to the members of the work council to decide. In practice, simple majority voting is used.

Means

Trade unions and their federations are financed by membership fees, which re 1% of the net wage/salary of employees who are members of the trade union. Trade unions do not just represent members in the framework of involvement as employees, but also provide them with free legal services and organise or financially contribute to different cultural and social occasions and trips. Work council/trustee only represents employees in the framework of their involvement in the managing of the undertaking and are not entitled to any contribution of fees paid by employees. On the other hand, the employer must bear the costs of elections of work councils or work trustees (Article 234 (7) of the Labour Code).

The employer must provide employees’ representatives with premises (room/office), which are technically equipped and bear the costs of the premises and equipment. In practice employees’ representatives are usually provided with fully equipped offices (as the administration of the undertaking uses).

Under Article 240 of the Labour Code, the employer also provides employees' representatives with paid days off when necessary for activities directly connected with the fulfilment of the employer's obligations (including obligations of the employer to co-decide with, consult and inform and collectively bargain with employees' representatives) or necessary for their participation in training. In Slovakia, it is still quite common that some officials of trade unions perform their office of employee representatives full time (without performing any other productive job for the employer). In addition, employees’ representatives are guaranteed the following minimum paid time off:

(i) four hours per month for one trade union representative (when a trade union has less than 50 members who are employees of the employer) and/or for one member of the work council or for work trustee;

(ii) 12 hours per month for one trade union representative (when a trade union has 50 and more members who are employees of the employer); and

(iii) 16 hours per month for one trade union representative (when a trade union has 100 and more members who are employees of the employer).

Slovak labour law is mute in respect of experts' assistance and their expenses in respect of the employer (save for the involvement of employees in a European Company and European Cooperative). In practice only trade unions (not work councils/work trustees) are assisted with experts and these experts are paid from the trade union’s membership fees. Experts can be paid (or partially paid) by the employer, if the employees’ representatives and employer agree this. In practice, few employers provide trade unions/work council/work trustee and employees with free legal advice from their in-house lawyers. Experts can be active in all matters and in any way that employee representatives or trade unions wish, but experts must respect confidentiality. Based on the authorisation given by the employee representatives (or trade unions) to the expert(s), they mainly advise and prepare documents for the trade union, but can also take part in negotiations.

7. Role and rights

Information and consultation

The employer is obliged to respect employees' representatives and cooperate with them. Slovak law does not provide for detailed arrangements for information and consultation. Specification of the procedure and content is left to the agreement of the employer and employees' representatives. This agreement may be part of the Collective Agreement entered into between an employer and a trade union (Article 231 of the Labour Code); or it can be part of a "pracovný poriadok" ("working order") a document specifying provisions of the Labour Code, issued by an employer with prior consent (also consent with respect to its
content is required) of employees' representatives (Article 84 of the Labour Code); or a separate internal
document agreed between an employer and employees' representatives.

However this agreement must respect several relevant provisions of the Labour Code. With the aim of
ensuring equitable and satisfactory working conditions, employees should be involved in the decision-
making process of an employer, which relates to employees' economic and social interests, either directly
or through trade unions, work councils or work trustees; and employees' representatives should closely
co-operate together (Article 229 (1) of the Labour Code). Employees have right to be informed about the
economic and financial situation of an employer and about the anticipated course of an employer's
operation in a comprehensible way and in good time. Employees may present their opinions and
proposals regarding this information and prepare decisions (Article 229(2) of the Labour Code).
Employees are involved in the process of the creation of equitable and satisfactory working conditions
through relevant trade unions, work councils or work trustees. These are entitled to co-decision making,
consultation, information and controlling activities (Article 229 (4) of the Labour Code). The employer
shall inform employees' representatives about its economic and financial situation and about its
anticipated course of operation (business) in a comprehensible way and in an adequate time. (Article 238
(2) of the Labour Code)

Employees' representatives must be also be informed about:

- the date or proposed date of a transfer (or partial transfer): the reasons for the transfer;
  employment, economic and social impacts on employees caused by the transfer; planned
  measures of the transfer regarding employees (Article 29 (1) of the Labour Code);

- the use of temporarily workers (Article 58 (12) of the Labour Code);

- reasons for collective redundancies; number and structure of employees, whose employment
  contracts shall be terminated; total number and structure of employees employed by an
  employer; time scale for collective redundancies; criteria for choosing of employees, whose
  contracts shall be terminated in case of collective redundancies. This does not apply to seafarers
  (Article 73 (2) of the Labour Code); and

- hazards to employees' health and safety resulting from working process or working environment
  and about measures taken to prevent them.

If employees' representatives are not active, this information shall be provided directly to employees

The employer shall consult employees' representatives beforehand on:

(a) the situation, structure and anticipated course of employment and planned measures, in particular
where there is a threat to employment;

(b) key issues of social policy of an undertaking, measures for the improvement of hygiene and for
improvement of the working environment;

(c) decisions which may result in substantial changes in the organisation of work;

(d) organisational changes such as limitation or stoppage of the employer's operation or part of the
operation, mergers, take-overs, divisions, and change of legal form of an employer;

(e) measures for safety and health protection of employees (all according to Article 237 (2) of the Labour
Code).

This consultation shall be done in a comprehensible manner and in good time, with adequate content and
with the aim of reaching an agreement (Article 237 (3) of the Labour Code). In respect to consultation, an
employer shall provide employees' representatives with the necessary information, consultations and
documentation and consider their views (Article 237 (4) of the Labour Code).

Employee representatives must also be consulted in the case of the undertaking or part of it undertaking
being transferred to a new employer. Employees' representatives must be consulted on measures relating

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measures preventing collective redundancies or enabling their limitation, on the possibility of further employment of employees at other workplaces or undertakings of an employer and on the reduction of negative outcomes of collective redundancies at least one month before collective redundancies begin (Article 73 of the Labour Code).

There are also other cases where consultation is compulsory:

- the termination of an employment contract by an employer (Article 74 of the Labour Code);
- the issue of orders to employees to work during holiday or rest period (while also other conditions under the Labour Code must be met) (Article 94 (2) of the Labour Code);
- night work (Article 98 (6) of the Labour Code);
- labour norms and efficiency standards determined by an employer (Article 133 (3) of the Labour Code);
- measures taken by an employer to enhance the qualification of his employees (Article 153 of the Labour Code);
- measures taken in order to employ disabled people and issues in connection with employing them (Article 159 (4) of the Labour Code); and
- the amount of compensation required by an employer from an employee due to the damage caused to the employer by the employee, and vice versa (Articles 191 (4) and 198 (2) of the Labour Code).

Employee representatives are, lastly, allowed to control/supervise adherence to labour law provisions. In this respect, employees' representatives are entitled to require information and documentation from an employer, provide proposals for improving working conditions, require an employer to remedy deficiencies and require information about steps and measures taken by an employer to remedy deficiencies (Article 239 of the Labour Code).

An employer may refuse to provide employees' representatives with information, which might harm the employer, or ask for information to be treated as confidential (Article 238 (3) of the Labour Code). Employee representatives and experts who assist them, are obliged to keep confidential all information and data, which were revealed to them and which were marked as confidential by an employer. This obligation of representatives and experts continues to apply for one year after expiry of their term of office, if legislation does not state otherwise (Article 240 (4) of the Labour Code); and in the case of any disputes regarding provisions of the Labour Code, employees as well as employers can file a petition to court to solve the dispute (Article 14 and Clause 9 of the Fundamental principles of the Labour Code).

**Bargaining**

Only trade unions (among all employees' representatives) are entitled to conduct collective bargaining. In the process of collective bargaining the trade union represent all employees of the employer. In its other activities it represents only its members. In the framework of collective bargaining trade unions must act cooperatively, unless they agree differently with the employer. In matters relating only to an individual employee, an employer must cooperate/consult with the trade union of which the employee is a member. In case of an employee who is not member of any trade union, the trade union with most of members will represent this employee (unless the employee states otherwise) in all matters that must be co-decided or consulted with the trade union, or on which trade union must be informed (e.g. dismissing this employee or the amount of damage to be reimbursed by this employee to the employer).

**8. Other representation bodies**

Beside trade union(s) and work council/trustee, employees at the plant-level are represented also by employees' representative for safety at work ("zástupca zamestnancov pre bezpečnosť a ochranu zdravia pri práci"). Details of this representation are set out in "Zákon č. 124/2006 Z.z. o bezpečnosti a ochrane zdravia pri práci" (Act no. 124/2006 Coll., on Safety and Health Protection at Work), which repealed Act no. 330/1996 Coll. of the same name. Employee representatives for safety are entitled to be provided
with detailed information on safety and health at work by the employer, to consult with trade unions or work council/trustees; supervise workplaces and control adherence to and fulfillment of measures in respect of safety and health at work; to cooperate with the employer and provide the employer with proposals on measures aimed at increasing safety at work; require the employer to restore any breach of their obligations in respect of safety at work and petition the Labour Inspector if the employer does not react to his/her requirements; as well as be involved in process of investigation of injuries and occupational diseases at work. The employer must provide employee representatives for safety with paid days off, when it is necessary for their training and performance of their duties, and create the conditions necessary for performance of their tasks.

**European Works Councils**

The trade unions associate themselves into trade union organisations at branch/sector level. These are organised on the economic branch/sector principle (not on the principle of controlling and controlled companies). The principle of organisation of employees’ representatives on the controlled- and controlling entities principle was introduced only with the concept of EWCs under Directive 94/45/EC.

The overall transposition of the Directive 94/45/EC is relatively good. The provisions of the Directive 94/45/EC were transposed according to the content of the Directive, sometimes even verbatim. Slovak law did not transpose most of the exceptions allowed under the Directive (also in respect of its scope). However, there are some discrepancies between the wording of the Slovak law and the Directive. For instance, the obligation of the central management to cover the costs for at least one expert is not clearly stated under Slovak law; translation of some legal terms in the definition of the controlling undertaking are not appropriate, and the possibility of the “proof to the contrary” allowed under art. 3 (2) of the Directive is not enabled under Slovak law. What is more, regulations regarding the selection of members of the special negotiation body are too brief and too general. And regulations regarding selection of the members of the EWC, especially if there are no employee representatives active at the undertaking, is very unclear. Most of these discrepancies are “compensated” by positive practice, which is in line with the scope of the Directive.

In practice, there are not many EWCs or information and consultation procedures established. The Directive opened the way for employees and their representatives in the field of transnational information, but it appears that employees and their representatives need training to participate in this area. They need to be more informed about the right to transnational information how to use this right, and how to negotiate with the employer/central management.

**9. Protection of rights**

All the rights of trade unions and work council/work trustee are enforceable by employees or trade unions before the court. However, due to lengthy court procedures in Slovakia, employees or trade unions usually decide to enforce their rights in an administrative procedure led by the Labour Inspector. However if an employee or trade union decides to use the courts, in general, Slovak courts are fairly sympathetic to employees and their legitimate interests.

The Labour Inspector enforces labour law, either on the basis of random inspection or upon petition of an employee or trade union. The Labour Inspector is authorised to order the employer to do something or cease to do something, and it may also fine an employer breaching a labour law provision up to SKK 1 million (approx. EUR 28,571). The threat of potentially high penalties deters employers from breaching labour law provisions ("Zákon č. 125/2006 Z.z. o inšpekci práce" Act no. 125/2006 Coll., on Labour Inspection, which repealed Act no. 95/2000 Coll. on Labour Inspection).

**10. Codetermination rights**

Co-decision making and the approval of employees' representatives is necessary for: work organisation (Article 84 of the Labour Code); even distribution of working time (Article 86 (1) of the Labour Code); the start and finish of the working day and shift distribution (Article 90 (4) of the Labour Code); split shifts (Article 90 (6) of the Labour Code); determination of the time necessary for personal cleansing after the work which shall be considered to be working time (Article 90 (10) of the Labour Code); detailed conditions of rest breaks and meal provision (Article 91 (2) of the Labour Code); longer reference periods in the case of legal limitations on work overtime (Article 97 (6) of the Labour Code);
specification of heavy physical or intellectual work, which may not be performed at night for more than eight hours per 24 hours (Article 98 (9) of the Labour Code); determination of the annual leave plan (Article 111 (1) of the Labour Code); compulsory collective leave of employees of the undertaking taken at the same time (Article 111 (2) of the Labour Code); extension of people who are provided with one warm meal per shift/day, e.g. former employees now retired (Article 152 (5) of the Labour Code); specification of serious operational reasons due to which the employer shall not provide employees with work and the amount of wages to be paid to employees in this situation (it must be at least 60% of their average salary) (Article 142 (4) of the Labour Code); and termination of the employment contract of an employee representative (otherwise this employment contract termination is invalid) (Article 240 (7) of the Labour Code).

From 1st September 2007 co-decision is also needed where there is uneven distribution of working time, the introduction of flexible working time, or a reduction in an employee's minimum weekly rest period of two days to 24 consecutive hours.

IV. EMPLOYEES PARTICIPATION IN CORPORATE BODIES

Legal basis and scope
Under the Slovak "Zákon č. 513/1991 Zb., Obchodný zákonník" (Act no. 513/1991 Coll., Commercial Code), employees are entitled to vote members of the "dozorná rada" (Supervisory Board) of all "akciová spoločnosť" (joint-stock companies) which employ more than 50 employees and have their registered seat in the territory of the Slovak Republic.

Employees elect at least one third of members of the Supervisory Board. Bylaws of joint-stock companies may determine that employees shall elect more than one third of members, but in no case can it be more than the number of members of the Supervisory Board elected by the "Valné zhromaždenie" (General Meeting), i.e. employees may in no case vote for more than half the members of the Supervisory Board. By-laws of the joint-stock company may also establish the right of employees to vote for members of the Supervisory Board if there is less than 50 employees employed by the respective joint-stock company.

The election of members of the Supervisory Board by employees are organised by the "predstavenstvo" (Board of Directors) in cooperation with the trade union active at the joint-stock company or with employees themselves. Nominees to the Supervisory Board can be nominated by the trade union or by at least 10% of employees. At least a simple majority of employees or their representatives is necessary to elect or revoke a member of the Supervisory Board. The procedure governing elections and revocations is adopted and issued by the trade union (or by employees in cooperation with the Board of Directors if the trade union is not active at the workplace) (Article 200 of the Commercial Code). Members of the Supervisory Board elected by employees have the same rights and obligations as other members of the Supervisory Board (who are elected by the General Meeting).

Representation of employees in the boards of European Companies or European Cooperative Societies
Slovak law, as Directive 2001/86/EC and Directive 2003/72/EC, under the acts transposing these Directives, allows management and employees’ representatives to agree that employees shall have the right to vote, appoint or agree or disagree with the appointment of members of the management/administration or supervisory body of the European Company or European Cooperative Society. If the European Company is created via the transformation of its legal form from the joint-stock company, the employees shall have the same rights to vote for members of the Supervisory Board as they had in the joint-stock company (as described above).
V. EMPLOYEE INVOLVEMENT IN DECISIONS THAT AFFECT THE UNDERTAKING

There are two "special" rights of involvement in two special situations recognised under the Slovak law, namely closer description of the right of involvement in cases of insolvency and bankruptcy procedure and in case of the undertaking's transfer (regardless of whether the transfer is a result of merger, demerger, take-over or any similar action). Slovak law does not provide employees' representatives with any special rights where state aid is received by the undertaking or in case of foreign investments into the undertaking.

Recovery and bankruptcy procedures
Slovak law transposes Directive 80/987/EEC under "Zákon č. 461/2003 Z.z. o sociálnom poistení" (Act no. 461/2003 Coll. on Social Insurance). The employer is obliged to pay contributions into Social Insurance in case it becomes insolvent/bankrupt. The Social Insurance creates a "fund" from these contributions, and provides finances to meet the claims of employees towards the employer in cases of insolvency or bankruptcy.

An employer, preliminary trustee in bankruptcy or trustee in bankruptcy must inform employees' representatives or employees directly (where employee representatives are not active in the undertaking/employer) on the employer's insolvency in writing within five days after the insolvency emerged. An employer, preliminary trustee in bankruptcy or trustee in bankruptcy shall confirm the employee's financial rights (such as right to wages/salary, surplus for overtime and work on holiday, compensation in lieu of holiday and other remuneration) under their employment relationship with the employer in last three months preceding insolvency or termination of employee's employment contract. In this respect, an employee shall provide the employer, preliminary trustee in bankruptcy or trustee in bankruptcy with all the information necessary for confirmation of the employee's financial rights towards the employer.
SLOVENIA

Slovenia used to be a part of Yugoslavia and gained its independence on June 25th 1991. Slovenia proclaimed its constitution in December 1991, and its constitutional system is a parliamentary democracy. It has been a member of the EU since May 1st 2004. It covers an area of 20,273 km2 and is divided into 210 municipalities. The Capital of Slovenia is Ljubljana.

Under the Constitution, Slovenia is a democratic republic and a social state governed by law. The head of state is the President of the Republic. The legislative authority is the National Assembly (90 deputies). The National Council performs an advisory role. Members are elected for a five-year term (40 members). The executive authority is the government. It consists of the Prime Minister and other ministers. The government and ministers are independent within the framework of their jurisdiction, and responsible to the National Assembly. The current government coalition consists of four parties: the Slovenian Democratic Party, New Slovenia-Christian People's Party, Slovenian People's Party and the Democratic Party of Pensioners of Slovenia. Judicial power in Slovenia is implemented by courts with general responsibilities and specialised courts which deal with matters relating to specific legal areas. The Constitutional Court decides on the conformity of laws with the Constitution. The Constitutional Court is composed of nine judges elected for a term of nine years.

I. ECONOMIC AND SOCIAL CONTEXT

Some basic economic data

Previously one of the most advanced centrally planned economies, Slovenia’s transition to the market economy was relatively smooth. Employment levels declined in the initial years of the transition, but the situation subsequently improved. Slovenia has the highest human development index (HDI) among new EU member states and is ranked 15th among the EU-25. Stable macroeconomic conditions – especially low levels of inflation – allowed Slovenia to fulfil the Maastricht convergence criteria and to enter the euro area in January 2007. Real GDP growth totalled 4% in 2005 and economic growth continued in 2006. Inflation was relatively stable in 2005 and 2006, fluctuating around 2.5%.

Main macroeconomic indicators of Slovenia. Real growth rates in %, unless otherwise indicated

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>GDP</td>
<td>2.7</td>
<td>3.5</td>
<td>2.7</td>
<td>4.4</td>
<td>4.0</td>
</tr>
<tr>
<td>GDP per capita, in EUR</td>
<td>11,094</td>
<td>11,866</td>
<td>12,461</td>
<td>13,146</td>
<td>13,807</td>
</tr>
<tr>
<td>GDP per capita, in PPP</td>
<td>15,400</td>
<td>16,000</td>
<td>16,500</td>
<td>18,000</td>
<td>18,900</td>
</tr>
<tr>
<td>Labour productivity</td>
<td>2.2</td>
<td>3.8</td>
<td>3.1</td>
<td>3.9</td>
<td>3.7</td>
</tr>
<tr>
<td>Gross wage per employee</td>
<td>3.2</td>
<td>2.0</td>
<td>1.8</td>
<td>2.0</td>
<td>2.2</td>
</tr>
<tr>
<td>Inflation</td>
<td>8.4</td>
<td>7.5</td>
<td>5.6</td>
<td>3.6</td>
<td>2.5</td>
</tr>
</tbody>
</table>

Source: Institute of Macroeconomic Analysis and Development; Slovenian Economic Mirror 11/2006

The relatively strong growth of value added in 2005 was recorded particularly in the group of market services (G-K) and according to the forecast of the Institute of Macroeconomic Analysis and Development it will further increase in 2006.

Although large enterprises represent only 0.3% of all enterprises, they employ 35.9% of people employed, while small and medium-sized enterprises (SMEs) employ 37% and micro enterprises only 27.1% of people employed.
**Enterprises by size (number of people employed), 2004. Size of enterprises by number of persons employed**

<table>
<thead>
<tr>
<th>Enterprises:</th>
<th>micro</th>
<th>small</th>
<th>medium</th>
<th>large</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>0-1</td>
<td>2-9</td>
<td>10-49</td>
<td>50-249</td>
</tr>
<tr>
<td>- Number</td>
<td>93,697</td>
<td>58,347</td>
<td>28,968</td>
<td>4,898</td>
</tr>
<tr>
<td>- %</td>
<td>100.0</td>
<td>62.3</td>
<td>30.9</td>
<td>5.2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>People employed:</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Number</td>
<td>606,811</td>
</tr>
<tr>
<td>- %</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Statistical Office of the Republic of Slovenia; Statistical Yearbook of the Republic of Slovenia 2006

**Labour market**

Slovenia’s population has been stable since the early 1990’s, at around 2 million, of which 70.2% or 1.4 million were in the 15 to 64 age group in 2005. The number of people employed by enterprises, organisations and individuals, along with self-employed people, including farmers, has increased over recent years.

**Population by activity, 2nd quarter 2001 – 2005**

<table>
<thead>
<tr>
<th>Labour force</th>
<th>People in employment</th>
<th>Unemployed people</th>
<th>Inactive people</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>972</td>
<td>914</td>
<td>57</td>
</tr>
<tr>
<td>2002</td>
<td>981</td>
<td>922</td>
<td>58</td>
</tr>
<tr>
<td>2003</td>
<td>959</td>
<td>896</td>
<td>63</td>
</tr>
<tr>
<td>2004</td>
<td>1,007</td>
<td>946</td>
<td>61</td>
</tr>
<tr>
<td>2005</td>
<td>1,005</td>
<td>947</td>
<td>58</td>
</tr>
</tbody>
</table>

Source: Statistical Office of the Republic of Slovenia; Statistical Yearbook of the Republic of Slovenia 2006; Labour Force Survey

The number of self-employed people (other than farmers) has significantly increased from about 30,000 in the late 1980s to over 95,000 in 2005 and represented 10% employment in 2005.

Labour force participation is traditionally high for both men and women. The exceptions are those aged under 25 and over 50. For the “prime age” group of 25 to 49, the participation rate in 2005 was 93.2% for men and 89.7% for women.

**Activity rates by age and sex, 2nd quarter of 2005 (%)**

<table>
<thead>
<tr>
<th></th>
<th>15 - 24</th>
<th>25 - 49</th>
<th>50 +</th>
<th>25+</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>36.5</td>
<td>91.5</td>
<td>30.7</td>
<td>62.8</td>
</tr>
<tr>
<td>- Men</td>
<td>41.0</td>
<td>93.2</td>
<td>40.4</td>
<td>70.1</td>
</tr>
<tr>
<td>- Women</td>
<td>31.8</td>
<td>89.7</td>
<td>23.0</td>
<td>56.1</td>
</tr>
</tbody>
</table>

Source: Statistical Office of the Republic of Slovenia; Statistical Yearbook of the Republic of Slovenia 2006; Labour Force Survey

The large majority of people in employment work full-time. Almost three quarters of job vacancies are for fixed-term employment. According to the Labour Force Survey, the number of people in employment in the service sector has gradually increased over the last ten years (from 46.3% in 1995 to 53.4% in 2005), while the number of those in industry (43.2% in 1995 to 37.3% in 2005) and agriculture (10.7% in 1995 to 8.7% in 2005) is decreasing. It is expected that employment in the service sector will continue to rise and exceed the falls seen in the manufacturing sector.
In the 2nd quarter of 2005 the unemployment rate fell to 5.8% and was below the average of EU-25 (8.8%). Since 1999, unemployment rates for women have been higher than those for men and the situation is not improving.

According to the Employment Service of Slovenia, the percentage of women among the unemployed is constantly increasing and amounted to 53.8% in 2005, while the share of the long-term unemployed is climbing back to close to 50% per cent of the total unemployment. In the 2nd quarter of 2005 the unemployment rate for young people (15 to 24 years) was 13%. It was rather higher among young women then young men. It is significant that in 2005 over one quarter of registered unemployed people had no work experience. The unemployment rate for older people (over 50 years) stood at 3.8% and was higher among men. However, those with over 30 years of work experience represented over 10% of registered unemployed people in 2005.

The number of long-term unemployed was slowly decreasing between 1999 and 2004, but increased again to 47.3 per cent in 2005. The average duration of unemployment stood at 1 year, 10 months and 21 days.

Since the 1960s the majority of first job seekers have had some education at post-compulsory secondary level, mostly vocational education. In the population aged 15 and over, more than 60% had some education at secondary level in 2005. The percentage of those with only basic education or less is still rather high (almost one third).

Because of the falling demand for unskilled labour, unemployment among those with low educational attainment is increasing. However, 2006 witnessed the largest increase in the number of unemployed people who have completed upper-secondary and tertiary education.

II. INDUSTRIAL RELATIONS

1. Legal basis and key issues

Social partnership plays a key role in social relations in Slovenia. The role of employee representatives is stressed in several articles of the Constitution, granting the freedom of trade unions and participation in management or establishing tripartite bodies with considerable powers. The heritage of the former economic system (the Yugoslav model of workers’ self-management characterised by a well developed system of representative industrial democracy and social ownership of the means of production) as well as the circumstances of political and economic transition in the 1990s shaped the industrial relations environment that enabled the existing scope and content of social dialogue in Slovenia. Although both, trade unions and employers’ organisations have a long tradition in Slovenia, it could be said that industrial relations started to shape in their contemporary form only after the break with the communist regime.

Constitutional and legal changes in 1989, which fundamentally changed the nature of the employment relationship, were a crucial point in the development of industrial relations. The Law on Basic Rights of the Employment Relationship replaced the so-called 'associative' employment relationship (i.e. the relationship among the workers themselves) with one based on the contract of employment. The 1989 law also contained the first legal regulations concerning collective bargaining and collective agreements.

In the 1990s new actors emerged on the Slovenian industrial relations scene and started to perform the new, previously non-existent roles of social partners. The change of economic and political system reformed pre-existing organisations and formed new ones. Trade union pluralism was a consequence of the process in which some parts of the old trade union seceded and formed new organisations. The trade

117Trade unions in Slovenia as a part of the Austrian trade union movement emerged already in the late 19th century, at first as educational and “self-help” organisations and then as workers organisations fighting for better wages and working conditions. The existing Chambers of commerce and craft of Slovenia were established as the Commercial and Craft Chamber of Kranjska (Trgovinska in obrtna zbornica za Kranjsko) in 1851.
union scene in the beginning of the 1990s was characterised by the political/ideological split – similarly as the wider political scene – between “communists” and “anti-communists”. While the reformed Association of Free Trade Unions of Slovenia (ZSSS) was seen as the successor of the old system and close to the reformed communist party, the Confederation of Independent Trade Unions of Slovenia (KNSS) was perceived as close to the new political parties. Pergam and K90 were seen as having the same tradition as ZSSS, but in contrast to ZSSS, tried to distance themselves from it. Ideological and political splits among Slovenian trade unions that were characteristic for early 1990s were by the end of the 1990s replaced by ideologically more neutral new splits.

2. Social partners
Data on the membership of the main social partners’ organisations is based on estimations of the organisations themselves. After the change of the socio-economic system, the rate of union density in Slovenia decreased, because membership in trade unions became voluntary and because of extensive restructuring of the Slovenian economy, particularly sectors with a traditionally high union density. A telephone survey conducted in September 1994 found that 59.6% of the total active population were members of trade unions (and 4.6% of the non-active population), and 63.5% of all employed persons (and 23.3% of unemployed people). Some 54.9% of ‘white-collar’ workers and 75.9% of ‘blue-collar’ workers were union members. Union density fell from practically 100% before 1990 to 63.5% in 1994, to about 42% in 1998 and remained at the same level (41.3%) in 2000. The latest data from 2003 shows that union density was 44.3%.

In the mid 1990s around 50% of all trade union members were members of ZSSS and it preserved its leading position during the 1990s. The second important characteristic in this period was the growth of new smaller service sector trade unions that account for almost 40% of total trade union membership. According to the data from Slovenian Public Opinion Surveys 2003/4, 44.4% of all trade union members are members of ZSSS, while 32% are members of autonomous sectoral trade unions.

Unions

Trade union associations in Slovenia

- **The Union of Free Trade Unions of Slovenia** (Zveza svobodnih sindikatov Slovenije, ZSSS) is the largest trade union organisation. ZSSS is a reformed organisation, a successor of the Slovenian section of the former Yugoslav trade union. Changes in the organisational structure in the 1990s involved decentralisation of decision-making within the umbrella organisation that gave sectoral trade unions an independent role in the confederal organisation. ZSSS consists of 22 member unions that are organised on a sectoral, regional and professional basis, representing about 300,000 employees. Approximately 60% of members are employed in industry (metal, chemical, food and textile), 30% in services (retail, hotels and restaurants) and 10% in the public sector.

- **KNSS - Independence, Confederation of New Trade Unions of Slovenia** (Neodvisnost, Konfederacija novih sindikatov Slovenije, KNSS) was in the mid 1990s the second largest union organisation, representing 10% of all trade union members, but this has changed. It now has only about 40,000 members. KNSS is a trade union organisation set up since the change of regime. KNSS consists of 10 member unions that are organised on sectoral, regional and professional principles. Most of the membership is in industry.

- **The Confederation of Trade Unions of Slovenia, Pergam** (Konfederacija sindikatov Slovenije Pergam, Pergam) started as a trade union with membership mainly in the pulp/paper and printing industries, but it increased the scope and number of members in other sectors (especially in the public sector). It was created following secession from the ZSSS. Pergam consists of eight member unions and 87,000 affiliates that are organised on sectoral, regional and professional principles.

- **The Confederation of Trade Unions '90 of Slovenia** (Konfederacija sindikatov '90 Slovenije, Konfederacija '90) is the trade union that has its majority in the coastal region. It was also created following secession from ZSSS in 1991, and has about 40,000 members. Konfederacija '90 consists of 22 member unions that are organised on sectoral, regional and professional principles. Approximately half of the members are employed in industry and the other half in services.

- **The Confederation of Trade Unions of Slovenian Public Sector** (Konfederacija sindikatov javnega sektorja Slovenije, KSJS) is a new, powerful trade union that has majority of members among civil servants, in health, education, cultural and science sector. Around 45% of employees in the public sector are members of the KSJS, amounting to around 73,000 members.
Employers

Main employers’ associations in Slovenia

- The Chamber of Commerce and Industry of Slovenia (Gospodarska zbornica Slovenije, GZS) until this year had obligatory membership. At the beginning of the period of socio-economic transition, GZS was the only organisation representing employers and enterprises and in this role had an important function that enabled social dialogue. In the middle of 2004 it had 64,000 members. At the end of 2006 some changes were introduced into the system of chambers. Membership of the Chamber of Commerce and Industry of Slovenia is no longer compulsory – the reason for the decrease in membership.

- The Slovenian Employers’ Association (Združenje delodajalcev Slovenije, ZDS) was founded on 22 February 1994, following the advice of the ILO and the International Organisation of Employers (IOE). In 2006 it had 1,400 members.

- The Chamber of Crafts of Slovenia (Obrtna zbornica Slovenije, OZS) also has obligatory membership. It represents independent craft workers and small and medium-sized enterprises. In 2006 it had almost 47,000 members. The majority of members are in transport, construction and personal services (such as hairdressing, dress-making and cosmetics).

- The Association of Employers for Craft Activities of Slovenia (Združenje delodajalcev obrtnih dejavnosti Slovenije, ZDODS) was established following the example of GZS’s establishment of ZDS on 23 June 1994. At the beginning of 1997, it had 2,730 members and in 2006 more than 3000 members, mainly in manufacturing, construction and transport.

3. Joint bodies

There are several institutional participation bodies: the National Council (Državni svet), the Council of the Institute of Pension and Invalidity Insurance of Slovenia (Svet Zavoda za pokojninsko in invalidsko zavarovanje Slovenije), the General Meeting of the Institute of Health Insurance of Slovenia (Skupščina Zavoda za zdravstveno zavarovanje Slovenije), the Managing Board of the Institute of Employment of Slovenia (Upravni odbor Zavoda za zaposlovanje Slovenije and also the National council for occupational safety (Svet za varnost in zdravje pri delu), established under the Health and Safety at Work Act.

The social partners cooperate at national level in the Economic and Social Council (Ekonomsko Socialni Svet, ESS). The ESS was established in April 1994 by a tripartite agreement on pay policy in the private sector as a central body for tripartite cooperation in Slovenia. During the eleven years of its existence, ESS has contributed to the successful implementation of basic economic and social reforms and the process of transition. The consultative function of ESS occurs through its activity in the preparation of legislation and other documents (such as social agreements and pay policy agreement) and giving opinions on working and draft documents that are relevant to the scope of ESS work - industrial relations, conditions of work, labour legislation etc and broader issues affecting workers, employers and government policy.

The ESS discusses all reports or documents where international/EU practice demands the opinion of the social partners. The ESS has 15 members (five representing each of the three parties). The ESS adopts its decisions unanimously. In case of differences in opinions, these are reported. The ESS has working groups (members are representatives of all three parties, and sometimes independent experts) that contribute to resolving of issues on the ESS agenda (e.g. drafting of law proposals, evaluating reforms of the social security system and various tripartite agreements). Although ESS opinions and suggestions are not legally binding, they are taken into account in discussions and decision-making. The administrative costs of the work of the ESS are paid from the state budget.

4. Collective bargaining

Legal basis and key issues

According to the Collective Agreement Act (Zakon o kolektivnih pogodbah), a collective agreement is an agreement between the trade unions and the employers’ organisations or employers. It is based on free will and is the right of the social partners. Representative trade unions or their confederations are partners...
on the workers’ side, while employers’ organisations are partners on the employers’ side. The
government— as an employer — concludes collective agreements for the public sector.

The collective agreement is binding on the partners to the collective agreement and their members. Where partners
are confederations of trade unions and/or confederations of employers’ organisations — it has to
be defined in the collective agreement for which members of the confederation it is binding. If the
representative trade union has signed the collective agreement, then it applies to all the employees - it
does not matter if they are members of the trade union or not.

In the case of collective agreements for one or more sectors – it can be proposed to the Minister of Labour
to extend the agreement to all the employers within the sector. The decision of the minister has to be
based on the fact that one or more representative trade unions and one or more representative employers’
organisations — that employ more than half of employees in the sector – concluded the agreement.

There are three levels of collective agreements in Slovenia: general agreements, sector agreements and
agreements for certain professions (e.g. medical doctors and journalists), and agreements at company
level. There is no regional level of collective bargaining in Slovenia.

Main features
In December 2006, there were 40 collective agreements registered at the Ministry of Labour, Family and
Social Affairs. Two of them were general agreements, 36 of them were sectoral agreements and two of
them were professional agreements. The Ministry does not register agreements at company level so there
is no data about agreements at that level.

In the past the collective bargaining structure in Slovenia was centralised. There were two general
agreements - one for the private and one for the public sector, but the general opinion is that there is now
no need for such a general agreement in the private sector and there is now at the highest (general) level
for the private sector only one agreement, about the indexation of wages. Collective bargaining is getting
more decentralised and collective agreements at a lower level are more important, especially sectoral
agreements. Lower level collective agreements can only give more (not less) rights to employees. For
example, collective agreements at company level can only be more favorable than sectoral agreements.
Only in exceptional cases it is possible to define a lower level of rights (for example, in the case of
insolvency of the employer).

Almost the whole workforce is covered by agreements. The only two categories of employee that are
not covered by collective agreements are managers and higher administrative employees in the state
administration and in the administration of municipalities. The main topics regulated are wages and other
types of remuneration, extra payments for night work, overtime work, Sunday work and work on
holidays, holiday allowance, reimbursement of expenses related to work, retirement severance pay,
payment during strikes, distribution of working time, determination of annual leave (longer duration than
the minimum stipulated by ZDR (Zakon o delovnih razmerjih, Employment Relationships Act), education
of workers, criteria for determining redundant workers and disciplinary sanctions.

5. Collective disputes
The procedure for peaceful dispute settlement can be defined by the collective agreement. According to
the Act on Collective Agreements, disputes can be solved by negotiation, mediation and arbitration. On
the basis of the proposal of the representative trade unions and employers’ organisations the Minister of
Labour can publish the list of mediators and arbiters. In the arbitration procedure the provisions of the Act
on Labour and Social Courts apply.

Strikes
According to Article 77 of the Constitution, employees have the right to the strike. Where required in the
public interest the right may be restricted by law, with due consideration given to the type and nature of
activity involved. Questions concerning the organisation of the strike are defined by the Act on strike

\[\text{118 This situation might change in the future because of reorganisation of the Chamber of Commerce and Industry of Slovenia.}\]
EMPLOYEE REPRESENTATIVES IN AN ENLARGED EUROPE

(Official gazette of the SFRJ, No.23/91). The employee is entitled to wage compensation during the strike – if this is set out in the collective agreement.

Lock-outs are not defined by the legislation. There are no lock-outs in Slovenia.

There are no national statistics on strikes in Slovenia. The Statistical Office of Slovenia was due to start collecting data on strikes in 2007 on the basis of rules issued by the Ministry of Labour, Family and Social Affairs. However, in recent times there have been almost no strikes in Slovenia. The most usual reason for strikes in the past were wages and/or different types of remuneration (when the employer does not pay the wages or pays substantially lower wages to the workers), working time, and announcements of changes of employment contracts.

III. EMPLOYEES’ REPRESENTATION IN THE UNDERTAKING

1. General issues and types of representation and bodies

Slovenia has introduced the double system of employee representation in the company – through bodies of participation in management (according to Worker Participation in Management Act (Zakon o sodelovanju delavcev pri upravljanju)) and through the trade unions (according to ZDR in CAA). According to WPMA the right to participate in management is exercised particularly in making decisions about and influencing the organisation of work; and in the determination and implementation of activities designed to improve the conditions of work, humanise the working environment and encourage the successful performance of the company.

According to ZDR and CAA, trade unions can conclude collective agreements, have the right to be informed and have the right to give opinions about the organisation of work and health and safety, and defend the rights of individual workers – who are members of the trade union. According to AWPM workers shall exercise the right to participate in management as individuals or collectively through a workers' council (svet delavcev) or workers' representative (delavski zaupnik), a workers' assembly (zbor delavcev), a workers' representative in company bodies (as members of the supervisory board and worker director). Where there is no workers’ council in the company – the safety representative should be appointed to carry out the tasks concerning health and safety at work.

2. Legal basis and scope

The WPMA governs workers’ participation in the management of commercial companies, irrespective of the type of ownership, and cooperatives. Under the provision of this Act the participation in management shall also be exercised by workers in public commercial companies, banks and insurance companies. Workers in an institute shall exercise their right to participate in management as individuals (to be informed) by the WPMA, and collectively in accordance with separate legislation, i.e. Act on institutes. There are a certain number of workers’ representatives in the council of institutes (this applies to the schools, hospitals and cultural institutions).

3. Capacity for representation

A trade union representative shall have the right to provide and protect the rights and interests of trade union members with the employer. Workers’ councils represent all workers of the company, except the management. Workers’ councils have legitimacy of representation

4. Composition

There is no legal basis concerning the organisation of the trade unions. Therefore the trade union itself decides if there is going to be a trade union branch or trade union representative within the company. The conditions of work and number of trade union representatives – that are protected – are defined by the collective agreement at company level. A trade union, which has members with a certain employer, may appoint and/or elect a trade union representative to represent it with the employer. If a trade union representative has not been appointed, the trade union shall be represented by its president. A trade union must inform the employer on appointment and/or election of a trade union representative.
Workers are entitled to elect a workers' council (svet delavcev) in conformity with WPMA. A workers' council shall be formed if the company employs more than 20 workers having the right to vote. In a company which employs less than 20 workers who have the right to vote, workers shall participate in management through a workers' representative (delavski zaupnik). A workers' representative shall be given the opportunity to carry out his duties, and is guaranteed the rights granted to a workers' council.

The size of the workers' council is three members in companies with up to 50 employees; five members in companies with between 51 and 100 employees; seven members in companies with between 101 and 200 employees; nine members in companies with between 201 and 400 employees; eleven members in companies with between 401 and 600 employees; thirteen members in companies with between 601 and 1,000 employees. In companies with more than 1,000 employees the number of members of the workers' council is increased by two per extra thousand employees.

The term of office of workers' council members is four years. Members may be re-elected. The number of workers' council members shall not change during the term of office, regardless of a change in the number of workers entitled to vote in the company. The right to vote representatives onto the workers' council is granted to all employees who have worked in the company for at least six months continuously. The very detailed election procedure is conducted by electoral committees and vote-counting committees, following the strict rules of WPMA.

5. Protection granted to the members

According to the WPMA, the workers' council member who during the discharge of his duties behaves in accordance with the laws, collective agreements and the agreement provided by this Act may not, without the consent of the workers' council, be assigned to another workplace, another employer or be included among any redundancies. It shall not be possible to lower his salary, institute disciplinary proceedings against him or place him in any other way in a less favorable or subordinate position.

According to the ZDR, the employer may not terminate the employment contract of:

- a member of a works council;
- a workers representative;
- a member of a supervisory board representing workers;
- a workers’ representative in the council of an institution; or
- an appointed or elected trade union representative

without the consent of the body whose member he is or without the consent of the trade union, if they act in accordance with the law, the collective agreement and the employment contract, except in the case of termination due to a business reason where he rejects the offered appropriate employment, or in the case of termination due to the procedure of the employers termination.

The protection against termination applies to the entire period of their term of office and another year after its expiry. Where there is a change of employer, a trade union representative shall keep his status provided that with the employer-transferee the conditions for his designation are fulfilled in accordance with the collective agreement. The previous paragraph shall not apply if the conditions necessary for the reappointment of a trade union representative are fulfilled. A trade union representative, whose term of office expires due to a transfer, shall enjoy the protection for another year after the termination of office of the representative. The number of trade union representatives, who enjoy protection, can be determined in accordance with the criteria stipulated in the collective agreement and/or agreed to between the employer and a trade union. Trade union representatives referred to in the previous paragraph enjoy protection against the reduction of his wages or the introduction of disciplinary or damage proceedings or being treated less favourably or subordinately on the basis of their trade union activities. Upon the request of the trade union and in compliance with the regulation of the trade union the worker is a member of, the employer shall ensure the technical execution of settlement and payment of a trade union membership fee for the worker concerned.
6. Working of the body and decision-making

The first workers' council session shall be chaired by the chairman of the electoral committee until the council elects a president from among its ranks. The workers' council shall elect the president and his deputies. The president shall act on behalf of and represent the workers' council. The deputy shall act on behalf of and represent the workers' council in the absence of the president. Workers' council members may not be hindered in the performance of their duties in the workers' council or in their regular work. The method of work of the workers' council shall be regulated by the rules of procedure. The rules of procedure shall determine in particular the manner of convening the sessions; the quorum; the manner of adoption of decisions; the keeping of minutes; the participation of people referred to in Article 61 of this Law; and the manner of constituting workers' council committees.

The workers' council may set up committees to deal with individual questions from its field of competence. Workers' council committees may also be set up to deal with questions of concern to individual groups of employees (women, disabled workers, young workers etc.). The workers' council may set up committees for individual organisational units of the company and segments of the working process, or for parts of the company outside the headquarters (detached units) if at least ten employees having the right to vote are working in such a detached unit. The field of competence of workers' council committees shall be determined by the workers' council in its rules of procedure. A workers' council committee may have at most a third of its membership recruited from among employees who are not workers' council members. The management body and the director shall be informed of the foundation of workers' council committees, their composition and their fields of competence. Workers' council committees shall deal with matters from their fields of competence and shall inform the workers' council of their conclusions and proposals upon which the workers' council shall take a final decision. The manner of adoption of decisions is determined by the Rules of Procedure adopted by the workers' council.

7. Means

The workers' council may invite to its sessions experts from inside or outside the company, management personnel, trade union representatives in the company and representatives of employer associations. The workers' council shall as a rule meet during working hours, taking account of the needs of the work process. The company shall be bound to allow workers' council members five paid working hours a month to enable their participation in workers' council sessions. The director of the company shall be informed in good time of the time of the session. If a session is held outside working hours because the needs of the work process so dictate, that time shall be counted as work time and shall be paid as the working hours.

Workers' council members shall be entitled to three paid hours a month for consultations with employees and up to 40 paid hours a year for training necessary for the efficient operation of the workers' council. The employer and the workers' council may make an arrangement determining more hours for the duties of workers' council members, longer leave with payment or without payment for training necessary for the efficient operation of the workers' council, more hours within working hours for consultations with employees and other benefits concerning the operation of the workers' council. The company shall be bound to ensure that workers' council members are paid for the time spent on consultations at the same rate as they would have been paid had they been working. The time and place of consultations shall be determined in an agreement between the director and the workers' council, taking account of the needs of the work process.

In a company with between 50 and 100 employees, the number of workers' council members shall be one member; between 100 and 300 employees two members. In a company with more than 300 employees, the number of workers' council members who perform their function in the council on a professional basis shall be one member in a company with between 300 and 600 employees; two members in a company with between 600 and 1,000 employees; and one extra member per each subsequent 600 employees.

A professional workers' council member shall be entitled to a salary which may not be smaller than the salary he was receiving before being elected a workers' council member, or to a salary equal to that received by employees with an equal level of education if the latter is more favourable for him. The salary of a professional workers' council member shall be reviewed in the same way as other salaries in the company. The employer shall cover the expenses for the work of the workers' council, the minimum being the expenses for the premises needed for the sessions, the reception of clients and the work of
professional council members; as well as expenses for the materials used by the council and administrative personnel working for the council. The expenses for persons referred to in Article 61 of this Law shall be covered by the company if so agreed with the employer and in the amount agreed upon, which may not be less than 50% of the average monthly salary per company employee for each member of the workers' council. The employer and workers' council may make an arrangement allocating a fixed amount of resources for the duties of the workers' council over a specific time period. The workers' council shall employ these resources at its discretion, but only for the financing of its work.

8. Role and rights
Workers have the right to present an initiative to management and receive an answer; the right to be informed; the right to give opinions, make proposals and receive answers to the proposals. They also participate through the possibility or obligation of joint consultation with the employer; through the right to participate in decision-making; and through the right to stay decisions of the employer.

Information
The employer is bound to keep the workers' council informed about issues relating in particular to the economic position of the company; the development targets of the company; the state of production and sales; the economic position of the branch as a whole; changes of activity; any decline in economic activity; changes in the organisation of production; technological changes; the annual accounts and annual report; and other issues under mutual agreement referred to in paragraph 2, Article 5 of WPMA. At a request from the workers' council the employer is bound to allow inspection of documentation to obtain an insight into these matters.

Consultation
The employer is bound to inform the workers' council about and request joint consultations on the status of the company and personnel issues before taking decisions on these issues. The employer is bound to give the workers' council the necessary information at least 30 days before taking the decisions, and organise joint consultations at least 15 days before taking the decisions. It falls within the duty of the employer to arrange consultations between the workers' council and the employer to keep the workers' council informed of planned decisions concerning status and personnel issues, to seek advice from the workers' council and to try and harmonise points of view.

Status issues include status changes; the sale of the company or of essential parts; the closing of the company or of essential parts; and essential ownership changes. Personnel issues include the need for new employees (number and profile); job systematisation; the movement of a significant number of employees to outside the company; the movement of a significant number of employees from one place to another; the adoption of policies concerning additional pension, disability and health insurance; a reduction in the size of the workforce; the adoption of general rules of disciplinary accountability. A significant number of employees is 10% of all company employees.

9. Other representation bodies
The workers' council has the right to convene a workers' assembly composed of all employees except management personnel. Assemblies may also be convened by individual organisational units or sectors of the company work process. The assembly of a detached unit may also be convened by the workers' council committee of the detached unit. The workers' assembly may discuss matters from the field of competence of the workers' council or of its committee. The workers' assembly may not decide upon matters falling within the competence of the workers' council or its committee. The director of the company shall be informed about the convening of a workers' assembly. The company shall have the right to send a representative to attend the workers' assembly. The workers' council or its committee must convene a workers' assembly if so requested by the director of the company and to put items proposed by the director on the agenda of the assembly. Once a year a workers' assembly may be convened during working hours, taking into account the needs of the work process. The manner of convening a workers' assembly and the work of the assembly is detailed in the rules of procedure of the workers' council.

Groups of companies shall establish a workers' council of the group. The workers' council of a group of companies shall comprise representatives of all the companies in the group. Members of the workers' council of the group are appointed by the workers' councils of the individual companies. The total number
of members and the number of members from individual companies is determined by agreement according to the size and the number of workers' council members of each individual company. The workers' council of a group of companies may only comprise members of the workers' councils of the individual companies.

The workers' council of groups of companies is competent to deal with issues of concern to employees in all the companies in the group. The workers' councils of the group may detail in a mutual agreement the competencies of the workers' council of the group and the matters falling within its sphere of activity. The provisions of this Law on the method of work of a workers' council shall meaningfully apply to the method of work of a workers' council of a group of companies. The term of office of members of the workers' council of a group of companies shall depend on their term of office in the workers' councils by which they were nominated.

The employer must enable workers or their representatives to take part in all questions concerning health and safety at work. Health and safety is one of the responsibilities of the worker’s council and there are no designated health and safety committees. If there is no worker’s council in the company its duties in the field of health and safety are taken by the workers' health and safety representative.

**European Works Councils**

Representation of employees in Community-scale undertakings is regulated by a special act – the EWCA. The EWC shall have a minimum of three and a maximum of 30 members. The members may appoint deputies. According to the Article 19 of the Slovenian EWC Act, each member state with at least:

- 20% of employees shall have one additional representative;
- 30% of employees shall have two additional representatives;
- 40% of employees shall have three additional representatives;
- 50% of employees shall have four additional representatives;
- 60% of employees shall have five additional representatives;
- 70% of employees shall have six additional representatives; and
- 80% of employees shall have seven additional representatives.

There is no information on any EWC having its seat in Slovenia, only information on a few representatives being members of foreign-based EWCs.

**10. Protection of rights**

There is a penalty clause in the WPMA. A company shall be fined at least 1000 EUR for infringement if it fails to:

- make agreements with the workers' council public, in the manner habitually used in the company;
- implement agreements with the workers' council;
- enable the workers' representative to work and exercise his rights;
- organise elections in such a way that all employees may participate in them;
- cover the costs of the necessary technical activities in connection with elections;
- pay the employees for time spent on the work of electoral bodies or the time spent on elections;
- secure payment for workers' council members for their participation in workers' council sessions;
- secure payment for workers' council members for the time spent on consultations with the employer;
- cover the necessary expenses for the operation of the workers' council;
- provide the special protection due to workers' council members in connection with their duties;
- secure the right of employees as individuals to participate in management;
- provide within 30 days the answer to an initiative of an employee bearing upon his job or his work or organisational unit;
- keep the workers' council informed as stipulated by Article 90 of the Law;
- request joint consultations on status and personnel issues at least 15 days before adopting the decision; and
- submit for the consent of the workers' council the draft decisions which it is bound to submit in accordance with Articles 95 and 96 of the Law.
A company can also be fined if it:

- promises benefits or threatens the loss of benefits in connection with elections, and thereby influences the result of the elections;
- hinders or does not render possible the duties of workers' council members or their regular work;
- adopts decisions although the workers' council denied consent within eight days; or
- implements a decision before receiving the final decision of the competent body.

The responsible person of a legal entity which commits such an infringement shall be fined at least SIT 100 EUR. Enforcement of the provisions of the WPMA is exercised by the labour inspector. In the case of a dispute on the right of workers’ participation in management, the competent authority is the labour court.

11. Codetermination rights

The employer must submit for approval by the workers' council:

- draft decisions on the organisation and execution of safety measures not stipulated by law or other regulations and not covered by collective agreements;
- the determination of measures to prevent injuries and occupational diseases, as well as measures to protect the health of the employees, not stipulated by law or other regulations and not covered by collective agreements;
- the basis for determining the use of paid leave and other instances of absence from work;
- criteria for the assessment of performance and for the remuneration of innovative activity in the company;
- the management of the housing fund, company vacation homes and other worker welfare facilities; and
- employee promotion criteria.

The workers' council considers and forms an opinion on these drafts within eight days of their submission. If the workers' council does not form an opinion on the drafts within the time limit mentioned, it shall be considered to have given consent to the drafts. Consent given by the workers' council and delivered to the employer in a written form shall be considered as an agreement between the workers' council and the employer.

The employer must obtain the consent of the workers' council if decisions result in an increase or reduction in the workforce in which a significant number of employees are concerned under employment regulations. The workers' council can only deny consent if the proposal to reduce the size of the workforce does not include a draft programme for the solution of the problem of redundancies in accordance with employment regulations, or if the reasons for the decision to reduce the size of the workforce are not well-grounded.

If the workers' council denies consent in situations other than these, the denial shall have no effect on the regularity and legality of the decision of the employer.

The workers council has the right to a “stay of execution” of individual decisions of the employer and to initiate procedures for settlement of the dispute within eight days of receiving information that the employer has adopted a decision on issues related to increasing or reducing the size of the workforce without informing the workers’ council (or requesting joint consultation). The employer is not allowed to implement these decisions until the final decision of the competent court.
IV. EMPLOYEES PARTICIPATION IN CORPORATE BODIES

1. Legal basis and scope
According to the WPMA, workers’ participation in company management bodies is implemented through representatives on a company supervisory board or the supervisory committee of a cooperative (the supervisory board), and representatives of the employees in the management of a company (worker director).

There are 27 worker directors in Slovenian companies. There are workers representatives in all supervisory boards (because they must be according to the Company Act), but unfortunately there is no data about the number. There is no exact data available for workers’ councils, but according to the Association of Workers’ Councils more than 85% of joint-stock companies in Slovenia have a worker council.

Although there have been proposals to establish statistical data on issues of employee representation, there are at present no official statistics in Slovenia regarding the number of Slovenian companies involved in employee representation in the form of an EWC. Nor is there information on board-level participation in Slovenian companies. The only information is that available from the Slovenian Association of Works Councils, which has prepared a framework list of workers’ directors in Slovenia (according to this list, there are currently 27 companies with workers’ directors and it is highly probable that this number matches the reality). In contrast to this about 85% of joint-stock companies in Slovenia do have works councils elected.

Composition
The number of workers' representatives on the supervisory board is determined by the company's articles of incorporation and may not be less than a third of supervisory board members in a company with up to 1,000 employees and no less than half of supervisory board members in a company with more than 1,000 employees. Workers' representatives to the supervisory board are elected and recalled by the workers' council which informs the assembly of the company. The manner of election and recall of workers' representatives on the supervisory board is determined by the rules of procedure of the workers' council.

A company with more than 500 employees shall have a worker director in the company management nominated by the workers' council. In a company with a smaller number of employees a worker director may be appointed if so agreed by the workers' council and the employer. The worker director as a member of company management is appointed by a body of the owners of the company determined under a separate law. The competent body appoints the worker director by a majority of votes of the members present. If the worker director is not appointed as provided in Act, the assembly committee, within a month from the vote of the assembly, proposes a joint candidate to the assembly. The candidate is appointed worker director if voted for by a majority of the assembly members present. The assembly committee is composed of the president of the assembly and an equal number of representatives of the owners, appointed from among the members of the assembly, and representatives of the workers from among the workers' council members. If the worker director is still not appointed, the workers' council may request that he be appointed by the competent court.

Functions
Workers’ representatives on the supervisory board represent the interest of all workers within the powers vested in the supervisory board, consistent within a separate law (Company Act) and the articles of incorporation of the company. The worker director acts on behalf of, and represents, the interests of workers with regard to personnel and social welfare issues, acting within the general rights and obligations determined for all company management members under a separate law and the articles of incorporation of the company.

Worker participation in the management of the company shall be implemented such a way that workers are kept informed directly and can make proposals and give opinions directly and they are also kept informed through a workers' representative or workers' council through which they can make proposals and give opinions, request consultations with the employer, participate in decision-making on individual
issues determined by this Law and stay the execution of individual decisions of the employer until they are finally decided upon by the competent court. The employer and the workers' council, or its committee, shall have meetings at the request of the employer or of the workers' council. Typically they meet once a month in order to exercise the rights and discharge the obligations stipulated by the WPMA.

Protection and responsibility of representatives
The employer may not terminate the employment contract of a member of a supervisory board representing workers without the consent of the board if the member acts in accordance with the law and the employment contract. The protection shall be applied the entire period of his term of office and another year after it has expired. There is no special provision for worker directors. Members of these bodies are bound by confidentiality according to the WPMA and their employment contracts.

Representation of employees in the boards of European Companies
Slovenia has implemented the SE-Directive by the Participation of Workers in Management of the European Public Limited-Liability Company Act (SE) (Zakon o sodelovanju delavcev pri upravljanju evropske delniške družbe - ZSDUEDD) of 2006. Of the issues which were open to the national legislator, the Slovenian legislation has followed the solutions from the general system of workers’ involvement – especially the election and protection of employees’ representatives. Accordingly, it is provided that employees’ representatives from the Republic of Slovenia shall be elected to the special negotiating body by all employees by secret ballot. Works councils, representative trade unions in a participating company, concerned subsidiary or establishment and at least 50 employees in a participating company, concerned subsidiary or establishment are entitled to nominate candidates for membership of the special negotiating body. Employee representatives are protected by the general national rules on protection of employee representatives.

V. EMPLOYEE INVOLVEMENT IN EXTERNAL DECISIONS THAT AFFECT THE UNDERTAKING

Procedures to prevent difficulties
Employees have the right to be informed on the economic position of the company, any decline in economic activity, the annual accounts and annual report etc. The workers’ council has the right to give opinions and make proposals concerning the economic position of the company.

Insolvency or bankruptcy procedures
The employer must consult with the trade unions about possible measures for preventing and mitigating harmful consequences applies to the receiver in bankruptcy or in liquidation.

Operations affecting shareholders
In the case of the transfers, mergers, takeovers and other operations affecting shareholders, the employer has a duty to inform employees under two acts, the ZDR and the WPMA. According to the ZDR, the transferor and the transferee must, at least 30 days prior to the transfer, inform the trade unions at the company about the date or the suggested date of transfer, the reasons for the transfer, the legal, economic and social implications of the transfer for workers, and the measures envisaged in relation to workers.

The transferor and the transferee must, with the intention of achieving agreement, at least 15 days prior to the transfer, consult with the trade unions about the legal, economic and social implications of the transfer and about the envisaged measures for workers.

If there is no trade union at the workplace, the workers concerned by the transfer must be, within the deadline, directly informed about the circumstances of the transfer. According to the WPMA, the employer is bound to inform the workers council about, and request joint consultation of, the status of the
company. The status issues shall be considered to include status changes, the sale of the company or of essential parts, the closing of the company or essential ownership changes.
The Spanish Constitution transformed an extremely centralised state into a new form of decentralised state. Spain is divided into 55 administrative “provincias” – more or less counties, including the islands and territories in North Africa. “Provincias” are grouped by geography, history and culture into “Comunidades Autónomas” – more or less, regions. The state retains labour legislation and the regions develop important functions in connection with intervention and active policies in the labour market. The main unions and employers’ associations have a nationwide scale, covering all of the state, although they have developed structures in each region. It is therefore only possible to find specific and important autonomous or regional unions in the Basque Country and in Galicia, in spite of the fact that an autonomous system of labour relationships has also been developed in Catalonia, with important collective agreements.

I. ECONOMIC AND SOCIAL CONTEXT

Some basic economic data
The economic situation in Spain can be described as favourable in a European context. In recent years, the Spanish economy has been one of the most dynamic within the EU, attracting significant amounts of foreign investment. Spain has achieved high levels of economic growth during this time. The economy in Spain now has a GDP that is, on a per capita basis, more or less 90% of the GDP of the four leading Western European economies and slightly below the European Union average.

On the other hand, weak areas of the Spanish economy continue to include, according to the OECD, high inflation, a large underground economy, low productivity, one of the lowest rates of investment in research and development among developed countries, and an education system which has been slated in OECD reports as one of the worst in Western Europe. Due to the loss of competitiveness, manufacturing jobs are being lost to countries with cheaper workforces in Eastern Europe and Asia.

With regard to the productive structure, the Spanish tourism industry has grown during the last four decades, to become the second biggest in the world, worth approximately 40,000 million Euros in 2006. And more recently, the Spanish economy has benefited greatly from the global real estate boom, with construction representing 16% of GDP and 12% of employment.

Finally, the vast majority of Spanish undertakings are micro-enterprises or do not employ workers at all. Only 0.9% of Spanish undertakings have fifty or more employees. And in relation to the active population, 64.3% work in the Services sector, 30.1% in Industry and only 5.6% in Agriculture.
EMPLOYEE REPRESENTATIVES IN AN ENLARGED EUROPE

Size of Spanish Undertakings (2006)

<table>
<thead>
<tr>
<th>Undertakings</th>
<th>%</th>
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<tbody>
<tr>
<td>Without employees</td>
<td>1,616,883</td>
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<tr>
<td>From 1 to 2 employees</td>
<td>881,748</td>
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<tr>
<td>From 3 to 5 employees</td>
<td>328,820</td>
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<tr>
<td>From 6 to 9 employees</td>
<td>154,635</td>
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<tr>
<td>From 10 to 19 employees</td>
<td>105,470</td>
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<tr>
<td>From 20 to 49 employees</td>
<td>58,725</td>
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<td>From 50 to 99 employees</td>
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<tr>
<td>From 100 to 199 employees</td>
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<tr>
<td>From 200 to 499 employees</td>
<td>3,908</td>
</tr>
<tr>
<td>From 500 to 999 employees</td>
<td>999</td>
</tr>
<tr>
<td>From 1000 to 4999 employees</td>
<td>658</td>
</tr>
<tr>
<td>From 5000 or more employees</td>
<td>93</td>
</tr>
<tr>
<td>All</td>
<td>3,174,393</td>
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</tbody>
</table>

Source: Spanish National Statistics Institute (INE)

Labour market
Economic growth has been accompanied by a considerable amount of job creation, with 600,000 new jobs created in 2006 reducing unemployment to 8.5% that year.

Employment rate - total %: European Union-Spain (1995-2006)

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<tr>
<td>EU (25 countries)</td>
<td>:</td>
<td>:</td>
<td>60.6</td>
<td>61.2</td>
<td>61.9</td>
<td>62.4</td>
<td>62.8</td>
<td>62.8</td>
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<td>60.7</td>
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<td>63.4</td>
<td>64.0</td>
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<td>64.3</td>
<td>64.7</td>
<td>63.8</td>
<td>64.7</td>
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<tr>
<td>Spain</td>
<td>46.9</td>
<td>47.9</td>
<td>49.5</td>
<td>51.3</td>
<td>53.8</td>
<td>56.3</td>
<td>57.8</td>
<td>58.5</td>
<td>58.9</td>
<td>61.1</td>
<td>63.3</td>
<td>64.8</td>
</tr>
</tbody>
</table>

Source: EUROSTAT

Unemployment rate - total %: European Union-Spain (1995-2006)

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</thead>
<tbody>
<tr>
<td>EU (25 countries)</td>
<td>:</td>
<td>:</td>
<td>:</td>
<td>9.3</td>
<td>9.0</td>
<td>8.6</td>
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</tr>
<tr>
<td>EU (15 countries)</td>
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<td>8.5</td>
<td>7.6</td>
<td>7.2</td>
<td>7.5</td>
<td>7.9</td>
<td>8.0</td>
<td>7.9</td>
<td>7.4</td>
</tr>
<tr>
<td>Euro area</td>
<td>10.5</td>
<td>10.7</td>
<td>10.6</td>
<td>10.0</td>
<td>9.0</td>
<td>8.1</td>
<td>7.8</td>
<td>8.2</td>
<td>8.7</td>
<td>8.8</td>
<td>8.6</td>
<td>7.9</td>
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<tr>
<td>Spain</td>
<td>18.4</td>
<td>17.8</td>
<td>16.7</td>
<td>15.0</td>
<td>12.5</td>
<td>11.1</td>
<td>10.3</td>
<td>11.1</td>
<td>11.1</td>
<td>10.6</td>
<td>9.2</td>
<td>8.5</td>
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Source: EUROSTAT

Three of the most important problems in the Spanish labour market are the high rate of fixed-term contracts, low productivity, and discrimination and segmentation, especially for women.

Labour Market - Main benchmarks European Union and Spain 2005

<table>
<thead>
<tr>
<th></th>
<th>EU 25</th>
<th>EU 15</th>
<th>Spain</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Total population (000)</td>
<td>453,831</td>
<td>380,563</td>
<td>43,141</td>
</tr>
<tr>
<td>2. Population aged 15-64</td>
<td>305,076</td>
<td>253,973</td>
<td>29,755</td>
</tr>
<tr>
<td>3. Total employment (000)</td>
<td>201,662</td>
<td>172,921</td>
<td>18,904</td>
</tr>
<tr>
<td>4. Population in employment aged 15-64</td>
<td>194,551</td>
<td>165,469</td>
<td>18,834</td>
</tr>
<tr>
<td>9. FTE employment rate (% population aged 15-64)</td>
<td>58.1</td>
<td>58.7</td>
<td>59.2</td>
</tr>
</tbody>
</table>
II. INDUSTRIAL RELATIONS

1. Legal basis and key issues

The Spanish system of industrial relations has been strongly influenced by the dictatorship that the country endured for forty years. There was neither freedom to unionise, nor an authentic right to strike in Spain from 1936 until 1976. In December 1978 the Spanish Constitution was passed, almost at the same time as the most important ILO Conventions about union freedom or collective agreement were ratified by Spain. In the late 1970s, Spain also ratified the International Covenant on Economic, Social and Cultural Rights - Pact I (ICESCR) and the International Covenant on Civil and Political Rights. The new Constitution expressly recognised the right to unionise, the right to strike and the right to collective negotiation in sections 28 and 37. Finally, the Law of Union Associations of 1st April 1977 allowed the legalisation of the main Spanish unions and employers' associations, whilst the Spanish Statute of Workers' Rights (ET) in 1980, and later, the Law on Union Freedom in 1985 regulated the main issues regarding employee participation in undertakings, collective agreements, the freedom of workers and civil servants to join unions, and the form of representation in undertakings.

During the last thirty years, the system of labour relations in Spain has undergone an important modernisation, marked by the impact of four fundamental factors. Firstly, a strong economic crisis during the 1980s and 1990s, with a very high unemployment rate, together with an industrial crisis and a fall in the number of jobs in the agricultural sector, has contributed to the services sector having a greater importance in the economy. This economic crisis also caused a very high rate of temporary, precarious and fixed-term contracts in the labour market, which is now perceived as one of the main problems of the Spanish industrial system. The third factor is the incorporation of Spain into the European Economic Community in 1985, and its most important consequences: the opening of companies and markets to the global market and the support that European structural funds later implied for the Spanish economy. The fourth factor, of lesser importance, is the progressive appearance of new Public Regional Powers – “Comunidades autónomas” — with a progressive role in the industrial system and in the labour market. Spain now has a modern industrial labour system, with an unemployment rate very similar to the European rate, strong unions, an important employers’ association, and a consolidated collective agreement system that covers a very high proportion of Spanish wage earns.

The Spanish Constitution of 1978 (CE) established a democratic system of labour relations, based on the recognition of the freedom of unions (section 28.1), the right to collective bargaining (section 37), and the right to strike (section 28.2). The workers’ and civil servants’ freedom to join unions is regulated by the Law on Freedom of Union affiliation – Ley Orgánica de Libertad Sindical 11/1985, of 2nd August (LOLS). The Act was drawn up together with the 1984 amendment of the Statute of Workers’ Rights, in a legal move, the central feature of which lay in favouring the most representative trade union organisations.
In accordance with art.1, only members of the Armed Forces, of the Institutes subject to military discipline, and judges and publics prosecutors are excluded from this right. There are also some restrictions on members of the police force and security officers, who are prohibited from joining general trade unions. The freedom of union affiliation included, among other provisions for affiliates, the right to engage in trade union activity or to form union workplace branches.

At a collective level, this fundamental right also included the right of all unions to call for strikes, to negotiate collective agreements, to propose industrial action, or to field candidates in elections for workers' representation in the undertaking. Special protection under Spanish law for exercising the right to trade union freedom includes prohibition on suspending or dissolving trade unions except by a court decision, or the declaration as null and void of any contractual clauses, regulatory provisions or company decisions which imply discrimination on trade union grounds. The most important unions – “main representatives unions” – have specific rights and prerogatives and, among those, the right to negotiate general personal-performance collective agreements and the right to participate in Public Administration bodies.

The freedom of employers’ associations is regulated by the Employers' and Employees' Associations Act 19/1977, of 1st April. Under Spanish law, the most representative employers’ associations are those organisations which cover a minimum of 10% of undertakings at national level, or 15% within an Autonomous Community, provided that these undertakings employ the same minimum percentage of workers in the areas concerned. This status confers the legal right, among others, to have representation in public bodies and to negotiate general-performance collective agreements

And, finally, the Law on the Statute of Workers’ Rights – Ley del Estatuto de los Trabajadores (ET) — established a detailed regulation on employees’ representation at work, on collective bargaining, at the same time that it recognised some specific issues of the most representative employers’ associations.

2. Social partners
Unions

There are a lot of trade union organisations in Spain, but in fact, there are two, clearly predominant unions.

**Trade unions in Spain**
- The “Confederation of Workers’ Committees”(*Confederación Sindical de Comisiones Obreras, CC.OO*) is a major Spanish trade union. CC.OO was established in the 1960s, and was closely connected to the Communist Party of Spain (PCE) and workers’ Roman Catholic groups to fight against the dictatorship. The CC.OO has approximately 1,000,000 affiliates today, is a member of ITUC and ETUC and sees trade union autonomy as the exercise of democratic decision-making capacity, carried out independently of governments, employers, political parties and other social organisations.

- The General Workers’ Union (*Confederación Sindical de la Unión General de Trabajadores, UGT*) was founded on 12th August, 1888. UGT is also a major Spanish trade union, historically connected with the Spanish Socialist Workers' Party (PSOE); however, UGT has clearly stated its autonomy from political entities in the last 1980s. The UGT. The UGT declares itself to be an institution of productive workers, organised along the lines of trades and liberal professions, which respects freedom of thought, leading toward the transformation of the society, in order to establish it on the basis of social justice, equality and solidarity. UGT has approximately 900,000 members and is a member of ITUC and ETUC.

- These two unions are the most representative organisations in the Spanish Labour Market by virtue of the votes cast by workers in the elections held at the workplace all over the country. UGT and CCOO obtained more than 76% of the members of workers’ committees and delegates in the 2003 election; and according to some sources, almost 70% in the 2006 elections. Only in the Basque Country (ELA-STV and LAB) and in Galicia (CIG) is it possible to find important nationalist unions. But CC.OO and UGT are, without contest, the key players in shaping industrial relations in Spain.

- Nevertheless, there are also other national unions like USO, CIS-CSIF or CGT, but they are much less important. USO and CSI-SIF only obtained 2 and 3% respectively of the total number of members of the committees elected in the whole country during 2006. And, as regards the General Confederation of Work –Confederación General del Trabajo (CGT), an Anarcho-Syndicalist trade union, member of International Libertarian Solidarity and the European Federation of Alternative Syndicalism, FESAL, has only around 60,000 members.
UGT and CC.OO are also, generally speaking, the most representative trade unions in the various geographical areas and sectors in which the different employment relationships are played out. According to statistics from the Spanish Labour Minister, CC.OO and UGT negotiated the vast majority, 66%, of Spanish collective agreements during 2006; and, even more importantly, those agreements cover 98% and 96% respectively of the Spanish workers affected or covered by collective bargaining in Spain.

<table>
<thead>
<tr>
<th>Collective agreements negotiated by Unions (2005).</th>
<th>Total</th>
<th>%</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>5,010</td>
<td>100%</td>
<td>9,846,740</td>
<td>0</td>
</tr>
<tr>
<td>CC.OO.</td>
<td>3,327</td>
<td>66%</td>
<td>9,620,064</td>
<td>0</td>
</tr>
<tr>
<td>UGT</td>
<td>3,300</td>
<td>66%</td>
<td>9,433,408</td>
<td>0</td>
</tr>
<tr>
<td>Other Trade Unions</td>
<td>1,571</td>
<td>31%</td>
<td>2,802,711</td>
<td>0</td>
</tr>
<tr>
<td>Group of workers</td>
<td>727</td>
<td>15%</td>
<td>196,889</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Spanish Ministry of Labour

It is important to highlight that according to some sources, membership in Spanish trade unions is one of the lowest in Western Europe: only 16% of employees are trade union members compared to 25% of European employees. According to EIRO, after a sharp fall in membership in the first half of the 1980s, it rose again and has been relatively stable in recent years. Membership in absolute terms doubled between 1985 and 2003, increasing from 1 million to 2.3 million. Officials, activists, and workplace representatives make up most of the trade unions’ constituency. Unemployed or pensioned workers are rarely members. The unions have recently increased their efforts to recruit members, for example, by providing new membership services.

Employers

Although there are many Spanish employers’ associations, there are two major ones:

- the Spanish Confederation of Employers’ Organisations (Confederación Española de Organizaciones Empresariales, CEOE)

- the Spanish Confederation of Small and Medium-Sized Enterprises (Confederación Española de la Pequeña y Mediana Empresa, CEPYME).

The only difference between them is the size of the undertakings associated with each one; large undertakings with CEOE and, as the name indicates, small and medium-sized enterprises with CEPYME.

In the area of policy and strategy when dealing with the government and in the area of collective bargaining and disputes, very few disagreements between both Confederations have been reported, as they are firmly committed to concerted action. There is no specific employers’ association for Spanish public undertakings.

CEOE set up in 1977 as an umbrella organisation for more than 100 territorial associations/federations and about 50 industrial federations. According to its own figures, its members represent more than a million undertakings which, in turn, employ 75% of the working population.

It is undoubtedly the most established and representative employers’ organisation in Spain and, as such, signs the majority of collective agreements and usually represents employers before the authorities and trade unions. Its work covers both labour and purely economic issues. Indeed, CEOE has played an important role in constructing the institutionalised framework of industrial relations, pursuing a strategy of collective bargaining, social harmonisation, and in recognising the trade unions as valid partners.

There are no reliable data on the membership of Spanish employers’ associations but it is estimated that 70–80% of employers are indirectly members of CEOE. ‘Indirectly’ means that the representation is organised at several intermediate levels. As a result, the business representation structure is very complex.

Data from survey Encuesta de Calidad de Vida en el Trabajo organised by the Ministry of Labour and Social Affairs and EIRO. http://www.eurofound.europa.eu/eiro/country/spain_3.htm
It continues to be based on a mixture of territorial, local-sector, provincial inter-sector and national-sector bodies. CEOE is member of BUSINESSEUROPE.

The following table sets out the main trade union and employer organisations

<table>
<thead>
<tr>
<th>Unions organisation</th>
<th>Details of membership</th>
<th>Number of members</th>
</tr>
</thead>
<tbody>
<tr>
<td>CC.OO</td>
<td>Communist and Catholic traditions</td>
<td>1,000,000</td>
</tr>
<tr>
<td>UGT</td>
<td>Socialist-Marxist tradition</td>
<td>900,000</td>
</tr>
<tr>
<td>CGT</td>
<td>Anarcho-Syndicalist trade union</td>
<td>60,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employer’s organisations</th>
<th>Details of membership</th>
<th>Number of members</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEOE</td>
<td>Represents large undertakings</td>
<td>More than 1 million undertakings with 75% of employees</td>
</tr>
<tr>
<td>CEPYME</td>
<td>Represents small and medium-sized enterprises</td>
<td></td>
</tr>
</tbody>
</table>

3. Joint bodies

The Spanish Economic and Social Council (Consejo Económico y Social, CES) was set up by Law 21/1991 of 17th June, to perform the constitutional function of consolidating the participation of the socio-economic partners in social and economic life, reaffirming their role in the development of a social democratic state under the rule of law. The Spanish CES is a central government advisory body on socio-economic and employment matters. It has independent legal status, full capacity and organisational and functional autonomy. The Council draws up opinions on the matters referred to it, on a mandatory or optional basis, by the government for consultation, and it prepares surveys and reports on its own initiative on the fields covered by its remit. It also draws up an annual report on the socio-economic and employment situation in Spain.

Furthermore, the Spanish system of industrial relations has many years experience of social dialogue. In fact, most of the latest reforms in the Spanish Labour Market undertaken during the last thirty years, and especially, RDL 5/2006 – following Law 43/2006, to improve Growth and Employment - were as a consequence of previous agreement between the Spanish government and the main unions and employers’ associations of the MS. And, it is important to highlight that this social dialogue process has been improved by the Joint Declaration on Social Dialogue of 2004.

From 2002 to the present day, UGT, CCOO and CEOE & CEPYME have signed a new National and Inter-Industrial Framework Agreement on Collective Bargaining every year. This Inter-industrial agreement which is not legally binding, helps the collective negotiators with guidance about the main topics of this process as a whole, with special attention to wages, working-time, safety and health, employment and non-discrimination clauses.

4. Collective bargaining

Legal basis and key issues

Collective bargaining in Spain is a constitutional right recognised specifically by section 37.1 CE of 1978. Besides, the Spanish Constitution also guarantees this as a part of the fundamental right of the unions protected by section 28 CE. Spanish legislation and the courts recognise three types of collective agreements.

- The first and the main type is the “statutory collective agreement”. This kind of agreement fulfils each and all of the subjective, formal and procedural requirements demanded by legislation – Title III of the Statute of Workers’ Rights (Estatuto de los Trabajadores, ET). It is legally binding and applies to all employers and employees included within their scope, whether or not they are affiliated to the organisations which sign the agreements.

- The second type is “extra-statutory collective pact agreement”. This kind of agreement is subscribed between the workers’ representatives and the employer, or between their respective representatives, but does not satisfy or cover all the requirements necessary to be classified as a statutory collective agreement - for example, sufficient legal status of the signatories. This agreement is also legally binding, but only applies to workers and employers affiliated to the organisations which concluded the
agreement. In other words, it will only bind those who actually carry out the negotiations, either
directly or through their representatives.

- The third type is called “inter-professional agreements”. This kind of pact is subscribed between the
main representative trade unions and employers’ associations of the State - or Autonomous
Communities - and will be subject to the arrangements laid down for statutory collective
agreements. Art. 83 ET recognises two different types of inter-professional agreements. Firstly,
structural agreements, which will be able to establish the framework of collective negotiation, as well
as lay down the rules for resolving conflicts between agreements from different areas and the
principles of harmonisation between the diverse units signed up to contracts, always bearing in mind,
under the assumption outlined above, those matters which cannot be negotiated at a lower level.
Secondly, agreements concerning specific matters regulating working conditions, or other labour
matters, like for example conflict-solving systems, for which the ASEC is an example.

There is the progressive appearance of company agreements, the role of which is to complete the
collective agreement at this level, to adapt it or to conclude the consultation processes with workers’
representatives. They do not regulate the whole range of terms and conditions of employment and
working conditions in an undertaking, but cover only one specific topic, or one specific and particular
aspect of labour relations in the undertaking or productive unit. Another distinguishing feature is that their
conclusion involves fewer formalities and procedural requirements. They are legally binding and they are
applied to all the workers of the undertaking. The 1994 Labour Reform increased their presence and
prominence in the Spanish system of industrial relations.

Regarding the relationship between the law and collective agreements, it is important to highlight that
after official recognition of the right to collective bargaining under Article 37(1) CE, the role of state
legislation, and consequently, also the role of the collective bargaining in the Spanish labour system, has
changed and evolved over time. In the 1980s, the law had an essential role in the regulation of the main
areas of the system of industrial relations and, of course, of individual labour contracts, perhaps as a
consequence of the relevant role that the State had had during the Franco dictatorship. However, during
the 1990s, and especially after Law 11/1994, a setback in legal intervention took place, leaving much
more space for collective regulation. So the areas in which the law determines minimum standards liable
to improvement by collective bargaining have gradually been reduced and, consequently, there has been
an important increase in the number of fields where the only regulation comes from collective bargaining.
Now rather than a strict hierarchical relationship between both sources, the relationship is based on the
division of responsibilities, regulated in each case by the law itself. Nevertheless, it is important to
highlight that Spanish collective agreements, at company level in general, are taking a fundamental role
not only to regulate the main working conditions, but also to manage the human resources of Spanish
undertakings.

Legal regulation of the collective bargaining process comes into operation when the workers’
representatives, or the employers’ associations with capacity to negotiate this type of agreement, informs
the other party about their will to begin negotiations, defining in detail, with the relevant written
communication, its capacity to negotiate, the range of the agreement, and the matters to be discussed (art.
89 ET).

This capacity to negotiate Statutory Collective agreements changes according the functional type of the
agreement. For company collective agreements, article. 87 ET allows negotiation by the workers’
committee or to the trade union representatives (if there are any) when these branches hold a majority in
the committee of the company. For sector or branch collective agreements, those trade unions that are
most representative at national level or at the level of the Autonomous Community, and trade unions with
a minimum of 10% of members of the committees in the company, or delegates appointed to represent
personnel within the territorial area or within the implementation field of the agreement the only ones
who have legitimacy to negotiate. For this type of branch agreement, employers’ associations are also
entitled to negotiation provided that they include at least 10% of the employers within the implementation
field of the agreement, and who, moreover, can count on at least 10% of the workers in the area
concerned. In any case, the party which receives the communication may only refuse to initiate
negotiations for legal or conventionally accepted reasons. Whatever the reason may be, it should be
answered in writing stating clearly the relevant causes.

Both sides are under the obligation to negotiate in good faith. Decisions always require a majority vote in
favour from both representative delegations. Finally, the collective agreements must be drawn up in
writing and sent to the Labour Administration to be registered and published officially. The agreement will come into force on the date agreed by the parties. They may eventually agree to different periods for each different item or a similar group of items within the same collective agreement. If a party communicates its wish to end the collective agreement to the other signatory, the clauses stating obligations between the negotiators will no longer be valid, whilst the remaining clauses - regarding wages, working time, or those that in general establish rights and duties for workers, and not for negotiators — are still binding. If no communication is made by the parties concerned, the whole agreement will be extended year by year, unless the agreement establishes otherwise.

**Main features**

According to the Spanish National Statistics Institute, there were approximately 5,776 legally-binding collective agreements during 2005, covering 10,755,727 Spanish workers. Approximately two out of three Spanish workers – more exactly, 69.38% - are covered by a statutory collective agreement.

The vast majority of these collective agreements are agreements at undertaking level. In fact, three out of every four Spanish collective agreements during 2005 – exactly 75.4% - were this type of agreement. However, the vast majority of Spanish workers and undertakings – 88.4% and 99.6% respectively- are covered by sectoral agreements.

Of these sectoral collective agreements the most important are those whose scope is counties or “provincias”. This type of sectoral collective agreement covers 72% of Spanish undertakings, and 53% of Spanish employees. Nevertheless, it is necessary to highlight the importance of national sectoral agreements in the Spanish collective bargaining system.

The content of collective agreements usually covers all types of issues within the field of industrial relations; they essentially concern terms and conditions of employment and other matters relating to the contract of employment (pay, working hours, working time, health and safety, occupational groups and categories, promotion, vocational training, geographical and functional mobility, disciplinary procedures, etc.) or relating to the collective aspects of labour relations (trade union rights, the rights of workers’ representatives, the joint committee, settlement of disputes concerning the interpretation and application of the agreement, etc.).

5. **Collective disputes**

Although there are other mediation procedures or channels, the main and most important mechanism in this field is the ASEC at national level, and other systems built by the main unions and employers’ organisations at regional level. The ASEC (Spanish acronym for Agreement on Extrajudicial Solution to Conflicts) is a system established in the Agreement on Alternative Labour Dispute Resolution signed in 1996 by the main Spanish unions and employers’ organisations. This Agreement has been renewed three times, and the text that is currently recognised is ASEC III.

The ASEC has made ample use of the possibilities opened by Spanish Labour Legislation in the field of collective disputes, without including individual discrepancies. For these collective disputes, the ASEC established the possibility for the parties to use mediation or arbitration. In the first case, a mediator proposes solutions to the parties in dispute which the latter may freely accept or reject. In arbitration, an arbitrator makes a decision which resolves the conflict and is binding on the parties.

In fact, to apply this scheme, it is necessary that the parties express their acceptance by collective agreements at either sector or undertaking level. This acceptance has been considerable and means that the ASEC III already has an important influence, especially in the sectors regulated by national agreements.

**Mediation** and **arbitration** are possible in legal disputes, in discrepancies during collective bargaining, when bargaining comes to a standstill over a long period of time, or in other forms of negotiation, such as those taking place within the Commissions for the administration of the Agreements, or those for geographical mobility procedures, the collective modification of work conditions and collective redundancies. If a strike should occur, mediation is carried out before it is called, and this can also be applied to resolve discrepancies about maintenance services.
The Multi-Industry Mediation and Arbitration Service (Servicio Interconfederal de Mediación y Arbitraje, SIMA) is a bipartite Foundation made up of the most representative state trade union organisations and employers’ organisations in Spain. It was founded in order to administrate the procedures of mediation and arbitration. In principle, SIMA acts in the case of collective disputes at levels above those of the Autonomous Regions. The SIMA is a material and technical infrastructure for the development of the procedure for resolving disputes of the ASEC.

Mediation and arbitration is carried out by the people designated by both sides. Signatories make up the corresponding lists, and each party may either designate a mediator or let the SIMA choose one of the people included on these lists.

Finally, it is important to highlight that Agreements for Solving Disputes exist in practically all of the Autonomous Regions; their administration corresponds to both sides – main unions and employers’ association signatories - of each multi-industry agreement. These Agreements establish the criterion for solving disputes which has arisen between workers and employers, without the need to have recourse to the courts.

**Strikes**

Section 28.2 SC recognises strikes as a fundamental right. According to this section “the right of workers to strike in defence of their interests is recognised. The law governing the exercise of this right shall establish the safeguards necessary to ensure the maintenance of essential public services”. And in its second point, Section 37 SC also establishes that “the right of workers and employers to adopt collective labour dispute measures is hereby recognised. The law regulating the exercise of this right shall, without prejudice to the restrictions which it may impose, include the guarantees necessary to ensure the functioning of essential public services.” Finally, according to the Constitutional Court, all trade unions also have the right to call for strikes as a part of their fundamental right recognised in sec. 28.1 SC

Hence, trade unions, employers’ representatives at the workplace (works councils and delegates), and also the workers themselves, when they decide by a majority agreement, have, all of them, the right to call for a strike to safeguard their social or economic interests. Although art. 11 Royal Decree Law (RDL) 17/1977 (RDLRT) apparently prohibits political and solidarity strikes, the Spanish Constitutional Court has admitted the plain legality of this type of strike whenever they are directed to protect the workers' economic or social interests, or when an interest exists, though indirect, with the object or the cause of the conflict. In any case, during the enforcement of a collective agreement it is illegal to summon a strike to alter or modify its content.

The undertaking affected – or the employer’s association when it is a branch or inter-industrial strike - and the Labour Authority must be informed in writing, five days prior to the date of the strike. In the case of public service companies, the prior notification must be made within ten calendar days’ – art 3 RDL of Labour Relations 17/1977, March 4th. Obviously, the right to go on strike does not cancel the working relationship. During the strike, the contract will be considered to be in a state of suspension, and the worker will not have the right to be paid wages, and will be in a state of special registration for social security. While the strike goes on, strikers do not have right to income protection for sickness or unemployment. From the moment of prior notification and during the course of the strike, the strike committee and employers should continue negotiating with the aim of reaching an agreement. The agreement which ends the strike is, in general terms, a collective agreement.

On the other hand, lock-outs are only allowed when there is a risk to the security of the undertakings or the non-strikers, when there is an illegal occupation of the establishment or, finally, when there are irregularities in the performance of work, which seriously impedes the normal process of production. The re-opening of the workplace must be carried out once the causes which gave rise to its closure have disappeared. During lockout, the work contract will be suspended, and the worker will not have the right to the payment of wages and will be in a state of special registration for social security.

**Strikes, strikers and working days lost in Spain (1997-2006)**

<table>
<thead>
<tr>
<th>YEARS</th>
<th>STRIKES</th>
<th>STRIKERS</th>
<th>WORKING DAYS LOST</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>709</td>
<td>630,962</td>
<td>1,790,100</td>
</tr>
<tr>
<td>1998</td>
<td>618</td>
<td>671,878</td>
<td>1,263,536</td>
</tr>
</tbody>
</table>
III. EMPLOYEES’ REPRESENTATION IN THE UNDERTAKING

1. General issues

In Spain there is a double channel of employee representation. The first is the election of works councils (comité de empresa), composed solely of employees. This election is compulsory for undertakings with more than 50 employees, and the election of staff representatives (delegado de personal) is compulsory below this threshold for undertakings with more than 10 employees. For undertakings with more than six and less than ten employees the election of staff representatives is compulsory only if the majority of employees decide so. These representatives have prerogatives in economic, health and safety matters and working conditions. They also play a part in the bargaining of undertaking agreements in parallel with trade unions and they have the right to call for strikes. For civil servants, art. 39 Law 7/2007, of 12th April (Basic Statute of Civil Servants’ Rights) establishes specific representation bodies in these fields: the staff representatives and the staff council. The first must be elected in electoral units with less than 50 civil servants, and the second in the remaining electoral units, according to art. 7 Law 9/1987 of 12 June.

Under art. 63 ET, a works’ council must be “set up in every production unit with 50 or more workers”. A “joint works council” must be set up in “undertakings which have, in the same province or in neighbouring municipalities, two or more production units, the individual numbers of which do not amount to 50, but which total 50 workers when taken together” (ET Article 63.2). On the other hand, staff representatives “represent workers in undertakings or production units employing less than 50 and more than ten employees”; and “undertakings or production units with more than six and less than ten workers may also have a staff delegate if a majority of workers so decide” (ET Article 62.1). Recently, the Spanish Constitutional Court has held the opinion that the majority participation of workers in a vote is enough even when a union had called the election.

Prevention representatives are workers’ representatives with specific functions in the area of the prevention of occupational hazards. In undertakings with more than 50 employees, a joint safety and health committee must also be set up. The Committee shall consist of the prevention representatives, on the one hand, and of the employer and/or his representatives in equal numbers to the prevention representatives, on the other.

The second channel, common for civil servants and employees, are the trade union sections (sección sindical) that may be set up and trade union representatives (delegado sindical) that may be appointed with special rights for some unions in productive units with more than 250 employees. Union representation at the workplace is regulated, basically, by the LOLS. Spanish collective agreements also regulate and, in some cases, recognise more rights for this type of workers’ representation. Workplace sections are a channel of communication between the union and its members, and a means of representing these members and defending their interests in their dealings with the employer. They are fairly common in large or medium-sized Spanish undertakings, but rarer in mini- and micro-enterprises. Their role is especially important in larger undertakings and groups of undertakings. The role of trade union representatives is becoming increasingly important, particularly in large undertakings with a marked trade union presence and in large groups of undertakings. There are not usually problems between trade union representatives and works’ councils, probably because in most cases the union representative is also a
member or even the president of the works’ council. For this reason, relations between the unit and trade union forms of employee representation are very close in Spain.

In the vast majority of cases, works councils have a very close bond with trade union organisations. In fact, the Spanish trade union model is based more on representation through the works’ council structure than on membership. However, as EIRO highlights, in sectors with high union membership – for example the automobile or chemical industries – the works councils, though remaining unionised, lose much of their ‘prominence’. In these cases, the protagonists in terms of trade union activity and organising within undertakings are the workplace sections of the different unions, organising their own members. This is even clearer in the larger groups of undertakings where collective bargaining has developed a very important role, newly established representative bodies like union sections for the whole group, or works councils also for the whole group. Spanish law does not establish a specific form of representation for groups of enterprises.

This balance of power, generally in favour of the works council or staff representatives, especially in medium- and micro-sized enterprises – the vast majority in the Spanish productive structure - probably results from the long tradition of similar representation bodies in the Spanish system and by their previous regulation in the Statute of Workers’ Rights – five years prior to the legal regulation of union sections and representatives in 1985.

2. Legal basis and scope

The current form of the Spanish system of employee representation in undertakings was fairly recently introduced. In a corporatist context, the state under General Franco’s dictatorship regulated working conditions by enacting the so-called labour ordinances (“ordenanzas laborales”). One of the features of the second period of the Franco regime (1958-1975) was a relative liberalisation of the economy, and a controlled system of collective bargaining was introduced, opening the door to semi-clandestine trade unions, especially CC.OO.

The transition to democracy made it possible to return to trade union freedom. The Constitution provided a framework for the pluralist system and granted preferential treatment to the trade unions. The ET, in 1980, introduced unit representation on a participative basis: “workers shall be entitled to participate in the management of their undertaking through the offices of their representative bodies” (Article 61 ET), and collective bargaining at undertaking level by both unit and trade union representations was placed on a legitimate footing (Article 87.1 ET). The Statute of Workers’ Rights also set out the operation and prerogatives of the works’ councils (comités de empresa) and representatives (delegados de personal) that currently exist: information, consultation and supervision. The LOLS, in 1985, made provision for trade union representatives (delegados sindicales) and workplace branches (secciones sindicales) in the undertaking.

In 1997, the multi-industry agreement on collective bargaining (AINC of 28th April 1997 Article IV-7) stated that “participative industrial relations must be developed through collective autonomy and formal bargaining channels established and founded on adequate information” with effect at all levels. The agreement considers that undertaking representatives have an important role to play in the adaptation of national provisions, in particular in the area of work organisation and changes to working conditions and employment contracts. Taking a forward-looking and structured approach, it sets out the possibility of establishing a system of information, consultation and negotiation by means of collective agreement at industry level.

The 2001 Law on the reform of the labour market, in order to increase and improve the quality of employment (Law 12/2001 of 9th July 2001) established new information rights to workers’ representatives in the case of subcontracting and also, transposing a European Directive, gave more information and consultation rights to these representatives in relation to the transfer of undertakings or productive units.

Recently, Royal Decree Law 5/2006, and Law 43/2006, of 29th December, for the improvement of growth and employment, has incorporated new rights for workers’ representatives in the case of subcontracting when the user undertaking and the auxiliary undertakings share one establishment. The scope of the new Law - previously negotiated by the Spanish most representative unions and employers’ associations - has developed the relationship between the workers’ representatives at the main undertakings and the workers’ representatives of other firms that work at the same place. So, besides other novelties like the
registration book, the Law expressly establishes that the workers’ representatives at the user undertaking and the workers’ representatives of the auxiliaries companies will be able to meet when they share a workplace, in order to coordinate their representation. As a consequence of this Law, the workers of auxiliary undertakings are entitled to formulate questions to the workers’ representatives of the user undertaking in connection with working conditions, while they share the establishment, and when there is no legal representation of workers of the auxiliary undertakings.

Also, Law 3/2007 of 22nd March, regarding gender equality introduces new rights for workers’ representatives in connection with the preparation and transparency of equality plans, the control of undertakings’ activities in this field, specific measures to prevent sexual harassment or social responsibility initiatives relating to equality. The Law introduces new paragraphs to art. 64 ET. Now, the works’ council – or the DP — is entitled to receive information, at least annually, about the application of equal treatment, and about equal opportunities for women and men. This information includes the proportion of women at different professional levels, as well as the measures that have been adopted to promote and achieve equality between women and men. Workers’ representatives are also entitled to examine whether the principle of equal treatment and equal opportunities for women and men is being applied, and to collaborate with the undertaking’s management in the establishment of reconciliation measures.


Spanish labour law does not set out any exclusion based on the scope of the undertaking. These legal provisions are also applicable to religious organisations, unions, and political parties. Only managers are excluded from participation through works’ councils or staff representatives, although they maintain their freedom to join unions.

3. Capacity for representation

The works’ council and staff representatives represent all the employees in the establishment, including all types of contract relationships. According to ET Article 63.1, “The works’ council shall be the representative and collegiate body of all workers in the undertaking or production unit responsible for defending their interests”; and “Staff representatives shall perform, with regard to the employer, the representation functions for which they have been elected and shall have the same powers as provided for works’ councils” (ET Article 62.2).

Workers from subcontractors, when they do not have specific representatives in their own undertakings and work in the establishment of the user undertaking, can present claims to the workers’ representatives of the main undertaking. These claims will not refer to their relation with their own undertaking. A similar provision relates to temporary agency workers, under art. 17 Law 14/1994 on temporary agencies of 1st June 1994, but only in relation to working conditions in the main undertaking.

The works’ council is not a legal person; but it has the capacity, as a result of its status as a collegiate body, to take administrative or legal action with regard to all matters that are related to its competences, if decided by the majority of its members (ET Article 65.1). And more or less the same can be said of staff representatives, who are decided by majority, and also have the same capacity and the same active and passive legitimacy as the works’ council (ET art. 62.2).

Trade union representatives are the representatives of all workers affiliated to a specific union in the undertaking or establishment.

4. Composition

There is no management participation in any of these representative bodies. They are “one-party” representations. The only exception is the joint safety and health committee.

According to article 8 LOLS, all workers who are members of the same trade union in an undertaking or establishment are entitled to establish or set up a workplace section (sección sindical), respecting the rules of this union body established in the union’s statutes. Hence, this statute shall be able to elect the productive unit, the whole undertaking or even the group of undertakings as the appropriate field to create this union section. According to the rulings of the Spanish Constitutional Court each union can elect a
trade union representative or spokesperson according to the provisions established in its statutes. Trade union representatives represent the section at the establishment and have rights established by the unions’ statutes.

Art. 10 LOLS gives more rights to those trade union representatives who are elected in undertakings with more than 250 employees or civil servants of those unions who have at least a member in the works’ council or in a similar body in the Public Administration. The law only imposes that they must be elected by and from among the trade union's members. This kind of representative has the same guarantees as a member of the works’ council, and their functions focus on consultation with regard to matters relating to union members, defending members' interests before the employer, and acting as the communication channel between the employer and the union. They have access to the same information as the workers’ representatives, may attend meetings of the works’ council and the health and safety bodies – not the “multi-plant committee” - and may be heard by the undertaking prior to the adoption of collective measures affecting workers, in particular redundancies and sanctions against members (LOLS Article 10.3).

Their number depends on the number of workers at the establishment and the number of votes in the elections to the works’ council. Those sections that have obtained less than 10% of votes will be represented in all cases by a single union representative. Otherwise, the remaining sections – those that have obtained more than 10% of the votes in the election to the works’ council or the representation body in Public Administrations — will be determined according to the following scale:

- 250 to 750 workers: one
- 751 to 2,000 workers: two
- 2,001 to 5,000 workers: three
- More than 5,001: four

Obviously, this number can be increased by collective agreements.

In the case of works councils and staff representatives, elections may be organised on expiry of the term of office of previous representatives – but only in the last three months of their term of office - by the most representative trade unions, unions who have obtained at least 10% of representatives in a specific undertaking, or by the workers of the establishment by majority decision.

The whole electoral process is directed and conducted by an electoral board, composed by the worker with most seniority, the oldest worker and the youngest worker of the productive unit. This board is in charge of preparing the census, receiving and proclaiming the candidacies, controlling the voting and proclaiming the results. The electors are all the workers aged over 16 years and who have a length of service of at least one month. On the other hand, all workers aged over 18 and with a length of service of at least six months – or at least three when a collective agreement so establishes it — are eligible.

All the trade unions and the group of electors that obtained the support of at least three times the number of posts to be filled may put forward candidates. For the works’ council elections, two colleges are set up; “one composed of technical and administrative personnel and other of skilled and unskilled workers”. Representation by lists in each of the colleges is proportional to the votes above 5%. Each elector may vote only one list. For staff representatives, there is only one list with the names of all the candidates. Each elector may vote for the number of candidates corresponding to the number of posts to be filled; those obtaining the largest numbers of votes are elected.

All the electoral claims must be attended, firstly, by the electoral board, and after, by electoral arbitrator (art. 76 ET). The results of these elections determine the more or less representative nature of unions in Spain.

The members of the staff representatives and works’ council have a four year term of office, “deemed to be renewed if, on expiry of the first term of office, no new elections of representatives have been called” (ET Article 67.3). These members may be revoked only by the vote of the majority of the workers that have elected them, in an assembly called by at least a third of the voters. Nevertheless, this repeal is not possible during the bargaining of a collective agreement, or until at least six months have passed since the last assembly.

120 Or less if the collective agreement lays down a smaller number.
Where there is a change of ownership, but the undertaking, establishment or productive unit maintains its autonomy, the change of ownership will not in itself extinguish the office of workers’ representatives. They will continue exercising their functions in the same terms and under the same conditions that they had previously (ET art. 44 as amended). In the case of a vacancy taking place in the works council for any reason – death, retirement, dismissal, etc.\(^{121}\) -, that vacancy will be covered automatically by the following worker in the list to which the member who is substituted belongs. When a vacancy occurs for staff representative, it will be covered automatically by the worker that had obtained an immediately inferior number of votes in the election. The substitute will be in office the time that remains of its term (art. 67 ET).

5. Protection granted to the members

Representatives are protected against sanctions, discrimination and dismissal during their term of office and for the following year – ET art. 68. They also take priority over other workers in cases of mass redundancy (ET Article 68, LOLS Article 10.3) or collective dismissal for economic, productive or organisational reasons. This priority also extends to geographic mobility. In cases of unlawful dismissal, the choice between redundancy pay and reinstatement belongs to the workers’ representative – ET art. 56.4. They also have the right to open a procedure in the case of sanction for serious or very serious breach of labour contract, in which, besides the interested party, the undertaking committee or remaining staff representatives will be heard – ET art. 68. Without this process the sanction is null and void.

Under art. 10 LOLS, in the event that they do not form part of the works committee, the union representatives enjoy the same guarantees as those legally established for the members of works committees or the representative bodies established in a Public Administration.

6. Working of the body and decision-making

Under art. 66.2 ET “Works’ councils shall elect a chairman and a secretary from among their members and shall draw up their rules of procedure. A copy of these rules shall be forwarded to the labour authority for registration purposes and a further copy forwarded to the undertaking. These rules of procedure must not infringe the law. Generally, the chairman is the leader of the majority trade union.”

Councils meet every two months or whenever one third of their members or one third of the workers that they represent so request” (ET Article 66.2). The normal frequency of meetings varies between once a week and once a month depending on the size and union density in the undertaking as well as the time of year. And although the employer and management are not part of the works council, they usually attend some meetings depending on the agenda. Union representatives attend meetings of the works council, and may speak but have no vote (LOLS Article 10.3). Sub-committees inside the works council are always possible. But these subcommittees, created to deal with specific matters or problems inside the council itself, are completely different from those known as “Comisiones Paritarias”, or Peer Committees.

7. Means

Representatives are entitled by law to monthly time-off rights, without loss of wages. The number of hours may be increased by collective agreement and may be combined and allocated to particular members. The collective agreement may establish the accumulation of hours of the different members of the council and of staff representatives, in one or several of their components, without exceeding the total maximum.

Furthermore, in undertakings or productive units where circumstances so permit, staff representatives or the works council “shall be provided with appropriate premises in which they are able to perform their tasks and have contact with workers” (ET Article 81). Under Law 43/2006, the workers’ representatives of subcontractors – that work at the same workplace - are entitled to make use of these premises in the terms agreed with the undertaking. Any possible discrepancies will be resolved by the labour authority.

Representatives may also use a notice board (ET Article 81, LOLS Article 8.2), and are entitled to freely express their opinion to workers – ET art. 68.

\(^{121}\) The change of affiliation of the workers’ representative from one union to another is not a reason – Sentence of the Spanish Supreme Court of 18-09-1989--.
Assistance by experts is not regulated by law, except as regards safety and health.

Sections of the most representative trade unions or sections of trade unions represented in the works council are entitled to have the use of a notice-board that will be located at the establishment in a place where the appropriate access of workers is guaranteed\textsuperscript{122}. These specific union sections are also entitled to a suitable room in which to carry out their activities provided that the productive unit employs more than 250 workers. And finally, they also have the right to negotiate statutory - or “erga omnes”- collective agreements provided they satisfy certain representative criteria.

Assembly or mass meetings

“Workers of the same undertaking or production unit are entitled to hold meetings” (Article 77.1 ET). People external to the undertaking may be invited to attend this assembly, but the employer must be informed. Such meetings must be called by the staff representatives, the works council or one third of the workers. The announcement, stating the agenda proposed, shall be communicated to the employer at least forty eight hours in advance. The works council or staff representative will agree measures with management to avoid disruption to the normal activity of the undertaking.

The meeting place will be the establishment, if conditions allow it. The assembly will take place outside working hours, unless otherwise agreed with the employer. When the premises are unsuitable or due to any other circumstance, the assembly cannot take place simultaneously without disruption or alteration to the normal development of production, the different meetings that must take place shall be considered as one and recorded as the day of the first one.

The employer must facilitate the workplace in order to hold the assembly, except in the following cases:

- If these requirements have not been satisfied;
- If less than two months have lapsed since the last assembly. This limit is not applicable to information meetings about collective bargaining;
- The employer has not yet secured compensation for damages occurring at a previous meeting; and
- Legal lock-out of the productive unit.

The assembly will be presided over by the works council or the staff representatives. They will be responsible for its normal development as well as for the presence in the assembly of people not belonging to the undertaking. The Assembly will only be able to deal with matters or issues that have been previously included in the agenda. The adoption of any agreements that can affect all the workers needs the personal, free, direct and secret vote of half of the workers of the undertaking or establishment.

8. Role and rights

According to article 8 LOLS, every union section at workplace (sección sindical) has the right to hold meetings - with previous notification to the manager - and distribute union information outside of working hours, provided it does not disturb the normal functioning of the undertaking. Each union section is entitled to receive the information sent by the trade union. As a part of the whole trade union, the branch section in the undertaking or productive unit also has the collective rights laid down by art. 2.2.d. LOLS. All union branches are entitled to call a strike or negotiate collective agreements - but collective agreements that are only binding for their affiliates or members, not statutory (or erga omnes) collective agreements.

The works council’s prerogatives with regard to labour and economic matters involve information, consultation and bargaining. Staff representatives have the same prerogatives as those established for works councils – ET art. 62.2.

Confidencial issues

\textsuperscript{122} It is important to highlight that a recent ruling of the Spanish Constitutional Court has established that undertakings must allow the unions use of the undertaking’s intranet when this use does not disturb the normal functioning of this intranet
There are certain legal obligations on works councils as regards the performance of their prerogatives. Specifically professional secrecy must be respected: the employees’ representatives, and any experts who assist them, are not authorised to reveal to employees or to third parties, any information which, in the legitimate interest of the undertaking or establishment, has expressly been provided to them in confidence. This obligation continues to apply even after expiry of their terms of office (ET Article 65.2 as amended by Law 38/2007);

Article 48 of Law 3/2007 lays down that the representatives of workers will contribute to prevent sexual harassment by increasing awareness of workers and the information of misconduct to the undertaking’s management.

**Information**

According to the new amendment of the article 64 ET as amended by Law 38/2007 (November 2007) – that has transposed Directive 2002/14/EC, the works council must be informed on the following economic matters:

- quarterly, at least, on the general evolution of the economic sector of the undertaking;
- quarterly, at least, on the economic situation of the undertaking and the recent and likely evolution of the company’s activity, the situation of production and sales of the undertaking, including the production program;
- of the balance sheet, results, annual report and any documents forwarded to shareholders under the same conditions as shareholders
- about the disposal of assets of the undertaking – except for those disposals that are normal in the economic activity of the undertaking - in cases in which collective redundancy could affect more than half the employees (ET Article 51.3).

On labour matters the works council must be informed:

- quarterly, at least, on the forecasts of new contracts, with an indication of the number and types of contract that will be used, including part-time contracts and the carrying out of overtime for these part-time workers and the forecast of subcontracting
- quarterly, at least, about “environmental activities that have a direct impact on employment.” and about the probable evolution of employment in the undertaking;
- annually, at least, about the application in the undertaking of the right to equal treatment and equal opportunities for women and men. This information must include the proportion of women and men in the different professionals levels, as well as the measures that have been adopted to promote equality between women and men in the undertaking and about the application of this plan (ET as amended).

Under art. 47 Law 3/2007 of 22nd March, the workers’ representatives - or, otherwise, workers themselves – are also guaranteed access to the information on the content of the plans of equality.

The works council must also:

- Receive copies of written contracts – except “high-level management contracts“;
- Be informed about the standard written contracts of employment used in the undertaking and documents relating to the termination of the employment relationship;
- Be informed about the sanctions imposed in cases of serious misconduct;
- Be informed about management decisions with regard to the functional mobility of lower functions (Art. 39.2 ET) and individual geographical mobility (ET Article 40); and
- Receive quarterly, information about absenteeism and its reasons, industrial accidents, occupational diseases and their consequences, periodic or special studies of the working environment and the prevention systems used (ET as amended by Law 38/2007);

Without prejudice to the information about subcontracting forecasts, when the main undertaking arranges a contract of services with a subcontractor, the main undertaking must inform its workers’ representatives about:

- Name or social reason, address and fiscal identification of the subcontractor;
- object and duration of the contract;
• place where the work or service will take place;
• number of the workers that will be employed in the establishment of the main undertaking; and
• Measures established for the coordination of activities to prevent risks (art. 42 ET as amended).

When the main undertaking shares its workplace with subcontractors, the main undertaking will have a registration book with information regarding all the mentioned companies. This book will be at the disposal of the workers’ representatives. (art. 42 ET as amended). The subcontractor will inform its workers’ representatives before the beginning of the execution of the contract, on the issues above (Art. 42.4 ET as amend)

In the case of non-collective dismissal for objective reasons, information and monitoring procedures may be determined by collective bargaining (ET Article 85.2 as amended by Law 63/1997).

The user companies shall inform their workers’ representatives about each contract with a Temporary Employment Agency (Law 14/1994, art. 9)

Art. 73 Law 3/2007 of 22nd March, on equality between women and men lays down that “The undertakings can voluntarily implement social responsibility initiatives. The implementation of these initiatives can be agreed with the workers’ representatives, consumers’ organisations or with associations whose main goal is securing the equal treatment of women and men, and the Bodies of Equality. In any case, the undertakings will inform the workers’ representatives of initiatives that are not agreed with them”.

The works council must be informed and is entitled to give an opinion – not binding for the employer - within 15 days (ET art. 64.6 as amended) in cases of merger, takeover or modification of the legal status of the undertaking having an impact on the volume of employment, and also prior to the implementation by the employer of decisions taken on restructuring of jobs and their final or temporary, full or partial abolition, reduction of working time and the full or partial transfer of units, vocational training plans, introduction or revision of work organisation and supervision systems; time and motion studies, introduction of bonus or incentive schemes and job assessments. In the case of sanctions for serious or very serious breach of labour contract by the workers’ representative, the employer shall open a procedure in which, apart from the interested party, the undertaking’s committee or remaining staff representatives will be heard (ET art. 68).

Consultation
The Works Council must be consulted:

– If there are plans for collective geographical mobility or for a major collective change to working conditions (same number of employees concerned as for collective redundancies and similar objective reasons), there must be a 15-day consultation period (ET Articles 40 and 41); and

– When the seller or the buyer of an undertaking or productive unit intends to adopt labour measures in connection with their workers. They shall begin a period of consultation with the legal representatives of the workers about these measures and their consequences for the workers. This period of consultation will take place before the measures are taken. During the period of consultation, the parts will negotiate in good faith, with a view to reaching an agreement. When the measures are geographical mobility or a major collective change of work conditions, the procedure of this period of consultation will be adjusted as established by articles 40.2 and 41.4 ET (see above) – art. 44 ET as amended).

In the case of collective redundancies and suspension of employment contracts for economic, technical, organisational or production reasons, the following procedure has to be followed (ET Articles 51 and 47):

a. request for authorisation from the competent administrative authority, including a copy of initial consultations with employee representatives, detailed documentation on the employees concerned and grounds, a justification of the planned measures and the viability of these plans;

b. 30-day consultation period (15 if numbers are below 50 and for contract suspensions);
EMPLOYEE REPRESENTATIVES IN AN ENLARGED EUROPE

c. the enterprise and the representatives must negotiate in good faith with a view to reaching an agreement. The negotiations must cover the causes, the possibility of preventing or mitigating their effects and ways of mitigating their repercussions. A redundancy plan is required when the undertaking has over 50 workers;

d. the agreement requires the consent of the majority of representatives;

e. the results of the consultation are forwarded to the authority which makes a decision within a period of 15 days.

A similar procedure is established in the case of bankruptcy or insolvency -- “concurso de acreedores” -- according to art. 64 of Law 22/2003 of 4th July. In this case, the main difference from the procedure for collective redundancies is that it will be the mercantile judge and not the Labour Administration who gives or denies the authorisation for the collective redundancy.

Under Law 38/2007, employee’s representatives must be informed and consulted on the situation and structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment. The works committee’s right to be informed of and consulted “on all employer decisions that could lead to material changes in the organisation of work and in employment contracts at the enterprise” and on “the adoption of potential preventive measures, particularly in the event of risk for the maintenance of employment” is also included.

ET art. 64.6 (as amended by Law 38/2007) requires that consultation shall take place, ensuring that the **timing and content are appropriate**, at the **relevant level of management and representation**, in such a way as to enable employees’ representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate, and with a view to reaching an agreement on decisions within the scope of the employer's powers.

Specific rights on “consultation” and “negotiation” have been laid down by Law 3/2007 of 22nd March, on **equality** between women and men:

– Art. 48 Law 3/2007 of 22nd March sets down that undertakings must promote work conditions that avoid sexual harassment, establishing specific procedures for its prevention, and responding to accusations or claims about sexual harassment. Undertakings can negotiate best practice codes, information campaigns and training activities with workers’ representatives.

– Art. 45 Law 3/2007 sets down that undertakings with more than 250 workers must negotiate or consult on an equality plan with worker’s representatives. For other undertakings, the equality plan is voluntary but must always be discussed with the workers’ representatives.

**Bargaining and calling for strike**

The works council is authorised to negotiate undertaking agreements (ET Article 87) and for this purpose they form a bargaining committee with employers’ representatives. When a multi-plant committee for a group of undertakings is set up, it will be able to negotiate a collective agreement at group level. Collective bargaining may cover various areas of industrial relations and working conditions, including pay, working time and grading. Some consultation rights can be concluded in a company agreement, including the consultation/negotiation rights that the framework law on gender equality has introduced, particularly with regard to the obligation for some large undertakings to negotiate a gender equality plan.

The works council’s capacity to bargain goes together with its right to call strikes (RDLRT).

**9. Other functions and responsibilities**

The works council supervises the performance of the provisions concerning work, social security and employment as well as the agreements, conditions and customs of the undertaking and may, where necessary, initiate appropriate legal proceedings before the employer or competent bodies or courts. It also supervises health and safety conditions, and the respect and application of the principle of equal treatment and equal opportunities between women and men. – as amended by Law 3/2007 (ET Article 64.1.7 as amended by Law 38/2007);
The works council should be present in the registering of workers or of their personal belongings – ET art. 18, and is entitled to stop the productive unit activity in case of imminent and serious risk – ET art. 19 and 21 LPRL.\(^{123}\)

The works council has to inform workers about matters that may have direct or indirect repercussions on industrial relations. Works councils must also cooperate with management in order to enable the introduction of measures to maintain and increase productivity, in accordance with decisions taken in collective agreements.

The works council has the prerogative, using methods laid down by collective agreement, to take part in the management of company welfare schemes set up in the undertaking in the interests of workers and their family members. The works council and staff delegates are also entitled to collaborate with company management in the establishment and development of measures to achieve work-life balance.

Cooperation with company management in establishing measures to ensure environmental sustainability, where so agreed in the collective labour agreement, is also included as a new function of the works committee by Law 38/2007.

10. Other representation bodies

Workplaces with less than six workers cannot, in principle, elect joint staff representatives. Nevertheless, some collective agreements provide for the creation of “territorial representatives” or even staff representatives in workplaces with at least four workers. These representative bodies are not staff representatives in a strict sense. They are created by the collective agreement and they only have or can receive those functions and guarantees that the agreement can establish for them.

Finally, the establishment and operation of a “multi-plant works' council” (comité intercentros) with a maximum of 13 members may be decided by a collective agreement (ET Article 63.3), which establishes its competences and functions. This committee represents all the undertaking’s workers. For this reason, the committee has the capacity to negotiate collective agreements unless the collective agreement establishing it provides otherwise. Its members are elected by and from the components of the different works’ councils of the undertaking. In their composition, it is necessary to respect the results that each union has obtained in the company as a whole.

Health & safety

The 1995 Law on the prevention of occupational hazards (Law 31/1995 of 8\(^{th}\) November 1995 –LPRL) breathed new life into employee representation and action in the area of safety and health at work. In undertakings with more than six employees, safety prevention representatives were to be elected by and from among employee representatives in the undertaking. These representatives were to be consulted in advance on work organisation and the introduction of new technologies. They are competent in the area of hazard prevention (promotion, provision of proposals, employee cooperation, implementation of schemes, training, evaluation and supervision). If it is impossible for the works council or staff representatives to meet, they may take the decision to suspend work in the undertaking if there is a serious and imminent threat to safety. They are entitled to inspect plants and to interview employees during working time and have the same protection and resources as staff representatives and the members of the works council. In undertakings with more than 50 employees, a safety and health council, with consultative functions, may be set up, half the members of which are safety representatives, the other half being representatives of the undertaking.

According to the recent law on subcontracting in the construction sector 32/2006, October 18\(^{th}\) Art. 9 the national collective sectoral agreement can set down systems or representation procedures with the

\(^{123}\) When in case of serious and imminent danger the employer does not take or does not allow the necessary measures to ensure the safety and health of workers, their legal representatives shall be able to decide by majority to stop the activity of workers affected by the said danger. Such decision shall be communicated immediately to the firm and to the employment authority, which, in the period of twenty four hours, shall cancel or ratify the agreed stoppage. The decision referred to in the previous paragraph can be taken by a deciding majority of the Delegates of Prevention when it is not possible to gather in the required timeframe the representative body of workers(Occupational Health And Safety Law 31/1995, art. 21)
purpose of promoting occupational and prevention standards in the construction sector and in a particular territory.

**European Works Council**


**11. Protection of rights**

Law 5/2000 on labour offences and sanctions deems any conduct by the employer that contravenes the right to information and consultation of representatives to be serious misconduct.

**IV. EMPLOYEES’ PARTICIPATION IN CORPORATE BODIES**

**Legal basis and scope**

The agreement on trade union participation in public enterprises, signed in 1986 pursuant to the economic and social agreement (Social and Economic Agreement-AES of 1984), introduced representation in the bodies of public sector enterprises which has subsequently increased. This agreement on workers’ participation in public enterprises of 16 January 1986 is still binding, and applies in the following public undertakings: Equipos Nucleares, S.A., Fundación de Servicios Laboralesa, Gestión del Suelo de ENSIDESA, Hulleras del Norte, S.A., Izar Construcciones Navales, S.A., Navantia, Sadim Inversiones, S.A. y Empresa De Transformación Agraria, S.A.

Law 31/2006, of 18th October, on the involvement of employees in European companies and cooperative societies transposes Council Directive 2001/86/EC of 8th October 2001 supplementing the Statute for a European company with regard to the involvement of employees. Art. 11 lays down the possibility that the agreement shall specify the number of members in the SE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights. Art. 14 and art. 20 Law 31/2006 are also important here.

**Representation of employees in the boards of European Companies**

Law 31/2006, of 18th October, on the involvement of employees in European companies and cooperative societies transposes Council Directive 2001/86/EC of 8th October 2001 supplementing the Statute for a European company with regard to the involvement of employees. Art. 11 lays down the possibility that the agreement shall specify the number of members in the SE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights. Art. 14 and art. 20 Law 31/2006 are also important here.

**V. EMPLOYEE INTERVENTION IN DECISIONS CONCERNING THE UNDERTAKING**

**Recovery or insolvency procedures**

In the case of declaration of insolvency or bankruptcy, when the liquidators, the workers or the workers’ representatives – art. 64 Law 22/2003 on bankruptcy, of 9th July - decide to shut down activities or a major collective change to working conditions, a period of consultation with employee representatives
must be opened. This period cannot be less than 30 days (15 if there are less than 50 people employed). The possibility of preventing or reducing its effects, the resources needed to mitigate its repercussions on workers and to enable the undertaking plans to continue in a viable way must be furnished. A redundancy plan is required when more than 50 workers are affected.

Art. 8.2, 44.4, 66, 100, 148, 149 Law 22/2003 are also important on this matter and provide some rights to employee representatives in these procedures.

Operations affecting the shareholders

In the event of assignment or other operations concerning the ownership of the undertaking, employee representatives have specific and general powers of information, consultation and bargaining, as discussed above, including:

- Under art. 44 ET, when an enterprise will be transferred, both firms – the seller or assignor and the buyer - must inform the legal representatives of their respective workers affected by the change of ownership of the following items:
  - Date foreseen for the transfer;
  - Reasons for the transfer;
  - Economic and social consequences, for the workers, of the transfer; and
  - Measures foreseen regarding the workers.

- If there are no workers' representatives, both undertakings must facilitate this information directly to the workers affected by the transfer. The seller or assignor must facilitate this information in good time before the transfer is carried out. The buyer must communicate this information in good time and, in any case, before its workers are affected under their employment conditions by the transfer (ET art. 44 as amended).

- When the seller or the buyer of an undertaking or productive unit foresees the adoption of labour measures in connection with their workers, they must begin a period of consultation with the legal representatives of the workers about these foreseen measures and the consequences for the workers. This period of consultation will take place before the measures are taken. During the period of consultation, the parties will negotiate in good faith, with a view to reach an agreement. When the measures foreseen are geographical mobility or major collective changes of work conditions, the procedure of this period of consultations will be adjusted to what is established in articles 40.2 and 41.4 ET (see above) – art. 44 ET as amended)

It is important also to highlight that art. 64.5 ET as amended by Law 38/2007 entitles workers’ representative to give an opinion, within a period of 15 days, prior to the implementation of decisions with regard to “restructuring of jobs and final or temporary, full or partial, abolitions of such jobs” and when the merger, takeover or modification of the status of the undertaking is likely to affect the volume of employment

Also trade union representatives shall be heard prior to the adoption of collective measures affecting workers in general and members of the trade union in particular (LOLS Article 10.3), and there are specific procedures and rights of the workers representative in cases of major modifications of working conditions, geographical mobility and collective redundancies necessary for economic, technical, organisational or production reasons.

Public aid

As regards public aid, employee representatives have general powers of information, consultation and bargaining, as discussed above, including:

- receipt of accounting documents and documents sent out to shareholders

- action with regard to collective redundancies (ET Article 51) or collective suspensions of contracts of employment (ET Article 47) often connected with grants of public aid for enterprise crisis situations.
SWEDEN

Sweden is a constitutional monarchy. The King and his family have only representative tasks. The country has had a parliamentary democracy system for more than 100 years (although women received voting rights as late as 1921, so to be accurate the parliamentary democracy in full should perhaps be dated from that year). The Social Democrat Party (Socialdemokratska arbetarepartiet) has dominated in the Swedish Parliament (Riksdag) and reigned – with or without support from other political parties – most of the time since the 1930s. After the general elections of 16 September 2006 a Conservative-Liberal-Christian Democrat-Centre Party (Moderata samlingspartiet, Folkpartiet, Kristdemokraterna, Centerpartiet) coalition took over as the Social-Democrats and the other supporting parties (the Left Party (Vänsterpartiet) and the Green Party (Miljöpartiet)) lost votes by 2.2% to the four parties on the centre-right. The four reigning parties call themselves the Alliance, and the new government is led by the Conservative Prime Minister Fredrik Rheinfeldt. Former Prime Minister Carl Bildt, also a Conservative, is the new Foreign Minister of Sweden. The Conservative Party with its 22% of the votes in the Riksdag clearly dominates in the new Government and has taken care of all the “important” minister posts.

Sweden is thus a centrally-governed, autonomous state with a long history of independence. The political/economic power is divided between three levels, the state/central level, the 21 regional county councils (landsting) and the 349 local municipalities (kommuner). The regional/local levels have a high degree of self-government. They decide on taxation of the community members and they are politically responsible in their respective areas. Some smaller municipalities in i.e. the north parts of the country depend on state contributions. Some municipalities in the southern parts have to pay for these contributions. This is one example of state intervention, which however is as rare in general as it is in the labour market.

I. ECONOMIC AND SOCIAL CONTEXT

Some basic economic data

The economic situation in Sweden on the whole is for the time being satisfactory, according to diverse economic institutions such as Sweden Statistics (Statistiska Centralbyråen), the National Institute of Economic Research (Konjunkturinstitutet), the Swedish Riksbank (Riksbanken), the economic experts at the social partners’ head organisations and others. It has been a good time for Swedish private enterprises, especially during 2006. Quite a few new jobs were created. Unemployment increased by 81,000 in December 2006 in comparison with December 2005 according to Sweden Statistics. The rate of unemployment was 4.6% of the labour force in December 2006, compared to 5.4% in December 2005. About the same development was expected for 2007. Around 140,000 new jobs are estimated for the period 2006–2008.

The National Institute of Economic Research reported in December 2006 in its monthly Business Tendency Survey that the economic situation in Sweden remains strong in most sectors. Industrial firms in the manufacturing sector report continued output growth. Retail firms, particularly in the durable goods trade are optimistic about future sales. One in three firms in the private sector is planning new recruitment. Construction sector activities are still very strong.

Looking back, the first half of the 1990s was the period with the worst GDP evolution since the 1930s, with a negative trend in three years. In 2000 there was an increase of GDP by 4.3%. In 2001 the increase was just 0.9%. For 2002, 2003, and 2004 the increase was 2.0%, 1.5% and 3.6% respectively. From 1990 - 2004 the average increase in the Swedish GDP was 2.0%.

The GDP average figures for 2005 and 2006 were 2.9% and 4.3% respectively. For 2007 and 2008 the GDP increase is estimated at 3.6% and 3.2% respectively. (The National Institute of Economical Research, Sweden Statistics, the Riksbank, December 2006).
The business structure is that of a small country dominated by about 20 major exporting concerns with more than 10,000 employees in both Sweden and abroad. Forty eight companies had a turnover of more than 10,000,000 million SEK in 2004 (Sweden Statistics). As for the total number of export companies there were 35,979 such companies in 2004. Out of these, 123 companies had more than 3,000 employees.

Among Swedish business activities transport vehicles (cars, trucks etc.) and electronics were the two greatest lines of industry in Sweden 2003. Machinery production came in as number three. The production value of Swedish industry increased, by 22% during 1997 – 2003.

Enterprises, total, according to SE-SIC 2002 and by size in 2004.

<table>
<thead>
<tr>
<th>Employees</th>
<th>0</th>
<th>1-4</th>
<th>5-9</th>
<th>10-19</th>
<th>20-49</th>
<th>50-99</th>
<th>100-199</th>
<th>200-499</th>
<th>500-</th>
<th>enterprises</th>
</tr>
</thead>
<tbody>
<tr>
<td>enterprises</td>
<td>651,609</td>
<td>149,049</td>
<td>34,439</td>
<td>18,149</td>
<td>10,562</td>
<td>3,162</td>
<td>1,482</td>
<td>891</td>
<td>846</td>
<td>870,189</td>
</tr>
</tbody>
</table>

Source: Sweden Statistics

Employees, by economic activities, number of companies (SNI 2002). 2004

<table>
<thead>
<tr>
<th>SNI 2002</th>
<th>Companies</th>
<th>Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Agriculture</td>
<td>172,705</td>
<td>34,283</td>
</tr>
<tr>
<td>B Fishing</td>
<td>1,519</td>
<td>518</td>
</tr>
<tr>
<td>C Mining, quarrying</td>
<td>630</td>
<td>8,517</td>
</tr>
<tr>
<td>D Manufacturing</td>
<td>56,943</td>
<td>679,427</td>
</tr>
<tr>
<td>E Electricity, gas</td>
<td>1,284</td>
<td>21,450</td>
</tr>
<tr>
<td>F Construction</td>
<td>60,375</td>
<td>196,572</td>
</tr>
<tr>
<td>G Retail and wholesale</td>
<td>118,492</td>
<td>456,015</td>
</tr>
<tr>
<td>H Hotels and restaurants</td>
<td>24,111</td>
<td>89,322</td>
</tr>
<tr>
<td>I Transport, communication</td>
<td>31,715</td>
<td>239,798</td>
</tr>
<tr>
<td>J Financial business</td>
<td>6,454</td>
<td>82,609</td>
</tr>
<tr>
<td>K Real estate, services</td>
<td>216,949</td>
<td>456,629</td>
</tr>
<tr>
<td>L Public administration,</td>
<td>564</td>
<td>138,508</td>
</tr>
<tr>
<td>M Education</td>
<td>12,865</td>
<td>381,704</td>
</tr>
<tr>
<td>N Health and social work</td>
<td>23,778</td>
<td>835,669</td>
</tr>
<tr>
<td>O Other social and personal services</td>
<td>84,579</td>
<td>141,875</td>
</tr>
<tr>
<td>Unknown activity</td>
<td>56,776</td>
<td>405</td>
</tr>
<tr>
<td>Total</td>
<td>870,189</td>
<td>3,763,301</td>
</tr>
</tbody>
</table>

Source: Sweden Statistics.

The evolution of labour costs in the private economy and productivity in the private economy can be analysed with the following pieces of information:

**Labour costs in the private economy: yearly increases**

<table>
<thead>
<tr>
<th>Year</th>
<th>Increases</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>3.8</td>
</tr>
<tr>
<td>2005</td>
<td>3.0</td>
</tr>
<tr>
<td>2006</td>
<td>2.5</td>
</tr>
</tbody>
</table>

Source: KI

**Productivity in the private economy: yearly increases (Source KI)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Increases</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>5.3</td>
</tr>
<tr>
<td>2005</td>
<td>2.6</td>
</tr>
<tr>
<td>2006</td>
<td>3.1</td>
</tr>
</tbody>
</table>

Source: KI
Conclusively, nothing in the economic situation described above has had any specific impact on the industrial relations, which have been mainly stable the last ten years, with a few exceptions.

**Labour market**

The labour market has an established industrial relations system, where the social partners on each side stand independent of the state and are equally strong on both sides. The trade union membership rate is an average of 80%. The collective agreements have a coverage of about 90%. There is a tendency of slowly decreasing membership in the blue-collar unions and of an increasing rate of graduated white-collar workers (see below). The change in government in 2006 will probably not result in any deeper changes in industrial relations. The Prime Minister Fredrik Rheinfeldt has declared that he supports the “Swedish Model” of collective bargaining and that no more important changes of labour law should be expected by the new government.

The Swedish Social Democrat government set two goals for employment and unemployment to be fulfilled in 2004: an employment rate of 80% and unemployment 4%. Neither of these goals have as yet been reached even if development has recently been positive. As of today, December 2006, the employment rate was 76.6 %. In 2008, unemployment is expected to fall to 4.5% and the employment rate to increase to 80.3 % (KI).

The activity rate measures the activity in the economy including a weighting of factors as industry production index, hours worked for public workers, the turnover in retail trade, export and import of goods. The index is set at 2000=100. For Sweden the activity index shows a continuing strong rise in the economy (Sweden Statistics, November 2006). The trend value was 120.0 in November 2006 which is a rise of 0.4% since October 2006, a yearly rate of 5.4%. The largest rise emanates from industrial production. The change in the activity index from November 2005 to November 2006 was 5.2%.

The labour force ratio, the employment ratio and the unemployment ratio, percent of the population, 16 – 64 years, gender and other related information. 2004

<table>
<thead>
<tr>
<th></th>
<th>Population, 16-64 years, 1000-</th>
<th>Unemployment ratio(^{125})</th>
<th>Labour force ratio(^{126})</th>
<th>Employment ratio(^{127})</th>
</tr>
</thead>
<tbody>
<tr>
<td>all</td>
<td>5,736</td>
<td>5.5</td>
<td>77.2</td>
<td>73.4</td>
</tr>
<tr>
<td>men</td>
<td>2,913</td>
<td>5.9</td>
<td>79.7</td>
<td>75.0</td>
</tr>
<tr>
<td>women</td>
<td>2,823</td>
<td>5.1</td>
<td>75.7</td>
<td>71.8</td>
</tr>
</tbody>
</table>

Source: Sweden Statistics, Yearbook 2006

The rate of self-employment has been stable since 2000, with only small increases occurring. The number of self-employed has varied in recent years from 410,000 to 430,000 in the private sector. In 2004 there were 423,852 self-employed in this sector\(^{128}\).

As for fixed term contract, in 2005 (first quarter) there were roughly 3.7 million employees (3.2 million had permanent jobs). The remaining 525,000 employees, out of which almost 310,000 were female workers, had some kind of fixed-term contracts. The most common forms of fixed-term contracts are “stand-in-contracts”, seasonal jobs and project contracts\(^{129}\).

\(^{125}\) Unemployed, percent of the labour force

\(^{126}\) Labour force, percentage of the population 16-64 years

\(^{127}\) Employed, percentage of the population 16-64 years

\(^{128}\) The number of solo-companies, around 600,000, in the company statistics does not regard the fact that one person may own several companies. See supra.

\(^{129}\) (Data from a LO-report, the Confederation of Trade Unions, Landsorganisationen i Sverige, LO: Anställningsformer och arbetstider, 2005.)
EMPLOYEE REPRESENTATIVES IN AN ENLARGED EUROPE

The number of fixed term contracts, percent of total number of employments 2000-2005.

<table>
<thead>
<tr>
<th>Fixed term contracts</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>14.1%</td>
<td>14.1%</td>
<td>13.1%</td>
<td>13.6%</td>
<td>13.5%</td>
<td>14.1%</td>
</tr>
</tbody>
</table>

(Source: Sweden Statistics and the Confederation of Trade Unions, (LO), 2005)

Part-time work. The Swedish definition of part-time is that you work 34 hours or less a week. Part time work is clearly more common among women than among men. According to the survey of 2005 (first quarter):

In 2004, 58% of employees were employed in the services sector, 30% in the manufacturing industry, and 12% in other activities. (Sweden Statistics).

Employment divided over sectors (percentage in 2004).

<table>
<thead>
<tr>
<th>Sector</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>17%</td>
</tr>
<tr>
<td>Building</td>
<td>6%</td>
</tr>
<tr>
<td>Private services</td>
<td>42%</td>
</tr>
<tr>
<td>Public sector</td>
<td>32%</td>
</tr>
<tr>
<td>Others</td>
<td>3%</td>
</tr>
</tbody>
</table>

(Source: Almega (Almega), the employers’ organization for service companies)

Finally, the educational level in Sweden has constantly developed. In 2000 (according to a large study performed by Sweden Statistics), 30% of Swedes had some kind of post-secondary education. Women generally had a higher education level. 21% of women had three or more years of post-secondary education compared to only 17% of men (25-64 years). This gap is likely to widen, according to Sweden Statistics.

II. INDUSTRIAL RELATIONS

1. Legal basis and key issues

Sweden has an independent labour market system, where the employer organisations and trade unions act without the interference of the state. There is a constitutional and legal framework for the right to strike, collective bargaining, codetermination, work environment, and working-time etc. The rules in the different laws concerning the labour market are usually optional and may be negotiated in collective agreements. There is no state system for minimum wages. Almost all wage bargaining is carried out between the social partners at different levels, without state interference, with the exception of strike situations when mediators can be called in by the Mediation Institute (Medlingsinstitutet).

The labour market is heavily regulated with more than 200 pieces of law, although while some are key laws, others are more peripheral. Among the most important laws are the Acts covering Codetermination, Employment Protection, Work Environment, Parental Leave, Workplace Unions, Study Leave, Equal Opportunities, Working Time and Annual Holidays. There are also Acts covering workers’ rights in what is called the social law area, such as the Act on Unemployment Insurance and the National Insurance Act.
2. Social partners

Trade Unions

The trade unions are divided between

- the Confederation of Trade Unions (Landsorganisationen, LO) (blue-collar workers),
- the Confederation of Salaried Employees (Tjänstemännens Centralorganisation, LO) (white-collar workers)
- the Swedish Confederation of Professional Associations (university graduates such as lawyers and civil engineers,) (Sveriges Akademikers Centralorganisation), SACO. LO has 15 trade unions. In 2006 two trade unions merged, the Swedish Metalworkers’ Union (Metall) and the industry workers union Industrifacket. The union’s new name is IF Metall. TCO has 17 trade unions. SACO has 25 trade unions. Most of the unions are organised by profession.

The trade unions in general organise members in the private and public sectors, although not all: for example the Swedish Trade Union for the Municipality Workers (Kommunalarbetareförbundet) and the Union of Civil Servants (Statstjänstemannaförbundet) only organise in the public sector. However trade unions for private as well as public workers belong to the same confederations: LO, TCO and SACO.

Collective bargaining is carried out at two levels. Every three years there is a central collective wage bargaining round, starting in industry. Each trade union bargains about so-called branch agreements. These agreements then make guidelines for local bargaining, which takes place at company level. In February – March 2007, a new three-year bargaining round started. The trade unions in the industry and municipal sectors have demanded in average 3.9% wage increase. In the autumn 2007 the government sector began bargaining. In all, 3 million employees expected new collective agreements.

Central trade union representatives used to take part in various State Administration Boards and similar organisations, until the beginning of the 1990s. In 1991 the central private employers’ organisation, the Confederation of Swedish Employers (Svenska Arbetsgivareföreningen) withdrew from all kinds of representation in these boards, which resulted in the trade unions at that same level having also to withdraw. The central trade unions, as well as the central employer organisations still take part informally in various committees, for example when the Government is surveying a new law. Only two fields of collective bargaining have remained at the responsibility of the head organisations, collective pensions and collective insurances.

All the trade unions (as well as the respective employer organisations) have for many years had good relations with their European mother/sister organisations.

In general, the trade union organisation rate is high in Sweden and estimated to be around 80% (in which varies across different branches). LO has recently been losing about 10,000 - 30,000 members a year - whereas TCO membership is decreasing more slowly. SACO has gained around 20,000 new members every year since the late 1990s. The reasons are varied, e.g. less jobs in the manufacturing industry the last ten years, better educated workers coming into the labour market, the new IT technology business demanding a qualified labour force.

### Trade Unions in Sweden

<table>
<thead>
<tr>
<th>Union Organisation</th>
<th>Details of membership</th>
<th>Number of members (2005)</th>
</tr>
</thead>
</table>
| LO                 | Confederation of Trade Unions  
|                    | Blue collar workers- 15 trade unions | 1,831,385  
|                    |                                      | (992,270 men and 839,115 women) |
| TCO                | Confederation of Salaried Employees  
|                    | White collar workers- 17 unions | 1,258,486  
|                    |                                      | (393,752 men and 646,118 women) |
| SACO               | Swedish Confederation of Professional Association  
|                    | Graduates- 25 unions | 580,566  
|                    |                                      | (288,409 men and 292,157 women) |
| IF Metal           | Part of LO and formed by metal workers union Metall and industry workers union, Industrifacket. | |

Source: organisations themselves
Employers’ organisations

- There is one large central organisation for the employer organisations in the private economy, the Confederation of Swedish Enterprise (Svenskt Näringsliv, formerly the Swedish Employers’ Confederation).

- The Swedish Association of Local Authorities and Regions (Sveriges Kommuner och Landsting) is the employer organisation for local authorities.

- The Swedish Agency for Government Employees (Arbetsgivarverket) is the employer organisation for the government sector.

- There are also a smaller number of independent employer organisations, e.g. the Swedish Newspaper Publishers’ Association (Tidningsutgivareföreningen) and the bank employers’ association (Bankinstitutens Arbetsgivarorganisation), which are not members in Svenskt Näringsliv. There are also employer organisations for the cooperative sector, the largest is KFO (the Cooperative Employers’ Association), and for example the sports’ sector, the Employers’ Alliance, and other rather small non-profit organisations.

As the former Confederation of Swedish Employers (withdrew all representation from government boards and similar organisations, the representation, e.g. wage bargaining at central level has come to an end. However, the Confederation of Swedish Enterprise (Svenskt Näringsliv) takes an informal part in various committees, working groups, and seminars led by the government and trade unions and vice versa. The organisation now concentrates on policy, opinion-making and lobbying issues.

Members of the Confederation of Swedish Enterprise (SN), by number of employees. 2005.

<table>
<thead>
<tr>
<th>Employees</th>
<th>Members (companies)</th>
<th>Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>10,262</td>
<td>-</td>
</tr>
<tr>
<td>1-4</td>
<td>18,896</td>
<td>42,583</td>
</tr>
<tr>
<td>5-9</td>
<td>8,956</td>
<td>59,883</td>
</tr>
<tr>
<td>10-24</td>
<td>8,677</td>
<td>132,731</td>
</tr>
<tr>
<td>25-49</td>
<td>3,703</td>
<td>127,194</td>
</tr>
<tr>
<td>50-99</td>
<td>1,965</td>
<td>134,993</td>
</tr>
<tr>
<td>100-249</td>
<td>1,229</td>
<td>187,119</td>
</tr>
<tr>
<td>250-499</td>
<td>405</td>
<td>139,265</td>
</tr>
<tr>
<td>500-999</td>
<td>231</td>
<td>162,060</td>
</tr>
<tr>
<td>1000+</td>
<td>161</td>
<td>504,019</td>
</tr>
<tr>
<td>Total</td>
<td>54,485</td>
<td>1,489,947</td>
</tr>
</tbody>
</table>

Source: The Confederation of Swedish Enterprise, 2005

The Confederation of Swedish Enterprise organises 51 employer organisations and trade organisations. Most of them, about 45, are employer organisations with bargaining rights.130

The Swedish state owns 55 companies/concerns with about 190,000 employees. The rules for the private sector are also applicable to industrial relations in state-owned companies. The social partners are the same as in the private sector. The Swedish Employer Agency (Arbetsgivarverket) is the employer for 271 governmental authorities with 240,000 employees. The agency negotiates with the respective trade

130 The largest organisation is the Swedish Trade Federation (Svensk Handel), the employer for retail and whole sale companies, has about 13,800 company members and 165,150 employed. The Association of Swedish Engineering Industries (Teknikföretagen) has about 3,230 company members and 298,130 employed in the engineering manufacturing business. The service companies in Almega have about 200,000 employees in 5,500 companies. (Data from 1 June 2005, the Confederation of Swedish Enterprise).
unions, representing the public sector, as does the employer at the municipal/regional level Sveriges Kommuner och Landsting.

3. Joint bodies
An Industry Committee and an Economic Council advises at and between bargaining rounds in industry and has done so since 1997. The Industry Agreement, concluded in 1997 between employer organisations and trade unions in industry should prevent conflict among other things.

4. Collective bargaining
Legal basis and key issues
Swedish labour law and collective agreements are often closely related. As an example, the Swedish Working Time Act (Arbetstidslagen 1982:673) sets down a maximum weekly working time of 40 hours (section 5). This rule is then possible to negotiate in collective agreements, in different ways for different branches and companies. The rules in Swedish labour law (there are more than two hundred small or bigger acts) are often discretionary, and may therefore be negotiated in collective agreements. These agreed rules are legally binding and can only be changed in new negotiations. It is not possible to agree rules giving employees worse conditions than the law gives. Regarding working time, following the example above, it is stated in the Working Time Act (section 3) that an agreement shall not be valid if the social partners do not follow the EC Directive 93/104/EG 23 November 1993. Sweden implemented this Directive in 1996. This principle of not being allowed making less favourite provisions for the employees in a collective agreement is also laid down in the Swedish Codetermination Act, section 4.

As for the representativity and hierarchy of the social partners, these follow the social partner organisations, which may all negotiate at the level where they perform. There are mainly two levels for the wage bargaining agreements. The first level is the national/sector level where the employer associations and the central trade unions bargain for the national/sector wage agreements. The negotiations start at this level and are then followed by local employers bargaining with local trade unions for local pay. The local bargaining may give better results in certain companies, in others they just follow the “frames” set at the sector level. But collective agreements rendering worse conditions than in the frame agreement (see above) cannot be negotiated. Local wage bargaining may also be carried out by a local, non-organised employer and a local trade union. The national/sector wage agreements run mostly for three years, and local agreements are adapted to this period.

Before 1990 Sweden had three bargaining levels, national/central, sector levels and local levels. The head organisations started to negotiate (i.e LO, the blue-collar workers’ trade union and SAF, the head employer organisation in the private sector). When concluded the sector organisations in the private sector followed. Finally, the wage negotiations at local level could start. This system was however considered old-fashioned and too centralised, so SAF withdrew from this level, and the other head organisations had to follow. Collective bargaining in the public sectors, government, municipalities, and city councils normally start six months to a year later.

Any worker or employer has the right to be a member of a trade union or an employers’ organisation, fulfilling the criteria of respective organisation. These labour market organisations can, under the right of association, exercise the rights of membership in such an organisation. That includes for example the right to conclude collective agreements (the Codetermination Act). A company without membership in an employers’ organisation and without collective agreements may negotiate with a trade union, wanting to reach an agreement. At local level, any employer is entitled to negotiate with the trade unions or representatives from the trade unions. As for obligations to negotiate the Swedish Codetermination at the Workplace Act (Medbestämmandelagen, MBL) a local employer must always start negotiations, when there is an “important change” under way. (section 11).

Sweden has no system for the extension of collective agreements. However the coverage of collective agreements is 90%, on average. The main reasons why Sweden has such a high coverage of collective agreements are the high membership rate of trade unions, a long tradition of co-operation and mutual respect between the social partners at an equal level, and the system of collective bargaining itself, which on the whole runs smoothly. Also, it is customary that local agreements cover all employees in a certain workplace. Employees who are not a member of a trade union receive the same pay, at least representing the minimum level of the collective agreement, as those who are members. In certain sectors collective
agreements applies in practice to all the workers, even those who are not organised, especially in the public sector, where the agreement coverage is 100 percent.

**Main features**

Local collective agreements are not registered anywhere, so it has never been possible to tell the number of these. However, in 2001 when the National Mediation Office (Medlingsinstitutet)(MI) started its activities it began to register branch agreements. In 2005 about 600 hundred branch agreements covering the whole country were registered at MI. (The MI Year Book 2005)

There are also 56,000 companies **without** membership in an employers’ organisation, that have reached collective agreements, “pending agreement” with local unions. (These figures are registered at the assurance company Fora, owned by Svenskt Näringsliv and LO). According to the accounts of MI, about 3.9 million employees in Sweden may be covered by collective agreements, meaning that 92 % of the employees are covered. (How many of the companies in all are covered is not possible to say.)

As to the issue of central and/or decentralised bargaining systems, there are two levels. Wage bargaining and bargaining about other working conditions takes place first at branch level, between the respective trade union and employer organisation. Secondly, the local parties negotiate the local collective agreements. (The main organisations do not take part in wage bargaining any more but have kept bargaining about collective pension and insurance.

The main topics regulated are first of all wages and other working conditions, such as local working time regulations. Equality between men and women is another issue, as is the work environment (e.g, health and safety).

5. **Collective disputes**

The National Mediation Office has had the responsibility for state mediation since 2001. There is central mediation, in big bargaining rounds and at in the case of strikes. The mediators are appointed ad hoc by the Office. For regional mediation there are about ten mediators employed to deal with smaller conflicts in the country.

Arbitration is mostly used in the private sector instead of court procedures. Also in labour disputes of individual interests it is possible to arbitrate. In collective disputes there is the Swedish Labour Court (Arbetsdomstolen), to solve legal disputes. The Swedish Labour Court (Arbetsdomstolen) was established in Sweden in 1929. Rules for the court and its activities are stipulated in the Act of Judicial Procedure in the Labour Disputes (Lagen om rättegång i arbetstvister, 1974). The Swedish Labour Court is a special court set up to hear and rule on labour-related disputes. A labour dispute is any dispute that affects the relationship between employers and employees. Certain types of labour dispute may be brought directly before the Labour Court. In such cases the court has exclusive jurisdiction. In other types of cases the claims must be brought before the ordinary county court, for example when the employee is not organised. A decision from this county court may be appealed to the Labour Court. The Labour Court is financed from public funds. Members of the court are appointed by the government. The individual parties in a dispute have no influence over the composition of the court. The court largely follows the same judicial process as the general courts.

Mediation is produced by the governmental authority the MI when there is an interest conflict. MI is responsible both for central mediation between parties at central level (strikes etc.) and regional mediation (blockades, etc.) between local employers and local trade unions.

**Strikes**

The right to take to industrial action, for both trade unions and employer associations is laid down in the Swedish Instrument of Government (Regeringsformen, 1974, Chapter 2, section 17). The practical measures around industrial action are regulated in the Codetermination Act (Medbestämmandelagen, 1976, Section 41-44). Strikes and lockouts in Sweden are described in the official statistics as stoppages of work. As for strikes there are two kinds, shown in the statistics, illegal and legal strikes. Other common forms of industrial actions are different kinds of blockades and sympathy actions, which are not accounted for in the official statistics.
The main reason for disputes is to put pressure on a social partner to conclude a collective agreement. The bigger disputes (strikes, lockouts) occur in the bargaining rounds as the old agreements have been cancelled. In minor, local disputes it is most often the trade unions trying to make a reluctant employer without collective agreements conclude one which is the cause. Another reason may be two competing trade unions trying to break through their own agreement, so-called border conflicts. These kinds of conflicts are very rare nowadays, although they do happen.

The amount of industrial action has been rather low in the 2000s\textsuperscript{131}. One reason for this is related to the Industry Agreement from 1997 and other similar agreements, following bargaining procedure agreements in other sectors regulating the order around wage bargaining. It has been shown, so far, that these agreements have functioned well. Some branches have by tradition more “provocative” trade unions, as in the building, electricity and transport sectors. There have been minor disputes in these industries in the latest five years. The various trade unions in the industry usually behave more “calmly”.

**Lost workdays, total, all work stoppages**

<table>
<thead>
<tr>
<th>Year</th>
<th>Lockouts</th>
<th>Legal strikes</th>
<th>Illegal strikes\textsuperscript{132}</th>
<th>Total workdays</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>-</td>
<td>0</td>
<td>272</td>
<td>272</td>
</tr>
<tr>
<td>2001</td>
<td>170</td>
<td>10,771</td>
<td>197</td>
<td>11,098</td>
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<tr>
<td>2002</td>
<td>263</td>
<td>171</td>
<td>462</td>
<td>838</td>
</tr>
<tr>
<td>2003</td>
<td>2,811</td>
<td>626,980</td>
<td>-</td>
<td>627,541</td>
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<tr>
<td>2004</td>
<td>11,900</td>
<td>14,988</td>
<td>280</td>
<td>15,282</td>
</tr>
<tr>
<td>2004</td>
<td>30</td>
<td>528</td>
<td>75</td>
<td>568</td>
</tr>
</tbody>
</table>

Source: The National Mediation Office.

### III. EMPLOYEES’ REPRESENTATION IN THE UNDERTAKING

#### 1. General issues

The Swedish employee representative system is based on laws and collective agreements. The main Acts are the Codetermination Act, the Workplace Union Representatives’ Act and the Act on Board Representation. The rules in these laws are often voluntary and may be interpreted and laid down in collective agreements. The representation system is typically single channel. Practically all employee representation is carried out by the trade unions in the workplaces. The local unions decide themselves how many union representatives that should take part in union work at the workplace. Union work at the workplace is allowed and paid for by the employer, but not union work outside the company at sector or central union level. Issues like how much time trade union representatives should spend on union work are often negotiated in a local collective agreement. Employee representatives on the company boards are chosen among the local union representatives, mainly. There are no exceptions for religious organisations or NGO organisations.

There is a legal and collective basis for union representation at workplace level. The trade unions have local (company) trade unions or, in small workplaces with only a few union members, there is often just one trade union representative. As for relations with other employees’ bodies of representation, cooperation with the other trade unions in the workplace is quite common. In Sweden there are often at least three categories of employees, blue-collar workers, white-collar workers and university graduates working at the same company, represented by different trade unions. The existence of bodies as for example European Works’ Councils is relatively limited and the work there is merely based on cooperation (exchanging of information) between trade unions in two or more other EU countries.

\textsuperscript{131} One exception is in 2003, as the Municipal Workers union went in strike in the municipal sector for higher wages.  
\textsuperscript{132} The illegal strikes emanate mostly from SAC, the Swedish syndicalists
The local trade unions form the general bodies of representation at workplace level in Sweden. A local trade union has its own statutes, decided at a member meeting. The management does not take part in trade union meetings. However the parties meet in information, consultation and negotiation procedures. If there is more than one trade union represented at the workplace it is considered normal that every trade union has its own local union established there. The different local trade unions often cooperate in different ways in negotiations with the employer. In quite a few cases, however, the trade unions are very considerate in negotiating, for examples in wage rises, one by one with the employer.

Safety committees (skyddskommitteer) and safety representatives are established under the Work Environment Law (Arbetsmiljölagen, 1977), dealing with health and safety issues. The safety committee should be established in workplaces with more than 50 employees. The committee should have an equal number of members from the employer side and from the employee side. The safety representatives – there should be one at each workplace with more than five employees - are chosen by the local unions or by the employees.

Relations between employers and trade unions in the workplace are generally satisfactory. A survey, published in 1999, followed up in 2004, carried out by Klas Levinson, showed that the co-operation climate in the surveyed companies was seen as positive and that the managing directors on the whole found cooperation with the local unions useful.

2. Legal basis and scope

The Swedish rules about trade unions rights to be informed and consulted are laid down in the Codetermination at the Workplace Act (Medbestämmandelagen, mainly sections 10, 11, 12, and sections 18-22). “An employer is obliged to regularly inform an employees’ organisation, in relation to which he is bound by a collective bargaining agreement as to the manner in which the business is developing in respect of production and finance and as to the guidelines for personnel policy” (section 19). The trade unions may ask for any written information that they may need and they should also be able to examine books, accounts and documents that concern the employers’ business. This is the general rule for information in the day-to-day business.

As for consulting – in Sweden consultations are usually named negotiations – there is the main rule that an employees’ organisation shall have the right to negotiate/consult with an employer on any matter relating to the relationship between the employer and a member of the employees organisation (section 10). In case of significant changes in the employer’s activities or in working or employment conditions the employer should, at his own initiative enter into negotiations with the trade unions at the workplace.

As for procedure this is rather informal generally (although notes have to be taken of course). There are higher demands on the employer to negotiate and inform the trade unions (section 15) in cases of collective redundancies compared with “ordinary”, non-crisis working situations. For example the trade union has the right to call an economic expert to judge the situation, and the employer has to wait until the investigation is complete before making a final decision.

Rules regarding confidentiality are laid down in various labour-law statutes. Generally the duty of confidentiality applies to social partner negotiations, on both sides. It also applies when the parties have agreed in a meeting that some information should be kept secret. However, in certain cases a trade union representative may talk about “secret things” to a member of a trade union board, and he or she is then also under the confidentiality rules.

3. Capacity for representation

The trade unions represent all trade union members at a workplace, regardless of employment forms and different contracts. The legal capacity at the Labour Court, local courts or other administrative bodies is exercised by the central trade unions, representing a local trade union or just a union member.

Local trade unions sign every collective agreement being negotiated at the local workplace with the local employer. The trade union representatives have full power to sign, with no restrictions. (Sometimes the agreement consists of a note in a protocol. However it is valid in e.g. court actions as a proper agreement according to Swedish practice law.)
4. Composition
Appointments of members to local trade union bodies are by election by the trade union members at the workplace, often once a year at the annual meeting. All members taking part at the meeting can vote.

5. Protection granted to the members
In general, trade union representatives have the same, and in some cases better, employment protection as other employees. In the case of redundancies, for example, as trade unions and employers cooperate in finding the best solutions for order of selection for redundancy, a trade union representative may be taken from “redundancy lists” as long as his work in the company with the negotiations of redundancies and other necessary union work is needed. He may therefore go on with the trade union part of his work and not be given notice of redundancy (The Workplace Union Representatives’ Act, section 8 (Förtroendemannalagen, 1974)).

6. Working of the body and decision-making
The work of the trade unions is mainly regulated in the Codetermination Act (Medbestämmelandlagen, 1976) and the Workplace Union Representative’s Act (Förtroendemannalagen, 1974). The Board Representation Act, (Styrelseredpresentationslagen 1987) and the Work Environment Act, (Arbetsmiljölagen, 1977) which deals with health, safety and other broader work environment issues also involves trade union work, as their representatives are chosen to work on the board and as safety representatives. As a rule the practical work is rather informal between the social partners in the workplace. The board of the local trade union is the executive body. This body has the running “decision power”. More important decisions are taken at union meetings, by majority votes. The trade union should also inform the members regularly about what is going on in the company and what the trade union is doing.

Means
According to the Workplace Union Representatives’ Act the trade union representatives may do their work during working time, and they keep their salary. If the representatives have to do union work after working time, payment for that work can be discussed with the employer. Union meetings are often held outside working time (lunches, evenings). The company has to give the trade unions diverse work facilities including a special room at the workplace, and computers. The trade union representatives must not accept worse conditions than they had as ordinary workers. After the full-time representative has finished his union work, he/she are entitled to return to his/her old job. Trade union representatives are allowed to attend trade union training courses with paid-time off. External assistance may be paid by the employer in, for example, redundancy situations. In such a situation, before a final decision is taken by the employer about redundancies, the trade union can order an economic survey of the situation in the company to be carried out especially for the trade union by an external expert, an employee consultant (arbetstagarkonsult), to possibly influence the decision. This right is regulated in collective agreements over the whole labour market, e.g. the Development Agreement (Utvecklingsavtalet).

There is no specific pre-established meeting system. However, in practise such a system is mostly carried out in the same way as any kind of meetings. Unions can call a meeting with the employer whenever there is a reason (the Act of Codetermination). The unions also have, in case of disputes of rights, a priority right of interpretation. This right can only be exercised by the established union, not by an individual employee. (The right means that the unions’ opinion in interpreting a certain regulation prevails as long as the dispute over this is solved.)

7. Role and rights
(Espace à supprimer)The role and rights of the body of representation, the Swedish trade unions, are as follows:

- The right to information is stipulated in the Codetermination Act, section 18-22. The information should regard business developments in respect of production and finance and the guidelines for personnel policy. The right to information includes giving an employees’ organisation an opportunity to examine books, accounts and other documents that concern the employer’s business.
The right to make proposals and issue opinions is generally stipulated in the Codetermination Act, section 10. “An employees’ organisation shall have the right to negotiate with an employer on any matter relating to the relationship between the employer and any member of the organisation. An employer shall have an equivalent right to negotiate with an employees’ organisation.”

The right to be consulted, expressed in Sweden as the right of negotiation, is regulated in the Codetermination Act, section 10 – 17. One of the most important rules is the one laid down in section 11: Before an employer takes any decision regarding significant changes in his or her activities, he or she shall on his/her own initiative enter into negotiations with the employees’ organisation/s. Significant changes in working or employment conditions are also included under this rule. As for general situations, both trade unions and employers could take the initiative on consultations, on any matter regarding local activities.

The rules above belong to the codetermination system. As for the right to approve or veto management decisions: The employer has always the last word in decisions regarding company activities. However, he has to consult/negotiate different issues with the trade unions before the decision is taken.

There are no specific rules regarding the procedure in the above related issues. The procedure is the same as in any negotiation between the employer and the employee organisation (the Codetermination Act, section 10 and 11, mainly).

As for managerial decisions a trade union cannot lay down a veto generally. There is one exception concerning contracting of an external labour force. The trade union, having members that could do the job themselves, can stop the contracting plans (The Codetermination Act, section 38 and 39). An employer who ignores a justified union veto may have to pay damages to the union concerned. Should a union exercise the right of veto without justification the union may become liable in damages.

8. Other representation bodies

Sweden has an extensive system of safety committees and safety representatives. Under the rules of the Work Environment Act 1997, the Work Environment Order and a number of work environment agreements, about 100,000 committee members, regional safety representatives, and safety officers are carrying out their work. Most representatives are elected by the trade unions. If there is no union or collective agreement at the workplace the employees may choose a safety representative. The safety representatives represent the employees in work environment issues. A safety representative may under certain conditions stop the work in a workplace. There are penalties for employers breaking the rules.

In Sweden the trade unions dominate in the workplace, dealing with “important” employee matters. This order is based on the law and collective agreements. Each enterprise in a “group of enterprises” has their own trade unions and trade union representatives. Informally, there are different kinds of informal committees established with advisory functions which are not regulated. There are generally no specific groups, at Company Group levels, beside the trade unions. At Scandinavian Airlines System (SAS), for example, there are, among others, three “daughter” flying companies in Denmark, Norway and Sweden. In each of these companies there are local trade unions for pilots, crew personnel and service workers. The employer has to bargain with each of the local trade unions in Denmark, Norway and Sweden.

European Works Councils

As for European Works’ Councils there are about a hundred in Swedish companies, under the rules in the EC Directive 94/45/EC, implemented in Sweden by the European Works’ Councils’ Act (Lagen om europeiska företagsråd 1996). The members in the EWCs are elected by the trade unions. There is not yet much general information or research about the work of EWCs, this being quite a “young” area.

9. Protection of rights

Two conditions must be met in order to take a labour dispute to the Labour Court. The claim must be lodged by an employer organisation or employee organisation or by an employer who has entered into a collective agreement on an individual basis. Also, the case must concern a dispute arising from a collective agreement, or a dispute relating to the law concerning the right to participation in decision-
making, mainly the Swedish Codetermination Act (i.e. freedom of association, the right to negotiation/consultation, the right to information). The dispute must concern parties which are bound by a collective agreement or a workplace where a collective agreement is in force. There are 25 members of the Labour Court, lawyers and representatives from the social partners. Thirteen members represent employers’ and employee interests. Four members are proposed by the Confederation of Swedish Enterprise, two by the Association of Local Authorities and Regions (Sveriges Kommuner och Landsting), four by the Swedish Trade Union Confederation, two by the Swedish Confederation of Professional Employees and one member by the Swedish Confederation of Professional Associations. The fourteenth member represents the state as employer. The court works in seven-member or three-member sessions. There must always be an equal number of social partners on both sides. The seventh, and the third person is the chairman, a court judge.

During the pre-hearing the chairman often manages to get the parties to reach an amicable settlement. The number of cases brought to the court varies from one year to the next. In recent years the average number of cases has been around 400. The annual number of judgements passed is around 150. A party may be fined for damages by the Labour Court. There are two kinds of damages covering pecuniary loss (economic damage) for the other party, and general damages. Anyone in breach of one of the statutes concerned or a collective agreement may be held liable to pay general damages to the person or persons suffering harm or loss as a result, for example when an employment contract is terminated without just cause. The sums vary from SEK 50,000 to SEK 100,000. The losing party most often has to pay the court costs part of the winning party. In cases where an employee is involved, the costs may be equally shared by the parties.

The penalties according to the Work Environment Act vary and include:

- injunctions and prohibitions, with or without contingent fines,
- damages (when an employer, for example, has stopped a safety representative carrying out his duties according to the Work Environment Act),
- fines and prison punishments up to one year for work environment offences. If the employer has caused an employee’s death or serious injuries the Swedish Penalty Code may be applicable, with a punishment for manslaughter or assault.

IV. EMPLOYEES’ PARTICIPATION IN CORPORATE BODIES

The legal basis for employee representation in the corporate supervisory board is regulated in the Swedish Board Representation Act (Lagen om styrelserpresentation för arbetstagare), 1987. According to the Act, employees are entitled to two permanent representatives and two deputies on the board of directors in companies with at least 25 employees. If the company has more than 1,000 employees and operates in at least two different lines of business, the employees are entitled to three permanent representatives and three deputies.

The Act is applicable to all private enterprises and public enterprises (companies owned by the state and the regional and municipal authorities). The government authorities have their specific regulations, with rules for board representation quite similar to those in the private sector, but with less extensive rights.

Composition and appointment/election system

The decision to appoint employee representatives is taken by a local employees’ organisation that is bound by a collective agreement with the undertaking, and the representatives are appointed by local employee organisations. A representative should be appointed from among the employees. The board representatives are elected once every year. In practice, however, the same people remain on the board for several years. According to the Act the employee representatives have the same tasks, obligations, rights and responsibilities as the other members/directors of the board.
Functions
The employee board representatives may not participate in board discussions concerning matters relating
to negotiations with an employee organisation, for example concerning collective agreements, or other
matters in which an employee organisation with members at the relevant workplace has an interest which
may conflict with the interests of the company.

The employee-elected board representative has the same work protection as other employees (The
Employment Protection Act, 1982, Lagen om anställningsskydd). He or she has a duty of confidentiality,
similar to other board members. In certain cases the board representative may confide to one member of
the trade union board. This person then has a duty of confidentiality as well.

Representation of employees in the boards of European Companies
New European Societies have not yet been established in Sweden. Banking concern Nordea has had
discussions about establishing a European society, but no such plans have been carried out.

V. EMPLOYEE INVOLVEMENT IN EXTERNAL DECISIONS THAT AFFECT THE
UNDERTAKING

The Swedish Act on Employee Consultation and Participation in Work Life, the Codetermination Act
(Medbestämmandelagen, MBL, 1976), is the key statute in Swedish collective Labour Law. It is intended
to promote employee participation in decision-making on employment and working conditions. One
characteristic feature of the Act is that the rights to participate in employer decision-making which it
confers are mainly confined to established unions which have concluded a collective agreement with the
employer concerned. The Act is applicable both to the private and public sectors.

Management and the right to direct work rest with the employer. However, the Act seeks to help the
unions to limit the scope of that principle. The primary route is to reach a collective agreement. Where no
such agreement is established the employee side has several possible ways of influencing decision-
making. The rules in the Act impose an obligation on the employer to take the initiative in negotiating
with a union before deciding on any major change to the business or to the employment and working
conditions of the union’s members.

Another form of employee influence regulated in the Act is the union’s right to be provided with business
information. There are no specific rules for State Aid. However, should problems occur in a particular
company the ordinary rules in the Act also apply to the employees in the company. As for the case of
planned managerial decisions regarding foreign investment - or any economic decision meaning “a major
change” in the business activities - the employer must inform and consult with the union or unions in the
workplace. The employer then decides upon the issue. Bankruptcy procedures are regulated in a special
Act, the Bankruptcy Act (Konkurslagen, 1987). The rules of codetermination are not affected by this Act
and should be applied as in every other case, referred to above.
TURKEY

The Republic of Turkey is a Eurasian country that stretches across the Anatolian peninsula in southwest Asia and the Balkan region of south-eastern Europe, with a total area of 783,562 km² (37th) and a population of 71,158,647 (17th). It is a founding member of the United Nations, the OECD and the Organisation for Security and Co-operation in Europe; a member state of the Council of Europe since 1949 and of NATO since 1952. Turkey joined the European Economic Community (today known as the European Union) as an associate member in 1963, the Western European Union as an associate member in 1992, and signed the EU Customs Agreement in 1995. Since 2005, Turkey has been in full accession negotiations with the European Union. Turkey is also a member of the G-20, which brings together the 20 largest economies of the world.

Turkey is a parliamentary representative democracy. Turkey's constitution governs the legal framework of the country. It sets out the main principles of government and establishes Turkey as a unitary centralised state.

I. ECONOMIC AND SOCIAL CONTEXT

Some basic economic data

Turkey has achieved impressive results in economic liberalisation, privatising state-owned enterprises (SOEs), and opening up its economy to international trade and capital flows. The employment-to-working-age-population ratio is still low. Despite investment climate improvements, and the resumption and high rates of economic growth, there is low labour force participation, low-productivity employment and high unemployment. Turkey has recently experienced “jobless growth,” with the number of jobs in the formal sector not responding to the growth in output. Promoting the creation of more and better jobs remains a priority in the country.

Total GDP is $708,053 billion (16th) and per capita $9,628 (69th) (2007 estimate). Total GDP (nominal) is $410,823 billion (17th) and per capita $5,561. The GDP growth rate for 2005 was 7.4%, making Turkey one of the fastest growing economies in the world. Turkey's economy is no longer dominated by traditional agricultural activities in rural areas, but by highly dynamic industrial complexes in the major cities, mostly concentrated in the western provinces of the country, along with a developed services sector. The agricultural sector accounts for 11.9% of GDP, whereas the industrial and service sectors make up 23.7% and 64.5%, respectively. The tourism sector has experienced rapid growth in the last twenty years, and constitutes an important part of the economy. Other key sectors of the Turkish economy are construction, automotive industry, electronics and textiles.

In recent years, the chronically high inflation has been brought under control and this has led to the launch of a new currency to cement the acquisition of the economic reforms and erase the vestiges of an unstable economy. On January 1, 2005, the old Turkish Lira was replaced by the New Turkish Lira by dropping six zeroes (1 YTL = 1,000,000 TL). As a result of continuing economic reforms, inflation has dropped to 8.2% in 2005, and the unemployment rate to 10.3%.

Turkey's main trading partners are the European Union (59% of exports and 52% of imports as of 2005), the United States, Russia and Japan. Turkey has taken advantage of a customs union with the European Union, signed in 1995, to increase its industrial production destined for exports, while at the same time benefiting from EU-origin foreign investment into the country. After years of low levels of foreign direct investment (FDI), Turkey succeeded in attracting 8.5 billion USD in FDI in 2005 and is expected to attract a higher figure in 2006. A series of large privatisations, the stability fostered by the start of Turkey's EU accession negotiations, strong and stable growth, and structural changes in the banking, retail, and telecommunications sectors have all contributed to a rise in foreign investment.
Labour market

The most recent figures on the economic and social framework were released by the TURKSAT (Turkish Statistical Institute) on 17 September 2007.

The general population reached 73,492,000 people and the working age population reached 52,484,000 in June 2007. The number of those employed has reached 23,581,000 thousand. Agricultural employment decreased by 72,000 and non-agricultural employment increased by 453,000 from June 2006 to June 2007.

Of those who were employed in June 2007; 28.4 % was employed in agriculture, 19 % was employed in industry, 6.3 % was employed in construction and 46.3 % was employed in services. Employment in agriculture decreased by 0.8 percentage points, while in industry and construction it increased by 0.2%, and in services it increased by 0.4 percentage points.

Labour force status*

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<thead>
<tr>
<th></th>
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<td>73 492</td>
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<td>Population 15 years old and over (000)</td>
<td>51 647</td>
<td>52 484</td>
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<td>Unemployed (000)</td>
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<td>Not in the labour force (000)</td>
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<td>26 618</td>
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</table>

*Population within the 15-24 age group – June 2007

The number of unemployed people has reached 2,285,000. The unemployment rate stayed at 8.8%. The rate of unemployment declined to 11.1% with a 0.1 percentage point decrease in urban areas and remained at 5.5 % in rural areas. The rate is 10.3 % for males and 16.6 % for females.

The proportion of people who worked without any social security related to their main job reached 48.6 % (agriculture, 88.1 %; non-agriculture 32.8 %).

The labour force participation rate (LFPR) remained at 49.3 %.

In 2005, 0.87% of Turkey’s population (approximately 623,000 individuals) were living below the food poverty line and 20.5% of the population (14,681,000 individuals) were living below the complete poverty line that covers food and non-food expenditure. While the poverty rate for regular workers is 6.57%, it is 32.12% for casual workers, 4.8 % for employers and 26.22 % for people working as self employed in 2005. Agriculture has the highest poverty rate among all sectors.

Education is compulsory and free from the ages of six to 15. The literacy rate is 95.3% for men and 79.6% for women, with an overall average of 87.4%.

Turkey is included in the Decent Work Country Programme (DWCP) and is prioritising the elimination of child labour, government and social partners effectiveness in combating informal economy (through social dialogue), youth employment (development through a National Plan of Action), and decent employment for women with special emphasis on entrepreneurship.
II. INDUSTRIAL RELATIONS

1. Legal basis and key issues

Historically, civil society has never been strong. Even today, civil society institutions have the ever-increasing temptation of making calls on the State without self-developed and implemented solutions to their own problems. Labour legislation has always been the major means of establishing labour standards. The most tangible expression of the power relations context is legislation and governmental regulations. The workers’ and employers’ occupational organisations, instead of becoming more organised in bargaining patterns, prefer to demand everything from the government in the form of laws or legal amendments. There are great expectations of labour laws’ potential to deliver change. The legislation covers a broad spectrum of issues, many of which are treated as issues of social dialogue and left to social partners in other countries. Job security and fair treatment as well as other benefits regarded as cornerstones in personnel policies are established by law and enforced by labour courts.

National traditions and national conceptions of partnership hinder innovative legislation and practices. Social dialogue capacity-building projects and initiatives to foster mutual understanding are underway. It is hoped that these will mobilise the potential to create better social cohesion, stronger growth and more jobs.

The impact of EU law on the evolution of Turkish labour law is indisputable. Turkey, as a country eager to join the European Union, is in the process of enacting pieces of legislation envisaged in the National Program for the Adoption of the Community acquis. The main statute regulating individual labour relations is the Labour Act. The Labour Act covers the public and private sector workers as well as manual and non-manual workers. The classical model of labour legislation designed to protect the weaker party is undergoing changes. There is the emergence of new debates such as employment creation through flexibility, corporate governance, socially responsible restructuring, and alternative dispute resolution. In recent years, promotion of employment has been assigned as a new objective to labour legislation. Within this new objective, flexitime and flexible types of employment were regulated on the basis of relevant Community directives by the new Labour Act.

The main statutes of collective labour relations are the Unions Act (Sendikalar Kanunu, SK) and the Collective Labour Agreements, Strikes and Lockouts Act (Toplu İş Sözleşmesi, Grev ve Lokavt Kanunu, TİSGLK) both enacted in the light of the 1982 Constitution which, as the fundamental law, lays down a general framework for labour issues. In Turkish, the term “unions” (sendika) denotes both trade unions and employers’ associations.

Basic labour laws

<table>
<thead>
<tr>
<th>Laws</th>
<th>Act no.</th>
<th>Adoption date</th>
<th>Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour Act (LA)</td>
<td>4857</td>
<td>22.5.2003</td>
<td>Individual labour relations (conclusion, content, effects, and termination of labour contracts, rights and obligations of the worker and the employer, and individual labour disputes and their settlement).</td>
</tr>
<tr>
<td>Unions Act (SK)</td>
<td>2821</td>
<td>5.5.1983</td>
<td>Formation, powers, functions, and termination of trade unions and employers’ associations.</td>
</tr>
<tr>
<td>Collective Labour Agreements, Strikes and Lockouts Act (TİSGLK)</td>
<td>2822</td>
<td>5.5.1983</td>
<td>Collective labour relations (conclusion, content, effects, and termination of collective labour agreements, collective labour disputes, peaceful settlement procedures, industrial action).</td>
</tr>
<tr>
<td>Vocational Training Act</td>
<td>3308</td>
<td>5.6.1986</td>
<td>Apprentices, craftsmen, and master workmen.</td>
</tr>
<tr>
<td>Public Officials' Unions Act</td>
<td>4688</td>
<td>25.6.2001</td>
<td>Public officials’ right to unionise.</td>
</tr>
</tbody>
</table>

2. Social partners
The Unions Act conforms to the principles of voluntary unionism, sectoral unionism, and union pluralism. The principle of freedom of association is guaranteed by Article 51 of the 1982 Constitution. Under this article, working people and employers have the right to form unions and higher organisations, without previous authorisation, in order to safeguard and develop their economic and social rights and the interests of their members in their labour relations.

Sectoral unionism denotes unionisation by sectors (industries). Under Article 3 of the Unions Act, trade unions have to be constituted on a sectoral basis by workers employed at workplaces in the same branch of activity, with the purpose of their activity widespread throughout Turkey. Confederations are the only form of higher organisations. They are defined as head organisations with corporate status formed by at least five unions active in different sectors. Employers’ associations are constituted on a sectoral basis by employers in the same sector, with the purpose of their activity widespread throughout Turkey. Public employers’ associations are an exception to the principle of sectoral unionism. For employers’ associations in the public sector, the condition that these be constituted by public employers in the same sector and carry out activities in the same sector is not required (Art. 3/II).

The principle of union pluralism has been accepted by the Unions Act (Art. 3/III). According to this principle, more than one union can be established in each sector. The Unions Act accepts this principle but at the same time takes measures together with the Collective Labour Agreements, Strikes and Lockouts Act in order to prevent the trade union proliferation that existed under previous legislation. Through the measures taken, these two acts try to balance and reconcile the principles of union pluralism and strong unionism. Therefore new machinery whereby the number of unions would be reduced and the process of collective bargaining would be less fragmented has been instituted. Prohibition of local unionism and the 10% threshold for authorisation were among the basic measures taken to this end.

There is a higher degree of representational power and of coordination efforts among employers’ associations and confederations. Their strong associational setting makes them more active and mobilised in the development of labour market policies.

Unions and confederations have to allow their members to benefit from their activities in an equal manner. The activities of unions as regards work life shall be (SK, Art. 32):

a) To conclude collective labour agreements;

b) To bring the matter before the authorities concerned, mediation and arbitration boards, labour courts and other judicial authorities in the case of collective labour disputes;

c) To have the capacity to act as plaintiff or defendant representing member workers or employers in matters arising out of work environment, legislation, custom and usage, collective labour agreements, or to act as plaintiff or defendant upon request in writing of its members or their heirs, in legal actions concerning rights under labour, transportation, copyright and unincorporated company contracts, and social security rights;

d) To decide and conduct industrial action - strike or lockout.

Social activities of unions and confederations shall be (SK, Art. 33):

a) To provide legal aid for their members and members’ heirs in matters concerning legal relations on which the employment is based and social security rights and the exercise of retirement and similar rights;

b) To send delegates to meetings held by virtue of law or international agreements;

c) To organise lectures and conferences for the improvement of occupational knowledge of its member workers or employers, increase in real productivity and development of national savings and investments; to establish health and sports institutions, libraries and printing shops and to provide opportunities for the workers to spend their leisure time in meaningful activities;

d) To assist, without making any donation, in the establishment of funds for educational purposes or for providing aid in cases like marriage, birth, illness, old-age, death and unemployment, and to give credits to such funds not exceeding 5% of the amount of the union's cash holdings;

e) To assist, without making any donation, in the establishment of cooperatives and to give credits to such cooperatives not exceeding 10% of the amount of the union's cash holdings;

f) To establish technical and vocational training facilities and try to enhance member workers’ vocational training, knowledge and experience;
g) To invest in industrial and commercial ventures not exceeding 40% of the amount of the union's cash holdings;

h) To establish and transfer to relevant ministries, education, health, rehabilitation or sports centres or to provide support in cash or kind to the relevant public bodies and institutions for such purposes, and to establish housing, training, health and rehabilitation centres directly or through authorized agencies in areas stricken by a natural disaster or to provide support in cash or kind to the relevant public bodies and institutions for such purposes, not exceeding 25% of the amount of the union's cash holdings.

Unions

On the labour side, there is a fragmented confederate structure reflecting the country’s divisions in politics and ideology.

- **TURK-IS (Confederation of Trade Unions of Turkey)**, the largest confederation, and claims to be pursuing “above party politics”. But, so far, it has supported centre-left political parties.

- **DISK (Confederation of Progressive Trade Unions of Turkey)** is a left-wing confederation.

- **HAK-IS (the Confederation of Righteous Trade Unions)** and has an Islamist stance and Islamist leanings. A change of attitude in Islamists’ evaluations of democracy under the pressures of globalisation and European integration reflects itself in HAK-IS in its efforts to incorporate democratic goals.

Nevertheless, one of the main obstacles to an effective social dialogue is the fragmentation and consequent competition on the labour side. The fragmentation of labour has resulted in polarisation and competition between the trade unions. This is particularly with regard to competing with each other in unionising the workers with the aim of becoming the authorised trade union

**Confederations** are composed of a fragmented network of affiliated trade unions, which can be organised on the sectoral level. There are 28 sectors in which unions may be constituted (SK, Art. 60). The Bill amending the Unions Act reduces the number of sectors from 28 to 18. On the basis of recent labour statistics issued by the Ministry of Labour and Social Security to serve as a basis in the determination of the authorised union, there are 96 sectoral unions established in 28 sectors. Of the 5,210,046 workers, 3,043,732 are unionised with a unionisation rate of 58.42%.

### Trade Unions

<table>
<thead>
<tr>
<th>Union Confederation</th>
<th>Unions in sector no.1</th>
<th>Unions in total</th>
<th>Unions above the threshold</th>
<th>No. of members</th>
</tr>
</thead>
<tbody>
<tr>
<td>TURK-IS</td>
<td>2</td>
<td>33</td>
<td>31</td>
<td>2,122,186</td>
</tr>
<tr>
<td>DISK</td>
<td></td>
<td>19</td>
<td>9</td>
<td>412,143</td>
</tr>
<tr>
<td>HAK-IS</td>
<td>2</td>
<td>7</td>
<td>5</td>
<td>391,913</td>
</tr>
<tr>
<td>Unaffiliated unions</td>
<td>1</td>
<td>37</td>
<td>1</td>
<td>117,490</td>
</tr>
<tr>
<td>Total</td>
<td>5</td>
<td>96</td>
<td>46</td>
<td>3,043,732</td>
</tr>
</tbody>
</table>

Fragmentation is also prevalent as regards public officials’ organizations: There are 47 sectoral unions established in 11 sectors and six public officials’ confederations (KESK, TURKIYE KAMU-SEN, MEMUR-SEN, BASK, HURRIYETICI KAMU-SEN, ANADOLU KAMU-SEN). Of 1,564,777 public officials, 787,882 are unionized with a unionization rate of 50.35%.133

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133 Official Gazette, 7 July 2006.
Public officials’ confederations

<table>
<thead>
<tr>
<th>Confederation</th>
<th>Membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>KESK</td>
<td>297,114</td>
</tr>
<tr>
<td>(Kamu Emekçileri Sendikaları Konfederasyonu)</td>
<td></td>
</tr>
<tr>
<td>TÜRKİYE KAMU – SEN</td>
<td>343,921</td>
</tr>
<tr>
<td>(Türkiye Kamu Çalışanları Sendikaları Konfederasyonu)</td>
<td></td>
</tr>
<tr>
<td>MEMUR – SEN</td>
<td>137,937</td>
</tr>
<tr>
<td>(Memur Sendikaları Konfederasyonu)</td>
<td></td>
</tr>
<tr>
<td>BASK</td>
<td>5,228</td>
</tr>
<tr>
<td>(Bağimsız Kamu Görevlileri Sendikaları Konfederasyonu)</td>
<td></td>
</tr>
<tr>
<td>HÜRRİYETÇİ KAMU-SEN</td>
<td>147</td>
</tr>
<tr>
<td>(Hürriyetçi Kamu Çalışanları Sendikaları Konfederasyonu)</td>
<td></td>
</tr>
<tr>
<td>Unaffiliated</td>
<td>3,535</td>
</tr>
<tr>
<td>Total</td>
<td>787,882</td>
</tr>
</tbody>
</table>

Employers

On the management side, there is a single employers’ confederation, TISK. It is the top association of business, and the umbrella organisation of 22 employers’ associations covering 8,300 workplaces with 1.1 million workers.

There are informal relations at national and sectoral levels that work well. A very important voluntary participation in social dialogue started in 1994 and led to a more in-depth bipartite dialogue at national level. With TISK’s efforts a Workers’ – Employers’ Confederations Summit convened for the first time in 1994. This informal “bipartite plus” convention of workers’ and employers’ confederations and Union of Chambers of Commerce and Commodity Exchanges (TOBB) at national level developed and became the so-called “Civil Initiative” including also the Confederation of Tradesmen and Small Artisans (TESK), and Association of Agricultural Chambers (TZOB) in 1999. The “Civil Initiative” developed common decisions and policies, conducted joint studies, and prepared reports on wages, tax, employment, and social security policies.

3. Joint bodies

Tripartite relationships ensure that trade unions and employers come together with policy-makers to voice the diverse interests they represent and have a role in national policy formulation and implementation, thus maintaining open lines of communication to develop long-term relationships. These mechanisms also affirm the domain of the tripartite partners in the specific areas of the determination of wages, employment conditions, selection of mediators, etc.

There are no formal bipartite structures at national and sectoral levels. For the betterment of representativeness and institutional capacity of the social partners, formal platforms are going to be established at such levels. Also, at present, there are no codes of conduct.

The Work Assembly (Çalışma Meclisi) was established in 1945 together with the establishment of the Ministry of Labour, and represents the first institutionalisation of tripartism. The Assembly convenes at the initiative of the Ministry to handle labour issues but such conventions are rare in practice. The Economic and Social Council (Ekonomik ve Sosyal Konsey) established in 1995 through a Prime Ministry circular to address economic and social issues at the highest level acquired a legislative status in April 2001 through the Act on Organisation and Functioning of the Economic and Social Council. The Council has a “triptite plus” composition. A Tripartite Consultation Board (Üçlü Danışma Kurulu) where the government, employers, workers and public officials shall be represented on an equal footing was established by the new Labour Act (Art. 114). The main idea is to promote effective consultation at national level between public authorities and social partners.

Other formal consultative tripartite structures at national level include the Turkish Employment Organisation (ISKUR) and provincial employment boards attached to ISKUR, the Wage Guarantee Fund, the Social Security Institution, the Minimum Wage Board, the Supreme Arbitration Board, the Occupational Qualifications Board, the Commission on the Cessation of Work in Workplaces or
Disclosure of Workplaces, the Board Empowered to Expend Fines Imposed Upon Workers’ Wages, the Board empowered to determine how to expend fines imposed upon employers not recruiting the required number of disabled and ex-convicts, the Vocational Training Board and provincial training boards, the Turkey – EU Joint Consultative Board, the Board to select official mediators, the High Board for the Disabled, and the Labour Quantity Surveyor Commission.

4. Collective bargaining

Legal basis and key issues
Statutory labour standards are still very high, and detailed regulations cover nearly all aspects of employment conditions as a result of which little room is left for negotiations. Some authors state that this impedes the development of genuine collective bargaining and stifles social dialogue. The relatively binding provisions of the labour legislation give collective bargaining a jumping-off point. Collective bargaining mainly aims at “wage bargaining” and is characterised as distributive bargaining, being far from integrative bargaining.

The Collective Labour Agreements, Strikes and Lockouts Act envisages decentralised collective bargaining. It is the competent and authorised trade union that concludes a collective labour agreement at the level of a workplace, workplaces or an undertaking with the employer side. Competence is a prerequisite for authorisation. Confederations, the only form of higher occupational organisations, are deprived of competence. But, workers’ and employers’ confederations may come together and reach a “common understanding” on labour issues. When they decide on conditions of work, for example, with regard to the public sector or a particular sector, the agreement serves as a guideline for the collective labour agreements to be concluded by their affiliates. The principle of sectoral unions denotes that each sectoral union has competence for those workplaces and undertakings in the sector in which it is founded. There are two workforce-size thresholds to be qualified as the authorised trade union: To represent at least 10% of the total employed in the concerned sector; and to represent more than half of the total employees employed in the workplace.

The competent and authorised sectoral union may bargain collectively with the employer’s side and consequently conclude a collective labour agreement at three different levels: Workplace (establishment), workplaces or undertaking (enterprise) are the bargaining units (Art. 3) and, at the same time, the levels of collective labour agreements. Thus, we speak of a local (workplace) collective labour agreement, group (workplaces) collective labour agreement or an undertaking collective labour agreement. Numerically speaking, workplace collective labour agreements are predominant in practice, but the number of workers covered is less than those covered by the undertaking collective labour agreements.

Where a single workplace is involved, there is the legal compulsion for the parties to conclude a local collective labour agreement. Workplaces belonging to the same employer and functioning in the same sector constitute an undertaking. Where more than one workplace falling under the same sector belongs to the same employer, the legal compulsion is for the conclusion of an undertaking collective labour agreement. However, there is no legal compulsion for the parties to conclude a group collective labour agreement. A group (workplaces) collective labour agreement is the one concluded at the level of various employers’ workplaces (multi-employer bargaining). Sectoral collective bargaining does not exist but a group collective labour agreement is somewhere between workplace and sectoral bargaining. The idea is the more or less harmonisation of working conditions in the same sector. The same idea is inherent in extensions.

For various employers’ workplaces to be grouped together as a bargaining unit, these have to be in the same sector. An employer may own one or more of the grouped workplaces. If more than one of the grouped workplaces belongs to the same employer, then it simply means that there is an undertaking grouped together with other workplaces and/or undertakings. The parties may not compel each other to conclude a group collective labour agreement; only upon the willingness of both sides may a group collective labour agreement be concluded. Lacking such an agreement, there will be separate collective labour agreements at the level of each workplace or undertaking. For the trade union to be one of the parties to a group collective labour agreement, it has to be the authorised union for each of the grouped workplaces and/or undertakings to be covered. On the employer’s side, there has to be an employers’ association representing its member employers; unaffiliated employers may not come together to conclude a group collective labour agreement.
In 2006, in the private sector, only 187,015 out of the total number of 4,384,651 workers were covered by collective labour agreements.

Levels of collective labour agreements

<table>
<thead>
<tr>
<th>Bargaining units</th>
<th>Parties</th>
<th>Type of CLA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workplace</td>
<td>Authorised trade union / Employer or employers’ association</td>
<td>Local CLA (workplace CLA)</td>
</tr>
<tr>
<td>Workplaces</td>
<td>Authorised trade union / employers’ association</td>
<td>Group CLA (workplaces CLA)</td>
</tr>
<tr>
<td>Undertaking</td>
<td>Authorised trade union / Employer or employers’ association</td>
<td>Undertaking CLA</td>
</tr>
</tbody>
</table>

Main features

The collective labour agreement consists of two parts: the normative part (substantive part) and the contractual (obligatory) part. In its normative part, the conclusion, content and termination of the labour contract are regulated. The mutual rights and obligations of the parties, application and supervision of the agreement and the settlement procedures for disputes that may arise constitute the contractual part of the collective labour agreement. Collective labour agreements are enforced as binding contracts in accordance with the Roman adage *pacta sunt servanda*. Absolute peace obligation is inherent in collective labour agreements. The parties are obliged to refrain from any industrial action during the effective period of the agreement. The peace obligation arises as a collective obligation from the “contractual function” of collective labour agreements. This obligation is an absolute one obliging the parties to refrain from all industrial action for the duration of the collective labour agreement. Collective labour agreements can be for a fixed period; the minimum limit is set at one year and the maximum is three years.

Collective bargaining is essentially a system of "joint management" or "industrial self-government" based on a written contract. The written agreement, the collective labour agreement, reflects a joint understanding covering wages, hours, fringe benefits, work rules, and a number of "non-economic matters" such as seniority, grievance procedures, or union representation. The principal business of unions is collective bargaining. They take part in politics and conduct welfare programs for their members, but such activities are marginal and secondary.

5. Collective disputes

The essence of collective bargaining, mediation and arbitration is dispute settlement. In collective bargaining, the parties themselves try to settle their controversies. Mediation and arbitration are processes of peace-making assisting the parties to settle their disputes through the involvement of the third party. There is an official mediation organisation attached to the Ministry of Labour and Social Security to take the necessary steps and measures for providing official mediation services (*TİSGLK*, Art. 59). Both of the parties to the collective interest dispute and the persons concerned are required to provide any information requested by the official mediator. The official mediation organisation may disclose to the public, through appropriate means, in the shortest time possible, the results arrived at in any dispute.

Collective bargaining is a condition *sine qua non* of industrial relations. Where collective bargaining fails, mediation starts. Mediation involves a strong form of intervention by the third party, the mediator. The mediator will expend every effort to have the parties reach an agreement and may propose solutions to the parties (*TİSGLK*, Art. 23/II). The duration of mediation is fifteen days but with the consent of the parties this term may be extended, at most, by six working days. If an agreement is not reached at the end of the mediation period, the mediator prepares a record of proceedings, including his recommendations and proposals to resolve the dispute, within three working days and submits it to the responsible office. The responsible office shall, at the latest, within six working days, forward this record to the parties (*TİSGLK*, Art. 23/III-IV). Following receipt of the record of proceedings, there may be recourse to industrial action or
in case of prohibition of industrial action, the dispute will be settled through private or compulsory arbitration or through a collective labour agreement reached by the parties themselves.

In arbitration, the third party, the arbitrator or the arbitration board, is empowered to take a decision (arbitrator’s award) that resolves the dispute. Voluntary (private) arbitration is where recourse is voluntary but the award is binding and compulsory arbitration is where recourse is compulsory and the award is binding. As regards the nature of the dispute to be settled, arbitration will be in the form of grievance or contract arbitration. If the dispute to be resolved is a collective interest dispute, the type of arbitration is contract arbitration; if the dispute to be resolved is an individual or collective rights dispute, the type of arbitration is grievance arbitration. The arbitrator’s award has the effect of a court decision in case of grievance arbitration, and the effect of a collective labour agreement in case of contract arbitration.

**Strikes**

Where collective bargaining and peaceful settlement procedures fail, industrial action may be initiated in the absence of any permanent and temporary prohibition. Strikes and lockouts are the only forms of industrial action. Politically motivated strikes and lock-outs, solidarity strikes and lock-outs, occupation of work premises, labour go-slow, production decreasing, and other forms of obstruction are prohibited (TİSGLK, Art. 25).

Workers have the right to strike if a dispute arises during the collective bargaining process (collective interest dispute). Only upon a decision to strike, may the management order a lock-out (TİSGLK, Art. 26). Under Article 42 of the Collective Labour Agreements, Strikes and Lockouts Act, dismissal cannot be based on participation in a legal strike, or participation in taking a legal strike decision, or promotion of workers to participate in a legal strike (Art. 42/1).

Where there is a prohibition of industrial action, one of the parties may apply to the Supreme Arbitration Board. This is called compulsory arbitration. In such a case it will be the Board to draw the collective labour agreement for the parties (TİSGLK, Art. 32).

**III. EMPLOYEES’ REPRESENTATION SYSTEM IN THE UNDERTAKING**

1. **General issues**

In Turkey there is single channel worker representation by a trade union. Works councils do not exist. **Trade unions** are the main statutory body of workplace representation. Trade union representatives represent the authorised/signatory trade union at the workplace. The law attempted to also contain provisions for the election of workers’ representatives in workplaces where there are no trade union representatives but failed as a result of the strong opposition by the trade unions conceiving it as a threat to unionism. There is no minimum workforce-size threshold statutorily required to establish a workplace representation.

Representation through unions is the commonest way in which workers are represented. The main task of trade unions is collective bargaining. A collective labour agreement is to be concluded at the level of workplace(s) and an undertaking between the authorised trade union and management. At the bargaining table, the authorised trade union is represented by the trade union officials. Of the trade unions representing at least 10% of the workers engaged in that particular industry, the one representing more than half of the workers employed in the place of work will be the union authorised to conclude the collective labour agreement. The law requires an employer to recognise and bargain with the authorised union, but it does not force him to agree with the union. He is free to yield to the union’s persuasions and the union’s task is to persuade the employer to accept policies and procedures the union wants. When the two parties reach agreement, the law requires it to be put in writing.

The authorised union becomes the signatory union with the conclusion of the collective labour agreement. The members of the signatory union benefit from the collective labour agreement automatically once it is concluded whereas the non-members may benefit by applying to the concerned employer and stating that they are going to pay solidarity dues, equal to two thirds of the union dues (TİSGLK, Art. 9).
2. **Legal basis and scope**

Trade unions and trade union representatives, the main statutory bodies of workplace representation, are regulated in the Unions Act. Issues such as how a union may become authorised, collective bargaining, conclusion, terms, effect and termination of collective labour agreements and industrial action are regulated by the Collective Labour Agreements, Strikes and Lockouts Act. No parts of the workforce are excluded from a general legal right to be represented at work. The laws apply to public and private sector workers and there are no employment thresholds.

3. **Capacity for representation**

A trade union represents its member workers and trade union representatives represent the authorised/signatory trade union at the workplace and the law requires an employer to recognise the statutory bodies of workplace representation. Any person who is considered a worker within the meaning of the Unions Act and is over 16 years of age may join a trade union. Persons under 16 years of age may join with the written consent of the statutory representatives. Any person considered an employer within the meaning of the Unions Act may join an employers' association. Concurrent membership is prohibited by law (SK, Art. 22). In case of concurrent membership, the latter membership shall be voided. The amount of monthly dues to be paid to a trade union by a worker cannot exceed the worker's basic daily wage. The amount of the monthly dues to be paid to an employers' association by an employer cannot exceed the total basic wages paid by the employer in one day. Union rules cannot contain any provision requiring a member to pay any fees or dues other than membership dues (SK, Art. 23).

4. **Composition**

Trade union representatives are appointed by the authorised union from among its member workers employed at the workplace, the number varying in proportion to the number of employed workers (SK, Art. 34): not more than one, if the number of workers is up to 50; not more than two, if the number of workers is between 51 and 100; not more than three, if the number of workers is between 101 and 500; not more than four, if the number of workers is between 501 and 1.000; not more than six, if the number of workers is between 1.001 and 2.000; not more than eight, if the number of workers is over 2.000. One of the trade union representatives may be assigned as the chief representative.

5. **Protection granted to the members**

Turkey is a party to the ILO C135 on Protection and facilities to be afforded to workers’ representatives in the undertaking. The union activity of the trade union representatives makes them vulnerable to anti-union discrimination, and in this respect there are specific safeguards envisaged by the Unions Act and the Labour Act. The relevant provisions of the Labour Act on dismissals shall be applied in case of termination of the open-ended labour contract of the trade union representative by the employer (SK, Art. 30/1). But, upon termination solely on the basis of representative functions, compensation of not less than one year’s wage shall be ruled (SK, Art. 30/2; LA, Art. 21/1). Unless there is the written approval of the trade union representative, the employer cannot change his workplace, for example, by transferring him to one of his other workplaces. It is also not possible for the employer to make substantial changes in the work performed by the trade union representative. Otherwise, such a change shall be deemed invalid (SK, Art. 30/3). Trade union representatives enjoy these safeguards as long as they hold the position.

6. **Means**

These issues have to be specified in the collective labour agreements for the trade union representatives. Trade union representatives have to perform these functions outside working hours unless provided otherwise by the collective labour agreement (SK, Art. 35). There are no other legal rules on the functioning which simply means that such matters have to be handled through collective labour agreements.

The revenues of unions and confederations shall be composed of membership dues and solidarity dues; income from activities allowed by the Unions Act and other activities such as entertainment and concerts; donations; and yield from their assets. It shall be unlawful for public administrations and bodies, economic ventures with capitals partially or totally provided by the state, and public professional organisations to give financial aid or donations of any kind to unions or confederations.
Unions and confederations shall not, without the permission of the Council of Ministers, accept aid of foreign origin from international bodies other than those of which they or the Republic of Turkey is a member. Trade unions and confederations shall not accept any aid or donation from employers or employers' organisations founded under the Unions Act or other laws, organisations of small businessmen and artisans, associations, public professional organisations and foundations. Likewise, the employers and employers' organisations shall not accept any aid or donation from workers, workers' unions and confederations, organisations of small businessmen and artisans, associations, public professional organisations and foundations.

7. Role and rights
Trade union representatives perform the following functions, limited to the workplace (SK, Art. 35):

a) To follow up and resolve workers’ requests and complaints;

b) To promote and maintain cooperation, harmony of work and peaceful labour relations;

c) To protect rights and interests of workers; and

d) To assist the enforcement of working conditions provided by labour legislation and collective labour agreements.


Workers’ right to information exists in various cases. It is necessary to provide for the protection of workers in the event of a change of employer, in particular, to ensure that their rights are safeguarded. The transfer of the whole or part of the workplace shall not in itself constitute grounds for dismissal by the transferor or the transferee (Art. 6). This provision shall not stand in the way of dismissals that may take place for economic, technical or organisational reasons entailing changes in the workforce. This provision shall not apply to any transfer of the workplace or part of a workplace where the transferor is the subject of bankruptcy proceedings which have been instituted with a view to the liquidation of the assets of the transferor. This article has drawn on Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses but has not transposed Article 7 of the Directive on information and consultation.

8. Other representation bodies
Annual leave boards. In workplaces where the number of workers exceeds one hundred, a board empowered to prepare annual leave lists to be submitted to the approval of the employer is to be composed of three members, one representing management and two representing the workers. Members representing workers are to be elected by the trade union representatives (By-law on Annual Leaves, Art. 15).

Occupational health and safety boards. In workplaces where the number of workers exceeds fifty, occupational health and safety boards composed of seven members have to be established. A foreman or master workman to be elected by foremen and master workmen, a trade union representative to be elected by trade union representatives, and in default thereof, a worker to be elected by the employees, and a health and safety representative worker make up the three members of the board (By-law on Occupational health and safety boards, Art. 5). Provision of information to workers and sufficient training with regard to general and specific occupational risks and occupational diseases is envisaged by the Labour Act (Art. 77). This applies also to temporary and fixed-term workers as well as apprentices and trainees.

Workplace health units. In workplaces where the number of workers exceeds fifty, workplace health units have to be established (By-law on workplace health units and physicians, Art. 5). Workers and their representatives are involved in organisations for medical surveillance and are obliged to fully co-operate and to follow information and training programmes.
Disciplinary boards. It is the collective labour agreements that envisage the establishment, composition, functioning and powers of disciplinary boards.

Boards established on a voluntary basis. Boards may be established through mutual agreement. This is especially the case with regard to implementation of projects such as training or health and safety jointly undertaken by the management and labour.

9. Protection of rights

The workers’ right to information in various cases is protected through imposition of legally specified sanctions. An increase is made on an annual basis in the amount of fines in accordance with the so-called re-evaluation percentage stipulated by the Government.

There are also various provisions providing protection against discriminatory behaviour by the employer. It is unlawful to dismiss for reasons relating to trade union membership and non-membership. Anti-union discrimination is deemed a violation of freedom of association. The Unions Act prohibits anti-union discrimination at the time of employment, during employment, and at the time of employment termination (Art. 31). Where a worker with regular job security is dismissed due to his trade union membership or involvement in union activities he shall be entitled to “unionism pay”, the minimum amount of which corresponds to the annual basic wage of the worker concerned. The Criminal Code prohibits hindrance of the exercise of union rights. Forcing or threatening someone to compel them to join, or not join a union, participate or not participate in union activities, or, resign from union membership or executive function in a union is punishable with one to three years’ imprisonment (Art. 118/1). Obstruction of union activities by force or threat or through any other illegal manner is also a crime entailing one to three years’ imprisonment (Art. 118/2). This rule covers all workers exercising union rights.

IV. EMPLOYEES’ REPRESENTATION IN CORPORATE BODIES

Workers are not represented in the board of directors, supervisory boards or other corporate bodies. The directives and regulations European Company Statute, European Cooperative Society and Information and Consultation of Employees have not yet been transposed into national legislation.

V. EMPLOYEE INVOLVEMENT IN EXTERNAL DECISIONS THAT AFFECT THE UNDERTAKING

United Kingdom

Britain was the first country to industrialise, starting in the second half of the eighteenth century, and some of the bodies currently involved in industrial relations have a long history. For example, the Trades Union Congress (TUC) the confederation, to which the overwhelming majority of UK unions belong, can trace its history back to its first Congress in 1868. However there have been major changes in UK industrial relations and the situation now differs substantially from that 20 or 50 years earlier.

The United Kingdom (UK) with 60.7 million inhabitants is the third most populous country in the European Union (EU), behind only Germany and France. The UK is the second largest economy in the EU in terms of GDP at current market prices – behind only Germany – accounting for one-sixth of total EU output in 2005 (before the accession of Bulgaria and Romania). Measured on GDP per head and taking account of purchasing power variations, the UK is in seventh place, behind Luxembourg, Ireland, Denmark, the Netherlands, Austria and Belgium.

Political power in the UK is concentrated at the centre, although some powers and responsibilities have, since 1999, been devolved to separate administrations in Scotland and Wales. The extent of devolution varies, with the Scottish Parliament having greater powers than the Welsh Assembly. The Scottish Parliament has full law-making powers in a range of areas, such as health, education, housing and economic development. However, the National Assembly for Wales, whose powers were strengthened in 2007, can only make laws in areas where it has been given specific “legislative competence” by the UK Parliament. In Northern Ireland the Northern Ireland Assembly has full legislative powers in some areas.

Employment legislation is one of the “reserved issues” in Scotland, and is dealt with in the UK rather than the Scottish Parliament, and the National Assembly for Wales has also not been given the competence to deal with it. There is separate employment legislation for Northern Ireland but it mirrors legislation passed in the rest of the UK.

In economic terms, the South East of the UK, in particular London, is the most prosperous area. In 2005, average gross valued added per head was £17,700 in the UK as a whole, but £24,100 in London, £20,400 in the South East and £18,900 in the East of England. These three regions account for just over a third (35.2%) of the UK total population. In all other parts of the UK, gross value added per head was below the national average.

I. Economic and Social Framework

Basic Economic Data

The UK economy grew by 2.8% in 2006 (increase in GDP), recovering strongly from the previous year’s below average increase of 1.9%. On an annual basis GDP has grown every year since 1992 and the UK economy has grown more strongly than that of the Euro-area. Between 2002 and 2006 the UK economy grew by an average of 2.6%, driven by household consumption and government spending, while in the Euro area average growth in the same period was just 1.5%.

Prices in the UK are fairly close to the overall EU average. Figures for 2005 show that the index of comparative prices in the UK is 103.7 (EU-5 = 100). This means that goods and services in the UK are only slightly more expensive than the EU average.
Average hourly labour costs in the UK in 2004 were €24.71, somewhat above the EU25 average of €21.22 but more or less in line with the EU15 average of €24.02. The index of labour productivity per person employed at 106.7 in the UK is above the EU average (EU-25 = 100, based on purchasing power parities).\textsuperscript{141}

**Productive structures and employment**

The UK economy is dominated by services. In 2006, services accounted for 76% of total output, compared to just 14% for manufacturing and a tiny 1% coming from agriculture, forestry and fishing. Construction accounted for 6% and the supply of electricity, gas and water, 2%. Mining and quarrying, including the extraction of gas and oil, also made up 2% of national output.

Business services and finance are dominant within services, accounting for almost a third (30%) of total national output, and their share of national output is growing. Government and other services, primarily consisting of public administration and social security, education and health and social work, accounted for just under a quarter of national output in 2006 (23%). Distribution, hotels and catering accounted for around a sixth (16%) of output.\textsuperscript{142}

The dominance of services is also reflected in the employment statistics. They account for 80% of all jobs in the economy, compared with only 11% for manufacturing, 7% for construction and 1% each for energy and water, and agriculture, forestry and fishing.

The proportions employed in services and manufacturing have changed over the last 10 years, with manufacturing losing jobs. In 1996 16% of jobs were in manufacturing and 75% in services – 10 years later, the figures were 11% and 80%. As overall the number of jobs in the economy has increased, this means that over 10 years manufacturing has lost 1.2 million jobs, while services have gained 4.1 million.\textsuperscript{143}

Only around one in five (20.2%) of those employed in the UK work in the public sector. In 2006, out of total employment of 29.0 million, 5.9 million were in the public sector and 23.1 million in the private sector. These percentages have changed only slightly since 1997, when 19.5% of employees worked in the public sector. However, the overall growth of employment means that the number employed in the public sector has increased by some 700,000 over the period.\textsuperscript{144} This contrasts with the 10 years previously when public sector employment was falling.

Most of those employed by the private sector work in companies employing 50 or more. Overall 46.8% of employees work in businesses employing fewer than 50 employees, 11.9% in businesses employing between 50 and 249 employees and 41.3% in businesses employing 250 or more (figures for 2005).\textsuperscript{145}

The idea of the primacy of shareholder value is strongly entrenched in the UK.

**Labour market**

**Employment and activity rates**

In terms of levels of employment, the UK has better figures than the EU average and has already met the targets set by the Lisbon and Stockholm summits. (These were an overall employment rate of 70%, a female employment rate of 60% and an older workers’ (55 to 64) employment rate of 50%.) The overall UK employment rate was 71.7% in 2005 (EU25 average 63.8%); the female UK employment rate in the same year was 65.9% (EU25 56.3%) and older workers’ UK employment rate was 56.9% (EU25 42.5%). The overall and female employment rates have increased only slightly since 2000, but the older workers’ employment rate has improved from 50.7% to 56.9% between 2000 and 2005.\textsuperscript{146}

\textsuperscript{141} Europe in figures: Eurostat Yearbook 2006-07
\textsuperscript{142} UK output, income and expenditure 1st quarter 2007, Office of National Statistics Press release, May 2007
\textsuperscript{143} Figures for September 2006 from Economic & Labour Market Review statistics May 2007
\textsuperscript{144} Economic & Labour Market Review statistics May 2007
\textsuperscript{145} Small and Medium-sized Enterprise Statistics, DTI Press release 31 August 2006
\textsuperscript{146} Europe in figures: Eurostat Yearbook 2006-07
The UK activity rate, in terms of those aged 15 to 64, is 75.3% compared to the EU25 average of 70.2% (figures for first quarter 2006). For men it is 81.7% (EU25 77.7%) and for women it is 69.1% (EU25 62.1%).

Self employment, part-time and fixed term working

UK national figures show that there were 31.1 million jobs in the UK in September 2006. Of these 4.0 million (13%) were self-employed.

EU figures show that part-time working is more widespread in the UK than in the EU as a whole. Around a quarter (25.4%) of employees in the UK work part time, compared with 19.1% for the EU25. Women are much more likely to work part time than men, with more than four out of ten (42.6%) women employees in the UK working part time, compared with only 10.4% of male employees. The EU25 figures are 33.1% women and 7.7% men.

Temporary working, however, is found less frequently. Only 5.6% of all UK employees are on temporary contracts: 6.4% of women and 4.8% of men. The EU25 figures are 14.2% for all employees – 17.0% women and 15.3% men.

Unemployment

Unemployment rates in the UK are below the EU average. The overall figure was 5.2% in the first quarter of 2006 compared with the EU25 average of 9.1% and, in contrast to the EU as a whole, the unemployment rate for women at 4.6% is slightly below that for men at 5.7%. The EU25 figures are women 9.8%, men 8.3%.

Long-term unemployment rates in the UK, at 1.1% overall, 0.7% for women and 1.4% for men, are also below the EU25 averages – 3.9% overall, 4.5% women and 3.5% men.

Unemployment grew slightly over 2005 and 2006 but national figures published in May 2007 suggest that the figure has stabilised.

Educational attainment

Performance in education and training is above the EU average. Figures from the Labour Force Survey for Spring 2005 show that 29.1% of UK respondents had participated in education or training in the previous four week, compared with 11.0% for the EU25. More than two-thirds (71.2%) of the UK population aged 25 to 64 had at least completed secondary school education, just above the EU25 average of 68.9%.

However, the OECD’s international comparisons of qualifications show that while the UK does relatively well in terms of high-level qualifications (degree level) and above, with 29% of the population aged 25-64 qualified at this level; it has a relatively high level of people with low or no qualifications (35%); and relatively low numbers with intermediate qualifications (36%). Although in recent years it has improved significantly, a 2006 report on the state of skills in the UK, produced for the UK government concluded that “the UK’s skills base suffers from long-standing historic failures in the education and training system”.

147 Labour market latest trends Statistics in focus 17/2006, Eurostat
149 Figures for first quarter 2006; Labour market latest trends Statistics in focus 17/2006, Eurostat
150 Ibid
151 Labour market statistics, Office for National Statistics May 2007
153 Education at a glance, OECD , 2006
154 Leith review of skills: Prosperity for all in the global economy - world class skills, Final Report, HM Treasury, December 2006
II. INDUSTRIAL RELATIONS

1. Key issues
Traditionally UK industrial relations have been seen as being organised on a “voluntarist” basis, with employers and unions able to conduct negotiations and reach agreements with little interference from the law or the state. This view fails to take into account the wide range of legislation governing the behaviour of both unions and employers, but a number of characteristics of UK industrial relations indicate that it is very different from the formal “social partners” model found in many other EU states.

- There is no economic and social council in which unions and employers are represented – although their representatives are included in a number of specific bodies (see I.2.2 below).
- There is no requirement for unions and employers to be consulted before employment legislation is enacted – they are simply some of the organisations whose views are sought in a wider consultative process.
- There is no general requirement for employers to negotiate with unions – this applies only in a very small number of cases where employers have been legally forced to “recognise” unions (see I.3.4 below).
- There is no legally guaranteed right to strike – only immunity from responsibility for the economic consequences of strike action on the employer, provided a number of conditions have been met.

2. Social partners

Unions
There are 7.6m union members in the UK, according to figures provided by the unions themselves, almost all in employment. Figures from the annual Labour Force Survey, which excludes non-working members, show a total of 7.2m in 2006, of whom 6.9m are employees. This is equivalent to 28.4% of all employees.

The vast majority – 6,463,000 – belong to the 61 unions affiliated to the TUC (Trades Union Congress), the only trade union confederation in Britain. Unions operating in both Britain and Northern Ireland are frequently also affiliated to the Irish trade union confederation (ICTU) through the Northern Ireland Committee of the ICTU.

While some unions continue to organise particular occupations and particular companies, most union members are now in large unions, formed by mergers, with members in sectors throughout the economy. Industry-based unions are now less common, although there are some, such as UCATT, the construction union. Details of the largest unions (and the TUC) are set out in the table, including two, the nurses’ union (RCN) and doctors’ union (BMA), which are not affiliated to the TUC.

Individual unions are independent in terms of their decision-making, although the TUC has in the past been the main channel for discussions with government. The emergence of much larger unions as a result of mergers – the three largest unions account for 60% of total TUC membership – may change this in the future.

A number of internal union procedures are regulated by legislation. The main areas covered by the law are membership, internal union elections, ballots on political funds and discipline of members.

The TUC is affiliated to the European Trade Union Confederation and all the larger and many of the smaller TUC-affiliated union are also affiliated to the ETUC European Industry Federations, such as EPSU and the EMF.

Trade unionists serve on a variety of public bodies with appointments made by government ministers using an appointments procedure, normally involving application and interview. These include some where the legislation setting them up requires that they should include employee representatives. These are generally those linked most closely to industrial relations such as the conciliation service Acas, the Low
Pay Commission (which makes recommendations on the national minimum wage) and the Health and Safety Commission. There are others where trade unionists are normally appointed, but there is no specific requirement to do so. These include the Learning and Skills Council and the new Commission for Equality and Human Rights, which took over the work of Britain’s three existing equality commissions in October 2007.

Trade unions lost membership heavily during the 1980s and the first half of the 1990s, largely because of changes in the structure of the workforce. However, since 2001 membership has stabilised at around 29%, although the 2006 figures are slightly lower at 28.4%.  

A key reason for this stability has been the increase in the proportion of UK employees in the public sector, where union membership is much higher. The Labour Force Survey figures show that trade union density is 58.8% in the public sector and 16.6% in the private sector (2006 figures). The public/private division also explains why a higher proportion of women are union members than men – 29.3% as opposed to 27.0% – despite the fact that in both sectors men’s union density is higher. It is simply that a higher proportion of women work in the public sector.

<table>
<thead>
<tr>
<th>Name of union</th>
<th>Details of membership</th>
<th>Number of members (January 2007)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>TUC</td>
<td>Umbrella trades union confederation</td>
<td>6,463,000</td>
</tr>
<tr>
<td>UNITE – the Union</td>
<td>Formed in May 2007 through the merger of the previously second and third largest unions with members in almost every sector of the economy. It is stronger in the private sector, but has at least 200,000 members in public services.</td>
<td>1,941,610</td>
</tr>
<tr>
<td>UNISON</td>
<td>Organises primarily in the public services, although as a result of privatisation it has substantial membership in private companies.</td>
<td>1,343,000</td>
</tr>
<tr>
<td>GMB</td>
<td>General union with members in a number of industries, although they are more likely to be manual workers</td>
<td>575,892</td>
</tr>
<tr>
<td>RCN (not in TUC)</td>
<td>Nurses</td>
<td>391,347**</td>
</tr>
<tr>
<td>USDAW</td>
<td>Primarily shop workers but has members in other areas</td>
<td>341,291</td>
</tr>
<tr>
<td>PCS</td>
<td>Central government employees, although includes employees whose work has been privatised</td>
<td>311,274</td>
</tr>
<tr>
<td>NUT</td>
<td>Teachers</td>
<td>270,436</td>
</tr>
<tr>
<td>NASUWT</td>
<td>Teachers</td>
<td>251,763</td>
</tr>
<tr>
<td>CWU</td>
<td>Postal and telecommunications workers, although not management grades</td>
<td>240,817</td>
</tr>
<tr>
<td>BMA (not in TUC)</td>
<td>Doctors</td>
<td>137,361**</td>
</tr>
<tr>
<td>UCATT</td>
<td>Construction workers</td>
<td>118,037</td>
</tr>
<tr>
<td>ATL</td>
<td>Teachers and other education staff</td>
<td>117,804</td>
</tr>
<tr>
<td>UCU</td>
<td>College and university lecturers</td>
<td>117,804</td>
</tr>
<tr>
<td>Prospect</td>
<td>Professional and scientific staff in central government and some other areas</td>
<td>101,532</td>
</tr>
</tbody>
</table>

Source: Annual Report of the Certification Officer 2005-2006, 2007. Figures are as reported to the TUC, with the exception of the RCN and BMA, where the figures come from the Annual Report of the Certification Officer 2006-2007, 2007 ** Figures for 2005-2006

Employers’ organisations

The main employers’ organisation is the CBI (Confederation of British Industry). Its membership consists both of individual companies and sectoral trade associations. It does not publish detailed figures on its membership, but states that around 80% of the FTSE 100 companies are CBI members and nearly half of the FTSE 350. Past estimates have suggested that there are around 2,000 individual companies in membership. In addition, 150 sectoral trade associations are members. In total it says that “is the UK’s leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce”.

The other two main employer bodies are:

- The IoD (Institute of Directors), which represents individual directors rather than organisations and has 54,000 individual directors in membership in the UK, the majority from smaller and medium-sized enterprises.

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155 Trade union membership 2006, Department of Trade and Industry, April 2007
156 Ibid
- The British Chambers of Commerce, which is the national body for 56 local chambers of commerce with 135,000 businesses in membership, although most of the members of local chambers of commerce are small and medium-sized businesses.

There are also 151 employers’ associations, whose details are provided by the Certification Officer. In total they had 241,398 members in 2005-2006 and the largest associations are set out in the table below. However, these associations are essentially groups lobbying for and providing services to businesses in their sectors, rather than employers’ associations conducting collective bargaining.

The CBI is a member of BUSINESSEUROPE and a number of UK employers’ associations are members of the equivalent bodies at European level. As with trade unions, employers’ organisations, particularly the CBI, provide representatives on a range of public bodies, and their appointment is subject to the same procedures.

Figures provided to the Certification Officer indicate that employers’ associations have steadily lost membership. In 1995 the Certification Officer recorded a total of 220 employers’ associations with 271,000 members. This had fallen to 152 bodies with 241,400 members by 2005-2006.

<table>
<thead>
<tr>
<th>Employers’ associations</th>
<th>Membership – number of employers (unless otherwise stated)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CBI</td>
<td>240,000 businesses</td>
</tr>
<tr>
<td>IoD</td>
<td>54,000 directors</td>
</tr>
<tr>
<td>British Chambers of Commerce</td>
<td>135,000 businesses</td>
</tr>
<tr>
<td>National Farmers Union</td>
<td>125,101</td>
</tr>
<tr>
<td>National Federation of Retail Newsagents</td>
<td>19,555</td>
</tr>
<tr>
<td>Federation of Master Builders</td>
<td>13,071</td>
</tr>
<tr>
<td>Freight Transport Association</td>
<td>12,427</td>
</tr>
<tr>
<td>Road Haulage Association</td>
<td>9,793</td>
</tr>
</tbody>
</table>


Role of the state

The state, as an employer, is a major player in UK industrial relations. Around a fifth (20.2%) of all employees work in the public sector. Although central government is not the direct employer of most of those working in the public sector, its control of funding gives it considerable influence.

Since 1999, the state has set a national minimum wage and there are a range of labour market measures, from tax credits for those in work, to the rules for entitlement to support during unemployment, which affect the industrial relations context.

However, although the state aims to control pay in the public sector, it no longer attempts to influence levels of pay settlements in the private sector through the pacts or policies seen elsewhere in the EU. The last attempt to do so ended in 1979.

3. Joint bodies

There is no UK equivalent of the tripartite economic and social councils found in many other EU states. The closest equivalent was the National Economic Development Council, which brought together representatives of unions, employers and the government and was set up in 1962 but was abolished in 1992.

The UK mediation body is Acas (Advisory, Conciliation and Arbitration Service). Originally part of the government, it became independent in 1974 and was given legislative basis in 1976. It provides a voluntary mechanism for solving disputes – there is no legal obligation to take disputes to Acas, although more recently much of its work involves the provision of advice on employment law. It also produces codes on good practice, which, while not directly legally binding, are taken into account by employment tribunals. The Acas council contains representatives of the unions and the employers and other independent and academic members.
4. Collective bargaining

Key issues

Collective agreements are a mechanism for making changes to employment contracts without each individual employee having to agree these changes.

There is no legal requirement for the employer to negotiate collective agreements except where there has been a legally binding decision that the unions should be “recognised” for bargaining (see I.3.4). In these cases the union has the right to bargain over pay, hours and holidays. However, such cases are rare and generally it is the balance of forces between union and employer at the workplace that determines whether bargaining takes place.

Collective agreements must, under the terms of the relevant legislation, be made “on behalf of one or more unions and one or more employers or employers’ associations” covering a range of issues, such as terms and conditions of employment and procedural issues. Collective bargaining “means negotiations relating to or connected with one or more of these matters”.

There are no further rules on who can negotiate or sign agreements, and in practice the union side may be made up of full-time officials, workplace representatives or a mix of both. Local union representatives are now much more likely to be involved in collective bargaining.

Collective agreements in themselves are not legally binding on the parties who have concluded them (the employer and the union) unless the two sides specifically state in writing that they should be – a very rare occurrence. However, items within the agreement that can be incorporated into an individual’s contract – such as pay rates, hours or holidays – become binding conditions of the contract. Items which cannot be included in this way – such as procedural arrangements for redundancy – are not normally legally binding.

Employers are not bound by an agreement signed by an employers’ association even if they are members of it, and there is no mechanism for extending agreements to those who have not signed them.

System of collective bargaining

Most employees in the UK are not covered by collective bargaining. Figures from the Labour Force Survey show that in 2006 only 33.5% of employees were covered by collective bargaining and coverage is not even across the economy. In the public sector 69.0% of employees are covered by collective bargaining compared with only 19.6% in the private sector.

There are also differences in collective bargaining coverage between industries, with public administration having the highest level of coverage and hotels and restaurants the lowest.

When bargaining occurs in the private sector, its most important level is at the company or individual workplace. There is still industry level bargaining in some industries, such as parts of the textile and furniture industries, but during the 1980s there was a clear move to bargaining at local level and a number of employer federations broke up or ceased to be involved in collective bargaining. In most cases companies set their own terms and conditions, either for the whole company or specific plants. In 2004, only a sixth of private sector workplaces, just using collective bargaining to set pay, negotiated at industry level. The figures relate to workplaces with more than 10 employees and come from the major government-sponsored survey of industrial relations – the Workplace Employment Relations Survey (WERS).

The situation is different in the public sector, where agreements covering several employers are more common. They account for around three-quarters of all workplaces, according to the 2004 survey. However there are some public sector employers, which bargain at the level of a single organisation. The civil service, for example, pays different rates in different government departments. In addition some workers in the public sector, such as teachers and nurses, are covered by pay review bodies, rather than collective bargaining. These pay review bodies make recommendations on pay, which are then normally

157 Section 178 Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA)
158 Section 179 TULRCA
159 Trade union membership 2006, Department of Trade and Industry, April 2007
approved by the government, the ultimate employer. Overall UK collective bargaining is, in the private sector at least, essentially decentralised. There is no national-level bargaining for the whole economy and industry-level bargaining has become less common. There is also no hierarchy or articulation between different levels of collective bargaining.

The legislation\textsuperscript{160} describes collective bargaining as being negotiations on the following issues:

- “terms and conditions of employment, or the physical conditions in which any workers are required to work;
- engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- allocation of work or the duties of employment between workers or groups of workers;
- matters of discipline;
- a worker's membership or non-membership of a trade union;
- facilities for officials of trade unions; and
- machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures”.

In practice these are the issues on which negotiations take place, although they concentrate on pay hours and holidays. The 2004 WERS survey indicates these are the issues that are by far the most likely to be subject to negotiations where unions are recognised. Over half of workplaces recognising unions negotiate on pay, hours and holidays, with pensions and then disciplinary and grievance procedures the next most frequently negotiated\textsuperscript{161}

5. Dispute settlement

The main body dealing with disputes is Acas (Advisory, Conciliation and Arbitration Service). However, the involvement of Acas is voluntary. Neither employers nor unions are legally compelled to go to Acas, although in some cases this may be written into the disputes procedures agreed between the two sides.

In 2005-2006 Acas was asked for its help as a conciliator in 952 collective disputes. In addition it provided arbitration – where the two sides agree in advance to accept the Acas decision – in 55 cases.

The **CAC (Central Arbitration Committee)** is another body involved in resolving collective disputes but in practice it only operates in a limited number of areas. These are the statutory recognition and derecognition of trade unions, disputes between unions and employers over the disclosure of information for collective bargaining purposes (see I.3.4), and issues brought to it under the regulations implementing four EU directives – on European works councils (implemented by the Transnational Information and Consultation of Employees Regulations 1999), on the framework directive for informing and consulting employees at national level (implemented by the Information and Consultation of Employees Regulations 2004), on employee involvement in the European Company (implemented by the European Public Limited-Liability Company Regulations 2004) and on employee involvement in the European Cooperative Society (implemented by the European Cooperative Society (Involvement of Employees) Regulations 2006). It can also provide voluntary arbitration in industrial disputes, although this possibility has not been taken up in recent years.

Disputes involving individual employment rights, such as dismissal or discrimination, go to Employment Tribunals and, if appealed, to the Employment Appeal Tribunal (EAT) (Court of Appeal in Northern Ireland) and then the rest of the legal system. Under legislation implemented in 2004 (Employment Act 2002 (Dispute Resolution) Regulations 2004) both sides must attempt to resolve their differences internally, through disciplinary and grievance procedures, before they can take their case to an Employment Tribunal. Acas can also be involved as conciliator in individual disputes and, if both parties agree, it can provide binding arbitration, as an alternative to the Employment Tribunal system.

\textsuperscript{160} Section 179 TULRCA,
\textsuperscript{161} Inside the workplace: Findings from the 2004 workplace employment relations survey, B Kersley, C Alpin, J Forth, H Bewely, G Dix, S Oxenbridge, 2006
**Strikes and lock-outs**

There is no positive legal right to strike in the UK. Instead workers are protected by "immunities" if taking specific forms of industrial action that would otherwise be unlawful. The legislation states that an act done "in contemplation or furtherance of a trade dispute" is not automatically actionable in the courts just because it makes someone break a contract or interferes with a contract.\(^{162}\) Political strikes and strikes in support of other workers are not lawful and are not protected by "immunities". However, even in a trade dispute, the immunities only apply if, among other things, there is a ballot before the strike is held and the conditions for holding such a ballot are both extensive and precise. All of these conditions must be met, otherwise the action may be unlawful. One common response from employers who consider that the union has failed to meet all the conditions is to seek an injunction from the court, asking for the action to be halted.

This legislation was initially introduced specifically to make it more difficult for unions to strike, and together with other factors, it has had an impact on the level of industrial action. For example, while 3,284,000 days were lost through strikes in 1976, by 1996 this had fallen to 1,303,000 days lost, and by 2006 to 755,000 days lost. There were only 158 strikes in the UK in 2006.

Employers’ lock-outs are not subject to the same legal constraints as strikes. However, in practice they are very rare. One reason for this is that unions do not normally pay strike pay, other than at a nominal level, so a lock-out does not increase pressure on the union.

### III. EMPLOYEES’ REPRESENTATION IN THE UNDERTAKING

#### 1. Legal basis and key issues

There is no formal legal mechanism providing for on-going workplace representation in the UK. In contrast to some EU countries there is no structure of works councils elected by all employees, and there is also no legislation or system of legally binding collective agreements which give wide ranging powers to local union organisations to represent all employees.

Traditionally, employees at work have been represented through trade unions. However, whether or not there is employee representation at work depends essentially on the situation in each individual workplace – whether the employees, are strong enough to compel this, and whether the employer wishes to accept or set up some form of employee representation. There is now a range of legislation which comes into effect, if employee representation, or in some cases if the wish for employee representation exists. This includes providing rights for union and other representatives and rights to compel union recognition. However, there is no legislation which stipulates that there should be ongoing employee representation at the workplace.

This means that the structure and influence of employee workplace representation is very varied, despite legislation from the EU requiring employers to consult with employee representatives on a number of issues.

In the vast majority of cases workers are either represented through trade unions or have no representation at all. The official 2004 survey of workplace employment relations (WERS 2004) found that 49% of workplaces with 10 or more employees, accounting for 71% of all employees, had some form of employee representation.\(^{163}\) This could be through trade union recognition, stand-alone non-union representatives and/or joint consultative committees, either at the level of the workplace or at some higher level.

The majority of these workers were covered by union recognition – in other words, the employer had agreed to deal with the union. WERS 2004 found that 30% of workplaces and 50% of employees were in

\(^{162}\) Section 219 TULRCA

\(^{163}\) Inside the Workplace: findings from the 2004 Workplace Employment Relations Survey, B Kersley, C Alpin, J Forth, A Bryson, H Bewley, G Dix, S Oxenbridge, 2006
workplaces where unions were recognised. In contrast, WERS 2004 found that overall only 5% of workplaces had stand-alone non-union representation.

In addition 39% of workplaces were covered by joint consultative committees, either at the level of the workplace itself, or at a higher level. These joint bodies, which have a variety of names, such as councils, committees and forums, and an even wider range of functions and structures, often have union members and are more common in the more highly unionised public sector and some of the private sector industries where unions are stronger. There is thus a substantial overlap between union recognition and the presence of joint consultative committees. Overall WERS 2004 found that 11% of joint consultative committees consisted entirely of union representatives, 22% had some representatives coming from union structures and some from non-union structures, and 67% were composed entirely of non-union representatives.

In addition to overall arrangements for information and consultation, there are particular rights to be informed and consulted as a result of specific EU directives. These relate to health and safety issues, redundancies and business transfers and modifications to the working time regulations. This is in addition to the arrangements for European works councils, employee involvement in European Companies and European Cooperative Societies and the rights provided by the legislation implementing the EU directive on information and consultation.

The overall legal position is therefore as follows:

- Where the union is recognised by the employer it has certain limited legal rights and also takes up the rights relating to European directives on redundancy, business transfers and health and safety;
- Where there is no union, there are no general rights for any non-union representative body, although it can be given the rights relating to EU directives on redundancy and business transfers, alternatively the employer can choose to organise specific elections for bodies to deal with these issues.
- To deal with issues emerging from EU directives relating to both working time and health and safety, where there is no union, special representatives should be elected; and finally
- In relation to the EU directive establishing a general framework for informing and consulting employees, a new body should be elected to negotiate an agreement on this issue, whether or not the union is recognised, or there is a non-union representative body. In practice, it is likely to be rare that a new agreement is negotiated on this issue. (see I.3.5.)

2. **Scope**

With the exception of the armed forces, which are subject to military discipline, and the police service, where specific statutory arrangements for representation apply, no parts of the UK workforce are excluded from a general legal right to be represented at work. Although in practice different arrangements have developed in different sectors over time, in theory the situation in both the public and private sector is the same. There are a range of employment thresholds which apply to the exercise of specific rights.

3. **Union representation at workplace level**

Representation through unions is the commonest way in which UK employees are represented and the key to trade union representation is **union “recognition”** by the employer. This means that the employer has agreed to consult or negotiate with the union or unions over issues affecting the workforce. (This normally means that the employer will negotiate with the union on pay and conditions but there are some cases where unions are only recognised by the employer for individual grievance and disciplinary cases.) In addition, if the union is recognised it has certain rights – to time off and information for collective bargaining purposes – and it is also the body which should be informed and consulted in specific circumstances – primarily redundancy and business transfers.
Legal basis
Legislation passed in 1999 provided for the first time a legal mechanism to compel employers to recognise unions. Unions must prove to an independent body, the Central Arbitration Committee (CAC) – see I.2.5 above – that a majority of employees in a “bargaining unit”, which can be a workplace, several workplaces, or part of a workplace, want a union to represent them. They can do this either by showing that more than half the employees are union members, or by winning the support for recognition of a majority of employees in a ballot, although this must also be equivalent to at least 40% of all employees in the bargaining unit. The legislation only applies to employers with 21 or more employees.

In practice, once the legal process is under way, most cases involve a ballot of employees. However, in the majority of cases where unions seek recognition and have substantial membership they are able to achieve it on a voluntary basis, as the employer is aware that the legal avenue is open to the union if recognition is refused. Figures compiled for the TUC show that from November 2000 to October 2005 the unions won recognition from 1,182 employers. But only in 90 cases was recognition granted as a result of a decision by the CAC.

If the CAC grants recognition, the employer and union have to try to negotiate a collective bargaining procedure. In these circumstances the union is limited to an agreement to negotiate over pay, hours and holidays. If employers and unions cannot reach an agreement on procedures, the CAC will impose one. This will normally involve setting up a joint negotiating body and a six-stage bargaining procedure, with each stage having a specified timetable.

As well as providing the right to union recognition in certain circumstances, the 1999 legislation also provided unions with an additional role by giving all workers the right to be accompanied at disciplinary and grievance hearings.

Composition
Trade union representatives at the workplace are often known as shop stewards although other terms such as local rep or union rep are also used.

There are no legal rules or guidance on the number of union representatives/shop stewards. A survey on union reps published by the TUC in 2002 found an average of 36 employees per union representative, where unions were recognised, although the midpoint value was 25. There are also no legal rules on the composition of joint consultative committees, where these exist.

Capacity for representation
As union representatives, they only represent union members. The union has the right to accompany individuals in disciplinary and grievance hearings.

A worker can be accompanied by a single companion who is either:

- a union official;
- a union representative with appropriate experience or training in acting as a companion, and who has been certified in writing by the union; or
- another of the employer's workers.

This companion can address the hearing and confer with the worker during the hearing. They can also put the worker’s case, sum up that case and respond on the worker’s behalf to views expressed at the hearing, although they may not respond to questions put directly to the worker. A union official or a union

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164 The legislation is the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), which was amended by the Employment Relations Act 1999 (ERA 99) and the Employment Relations Act 2004 (ERA 04). In Northern Ireland these rights are found in the Trade Union and Labour Relations (Northern Ireland) Order 1995 (TULRO), as amended.
165 Focus on Recognition: trade union trends survey 06/01, TUC, 2006
166 Section 10 of the Employment Relations Act 1999 (ERA 99), which was clarified by the Employment Relations Act 2004 (ERA 04)
167 Union reps – winning respect at work, TUC November 2002
representative can accompany the worker, irrespective as to whether the union is recognised by the employer.

The union also has the right to take cases to court on behalf of its members, although as separate individuals rather than a group (class action).

**System of appointment or election**

The method for electing union representatives from the membership vary from union to union but normally involves a show of hands rather than a secret ballot. Shop stewards or union representatives are normally chosen for a particular office or workshop, and where there is shift working there may be different shop stewards for different shifts. They are usually elected by the members in the area in which they work rather than by the workforce as a whole. Elections typically take place every year. In practice individuals may hold office for long periods.

Legally shop stewards are officials of the union and in some unions the choice of the membership at the workplace has to be endorsed by a higher level in the union.

**Protection of union representatives**

Dismissal and other forms of victimisation for trade union membership or activity are unlawful. Although union representatives have no specific protection against dismissal generally, an Acas code of practice recommends that employers should take particular care in taking disciplinary action against trade union representatives. In addition, where union representatives are acting as employee representatives for the purpose of redundancies, or business transfers, they have protection against dismissal and detrimental treatment, if the reason for the dismissal or detriment is their role as an employee representative.

**Internal working and decision making**

There is no legislation on this and the arrangements will be those found most appropriate by the individuals concerned, subject in some cases to the rules of the union.

Union representatives, even where the union is recognised, have no general right to a budget or facilities to enable them to do their work and depend on reaching agreement with the employer for any facilities they have. However, an Acas code of practice suggests that "employers should consider making available the facilities necessary for them to perform their duties efficiently and communicate effectively".

Union representatives where unions are recognised have a legal right to "reasonable" paid time off to carry out their duties as representatives and to receive appropriate training. The law does not specify what is considered “reasonable” and the employer may refuse time off either if it is considered too frequent or too inconvenient at the time of the particular request. If an employer refuses a right to time off in circumstances where it would have been reasonable to provide the right, the union representative can take a claim to an employment tribunal. All members of recognised unions, not just representatives, have the right to reasonable time off without pay to take part in trade union activities, except for industrial action. These would include shift workers attending union meetings.

There is no right to outside assistance from experts.

**Role and rights**

A key task for trade union representatives in many workplaces in the private sector is to negotiate on pay and conditions, although local union representatives are less likely to be involved in bargaining in the public sector. In workplaces where unions are recognised, union representatives have the right to information from their employer which is needed for collective bargaining.

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168 Sections 146 and 152 TULRCA
169 Section 103 Employment Rights Act 1996
170 Section 47 Employment Rights Act 1996
171 Section 168 TULRCA
172 Section 170 TULRCA
The overall importance of questions of pay and conditions for the work of union representatives at the workplace is indicated by the 2004 WERS survey\(^{173}\) which found that more than three-quarters of union representatives (79\%) had spent time on the issue in the previous 12 months and almost four out of ten (38\%) saw it as the most important issue – the highest in both cases.

The next most time-consuming issue for union representatives is representing individual union members in dealing with the employer. They are usually responsible for pursuing grievances and complaints on behalf of members of the union. They will also act as an advocate for members who are facing disciplinary action by the employer, although often, if they are unsuccessful the employer’s procedures will allow for the involvement of a full-time officer of the union.

Union representatives, where the union is recognised, have a right to information to enable them to conduct collective bargaining. The legislation states that, for the purpose of collective bargaining, employers have a duty to disclose, to representatives of independent recognised unions, information:

- without which representatives would be impeded in carrying out collective bargaining; or
- which, in accordance with good industrial relations practice, should be disclosed.\(^{174}\)

This can include an order to an employer to give the union information on the distribution of percentage pay awards across certain staff groups and information about the amount and distribution of overtime.

The Acas Code of Practice Disclosure of information to trade unions for collective bargaining purposes states that information that should be disclosed includes:

- pay and benefits - structure of the payment system, earnings analysed by work group, details of fringe benefits;
- employee numbers - numbers employed by age and sex, turnover, absenteeism;
- performance - productivity and efficiency data, sales; and
- financial - profit, assets, liabilities, loans, sales.

The right to information is not absolute. An employer can decline to give the information on the grounds: of national security; that the information has been obtained in confidence; that it relates specifically to an individual; or that it would cause "substantial injury" to the employer's undertaking.\(^{175}\) The Acas Code of practice gives examples of information that could lead to "substantial injury", which includes cost information on individual products and marketing and pricing details.

In cases of both collective redundancies and business transfers, it is the union which has information and consultation rights, provided that it is recognised.

In the case of collective redundancies, these rights are triggered when there is a proposal to make 20 or more employees redundant at one establishment within a period of 90 days.\(^{176}\) Employers are obliged by law to consult about ways of:

- avoiding dismissals;
- reducing the number of employees to be dismissed; and
- mitigating the consequences of the dismissals.

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\(^{173}\) Inside the Workplace: findings from the 2004 Workplace Employment Relations Survey, B Kersley, C Alpin, J Forth, A Bryson, H Bewley, G Dix, S Oxenbridge, 2006

\(^{174}\)Section 181  TULRCA

\(^{175}\) Section 182 TULRCA

\(^{176}\) The current version of the law was introduced by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1995 and is set out in Chapter II (section 188 onwards) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA). In Northern Ireland they are contained in Part XIII of the Employment Rights (Northern Ireland) Order 1996 (article 216 onwards).
Consultation should be undertaken "with a view to reaching agreement with the appropriate representatives" and the employer must consider representations and reply to them.

In the case of business transfers, these rights apply no matter how many employees are involved.\textsuperscript{177} All employees who could be affected by a change of employer have the right to be informed in advance of what is happening. This includes both employees working for the old employer (the transferor) and those working for the new employer (the transferee). Employers have a duty to inform representatives of the following:

- the fact that the transfer is taking place, the reason why, and the proposed date;
- the likely legal, economic and social consequences for the employees; and
- what measures are likely to be taken in relation to employees.

This information must be provided long enough before the transfer to allow consultation to take place.

If it is envisaged that measures will be taken (for example that jobs may change) the employer also has an obligation to consult the representatives, to consider any representations they make and to reply to them, stating reasons for objection where appropriate.

Recognised unions also have the right to appoint Safety Representatives\textsuperscript{178} and their rights are set out in greater detail in specific regulations.\textsuperscript{179} In terms of consultation, Safety Representatives should be consulted in good time about:

- the introduction of any measure at the workplace which may substantially affect health and safety;
- the arrangements for appointing competent people to assist with health and safety and implementing procedures for serious and imminent risk;
- any health and safety information the employer is required to provide;
- planning and organisation of health and safety training; and
- the health and safety implications of the introduction (or planning) of any new technology.

A recognised union can also reach a collective agreement to modify the legal limits on working time.\textsuperscript{180}

However, there are other areas where the recognised union is not automatically given rights on behalf of the workforce. These are the rights provided by the legislation implementing the EU directive on informing and consulting employees (2002/14/EC) and the choice of representatives for European works councils and for European Companies and European Cooperative Societies. The arrangements vary, but essentially employees’ representatives negotiating agreements in these areas will in most cases be elected by all employees. They are dealt with in sections 3.6 and 3.7.

There are no areas where the \textit{union’s approval} must be gained before management can act.

### 4. Representation where unions are not recognised

\textbf{Legal basis}

As already stated there is no formal legal mechanism providing for automatic on-going workplace representation in the UK, although some employers have set up such structures on a purely voluntary basis.\textsuperscript{181}

\begin{itemize}
  \item \textsuperscript{177} Transfer of Undertakings (Protection of Employment) Regulations 2006
  \item \textsuperscript{178} Section 2 Health and Safety at Work Act 1974
  \item \textsuperscript{179} Safety Representatives and Safety Committees Regulations 1977
  \item \textsuperscript{180} Working Time Regulations 1998
  \item \textsuperscript{181} Examples include the major retailer Marks and Spencer, which operates employee representation forums called Business Involvement Groups (BIGs) in every store and office area, and the financial services company Egg, which has had a body for informing and consulting its employees since 2000
\end{itemize}
These bodies do not have any general legal rights, unless they are bodies set up under the terms of the Information and Consultation of Employees Regulations 2004, which implemented the EU directive on information and consultation (2002/14/EC) (see I.3.6). However, EU directives on redundancy, business transfers and health and safety require employee representatives to be informed and consulted, and directives on working time require that a mechanism is provided for reaching agreements with representatives of the workforce. In all these cases, the employer should deal with the union, if it is recognised, but UK legislation also provides for specific arrangements where unions are not recognised.

These involve requiring the employer either to inform and consult existing employee representatives, if these are present, or to inform and consult representatives specially elected for that purpose.

In the case of redundancy, where there is no recognised union, the appropriate representatives can be either:
- representatives of affected employees appointed or elected generally for consultation and information purposes; or
- employee representatives elected by affected employees solely for the purpose of redundancy consultation.  

It is for the employer to decide, which of these routes to follow. Where representatives are elected specifically for this purpose, the employer must invite employees likely to be made redundant to elect employee representatives "long enough before the time when the consultation is required". There are no precise rules in the legislation as to how these representatives should be elected. Instead the legislation lays down more general principles and leaves the detailed decisions on the procedure in the hands of the employer.  

In the case of business transfers, where there is no recognised union, again consultation takes place with either representatives who have been appointed or elected generally for consultation and information purposes, or representatives elected specifically for TUPE purposes. The arrangements for the election of specially elected representatives are the same as those applying in the case of redundancy. These representatives can also agree changes to employees’ conditions after insolvency, in order to protect the business (see section 5). If no representatives are elected the employer should inform employees directly.

The situation is similar in the case of working time, although in this case special representatives must be elected. If an agreement is needed to modify the working time regulations – necessary, for example, to extend the reference period over which average working time is calculated, and there is no recognised union, a “workforce agreement” can be reached with “duly elected” workforce representatives. Here the legislation states that “the number of representatives to be elected is determined by the employer”.

In the area of health and safety, employers are legally obliged to consult employees not covered by trade union safety reps. The employer can choose to consult these employees directly or through elected representatives, known in the legislation as “representatives of employee safety”. Unlike the legislation covering redundancies or business transfers, the Health and Safety (Consultation with Employees) Regulations 1996 do not set out how the representatives should be elected. The Health and Safety Executive has published guidance on this, which is very general and does not have direct legal force.

Characteristics

There is no common structure for these ad-hoc bodies, or for bodies which have an ongoing role in information and consultation. The arrangements will vary from employer to employer. However, the available figures suggest that, in practice, it is rare for non-union representatives to be elected to deal with
specific issues, with the possible exception of health and safety. A survey looking at consultation on redundancy in non-union companies found that in two of the three cases examined, “management avoided the effects of the regulations [which require consultation with elected employee representatives] by asking staff whether or not they wanted representatives and, having received negative replies proceeded to consult on an individual basis” 189.

Similarly in the area of working time, setting up a one-off body to represent employees remains a rare option.

Protection

There is no particular protection for members of non-union bodies with an ongoing role in information and consultation, other than bodies set up under the terms of the Information and Consultation of Employees Regulations 2004 (see next section) unless they are dealing with redundancies of business transfers, in which case they benefit from the same protection as specially elected representatives. Employee representatives specially elected for the purposes of redundancy consultation and business transfers have statutory protection against dismissal 190. This also applies to workforce representatives elected for the purpose of negotiating workforce agreement on working time 191 and to “representatives of employee safety” 192. There is also protection from any detrimental treatment by the employer 193. This protection includes both representatives and candidates for election and it includes employee representatives appointed or elected generally for consultation and information purposes if they are dealing with redundancies or business transfers.

As regards the methods of working and decision making, there is no legislation setting out how representatives elected for these ad hoc purposes should function.

Means

There is no particular right to time off or other facilities for members of non-union bodies with an ongoing role in information and consultation, other than bodies set up under the terms of the Information and Consultation of Employees Regulations 2004 (see I.3.6). Employee representatives, dealing both with redundancy and business transfer, including existing workplace representatives, when they are dealing with this, must be allowed access to employees and must be provided with accommodation and other appropriate facilities 194.

They are also entitled to reasonable time off 195.

Individuals elected as “representatives of employee safety” have rights to time off, training and protection from harassment that are essentially the same for these representatives as for safety reps appointed by the union. However, unlike union appointed safety reps they do not have the right to inspect or to establish a safety committee.

Role and rights

There is no legislation setting out the role of non-union bodies with an ongoing role in information and consultation, other than bodies set up under the terms of the Information and Consultation of Employees Regulations 2004 (see next section). The roles of employee representatives dealing with specific issues – redundancy, business transfers, working time and health and safety – are limited to information and consultation on these issues, and the way this should proceed is the same as for representatives of

189 Redundancy consultation: a study of current practice and the effects of the 1995 regulations; William Brown, Simon Deakin, Maria Hudson; DTI; 1999

190 Section 103 Employment Rights Act 1996

191 Section 101A Employment Rights Act 1996

192 Section 100 Employment Rights Act 1996

193 Section 47 (redundancies and business transfers), Section 44 (health and safety) Section 45A (working time) Employment Rights Act 1996

194 Section 188 TULRCA (redundancies) and Regulation 13(8) Transfer of Undertakings (Protection of Employment) Regulations 2006 (business transfers)

195 Sections 61 and 62 Employment Rights Act 1996
recognised trade unions dealing with these issues (see 3.4.9). There are no areas where these representatives enjoy a right to approve or veto management decisions.

5. Information and consultation representatives (transposing the EU directive 2002/14/EC)

There is one circumstance, where the more typical legal arrangements involving either recognised unions or other representatives do not apply. These are the arrangements for informing and consulting employees implementing the EU directive 2002/14/EC.196

Legal basis and scope

Legislation implementing the directive came into effect in April 2005, and potentially requires employers in undertakings with more than a set number of employees –falling from 100 to 50 in April 2008 – to inform and consult with employee representatives on an ongoing basis.

However, the legislation does not lay down a structure which must be set up. Instead it leaves the mechanism for providing information and consultation to be settled by negotiations between the employer and the employees’ representatives with fallback arrangements if no agreement is reached. Those negotiating this agreement are to be elected by all employees. The legislation states that the election is to be organised by the employer and that “the election or appointment of the representatives must be arranged in such a way that, following their election or appointment, all employees of the undertaking are represented by one or more representatives”.

If this were a universal requirement, this legislation could have a substantial impact. However, it is important to recognise that this legislation does not require employers to establish a structure for information and consultation if one does not exist. The process must be either initiated by the employer or by a request of 10% of the workforce. Once this has happened, the employer and employee representatives are required to start negotiations on an agreement on information and consultation. But if neither the employer nor 10% of the workforce ask for an information and consultation mechanism to be set up, then there is no need for further action.

Representation and appointment

Once the process has been initiated, the legislation requires that the agreement, if one is reached, should provide either for the election of information and consultation representatives, or for direct information and consultation with all employees. The mechanism for the election of these representatives is not set out – it is left for negotiation between the two sides. However, the fallback arrangements, which apply if the negotiations fail, involve a ballot of all employees organised by the employer with one representative being elected per 50 employees or part thereof with a minimum of two and a maximum of 25. The agreement should cover all employees.197

Protection

Information and consultation representatives have protection against dismissal for carrying out their duties. This also applies to candidates and to representatives involved in the negotiation of original agreement.198 They should also not suffer detriment.199

Means and working

Information and consultation representatives are entitled to reasonable paid time off during working hours to perform their activities and duties.200 However, the legislation does not, even in the fallback

196 Information and Consultation of Employees Regulations 2004 (the ICE Regulations). Equivalent legislation - the Information and Consultation of Employees Regulations (NI) 2005 - applies to employees of organisations in Northern Ireland.
197 Regulation 16 and 19 ICE Regulations
198 Regulation 30 ICE Regulations
199 Regulations 32 and 33 ICE Regulations
200 Regulations 27 and 28 ICE Regulations
arrangements, set out how they should operate. It does not, for example, say how frequently they should meet.

**Role and rights**

A negotiated agreement on information and consultation is not constrained in the subjects to be covered. However, under the fallback arrangements, which are also likely substantially to influence the negotiated arrangements, the following provisions apply: “the employer must provide the information and consultation representatives with information on

a) the recent and probable development of the undertaking's activities and economic situation;

b) the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular, where there is a threat to employment within the undertaking; and

c) decisions likely to lead to substantial changes in work organisation or in contractual relations, including those [covering redundancy and business transfers]\(^{201}\)

Under the fallback provisions, consultation procedures must be appropriate in terms of timing and content, and allow representatives an opportunity to “meet the employer at the relevant level of management”.

If he or she wishes, the employer can choose to deal with redundancy and business transfers, through either recognised unions, or specially elected representatives (see I.3.4 and I.3.5), rather than informing and consulting information and consultation representatives on these issues.

**Practical application**

Where unions are recognised there is some evidence that they have used the regulations to improve their access to information and their consultation rights.

A survey of largely union-organised workplaces by the Labour Research Department in April 2006, found that, out of 150 responses, 49 (33%) had reviewed, amended or drawn up new information and consultation arrangements in the light of the regulations, although only 22 had set up new formal arrangements. Of these 15 had been initiated by the employer and seven by the union. In some cases the result had been the creation of new staff councils, involving both union and non-union members although generally the unions did not feel their position had been weakened\(^{202}\).

Where unions are not recognised, it is likely that new structures will only be set up where the employer initiates the process, as employees will find it difficult to reach the 10% threshold to ask for an agreement, or, perhaps more likely, will not know that they have this right, or wish to exercise it.

Overall the evidence so far is that the regulations have not produced major changes in employee representation at the workplace.

**6. Other representation bodies**

**European works councils**

Elections by the whole workforce will also normally be the mechanism for choosing UK representatives on the special negotiating body, charged with negotiating the arrangements for European works councils (EWCs).

UK members of the special negotiating body (SNB) for the EWC are elected by a ballot of the whole workforce, unless there is an existing consultative committee (a body whose normal functions include carrying out an information and consultation function) which itself consists entirely of members elected

\(^{201}\) Regulation 20 ICE regulations

\(^{202}\) Workplace Report, April 2006
by the whole workforce. In practice such committees are rare and normally the whole workforce will vote on UK members of the SNB. As well as employees, external trade union representatives can be members of the SNB from the UK, provided the employer recognises the union.203

The procedure is essentially the same for UK members of an EWC set up under the fallback provisions of the annex to the directive, although the members can be chosen by existing employee representatives, even if they have not been elected by the whole workforce. UK members of an EWC set up under the fallback provisions must be employees.

**UK representatives in European Companies and European Cooperative Societies**

The situation is slightly different for UK representatives for the employee involvement elements of European Companies and European Cooperative Societies.204 There is no need for a consultative committee to have been elected by all employees before it can appoint UK members to the special negotiating bodies. As well as employees, external trade union representatives can be members of the SNB from the UK. However, this is only possible if company management agrees that this should happen.

There are no specific UK rules on the choice of UK representatives for an SE representative body set up under the fallback procedure in the annex to the directive. This is left entirely to the special negotiating body.

Similarly, in the case of UK employee representatives at board level the UK legislation states only that “the [SE] representative body shall have the right to elect, appoint, recommend or oppose the appointment of” board members. There are no specific UK rules.

**IV. EMPLOYEE PARTICIPATION IN CORPORATE BODIES**

There is no general right for any employee representatives to participate at board level in the UK. The handful of experiments with employee representatives at board level in state-owned companies in the 1970s ended in the 1980s. Since then there have been a tiny number of examples where employee representatives have been present at board level, generally in companies which were either employee or publicly-owned.205

Such examples are very much the exception and there is no evidence that this is likely to change in the future.

**V. EMPLOYEE INVOLVEMENT IN EXTERNAL DECISIONS THAT AFFECT THE UNDERTAKING**

**Insolvency**

New provisions were introduced in 2006 to encourage the "rescue" of failing businesses.206 This is achieved in part by ensuring that some of the business's debts, including redundancy payments and

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203 The Transnational Information and Consultation of Employees Regulations 1999
204 The legislation on the European Company is the European Public Limited-Liability Company Regulations 2004 for Great Britain, the European Public Limited-Liability Company Regulations (Northern Ireland) 2004, for Northern Ireland. For the European Cooperative Society it is the European Cooperative Society (Involvement of Employees) Regulations 2006, which implements the Directive across the whole of the United Kingdom.
205 A report in 2002 for the TUC (Trade union involvement in information and consultation – a survey of current practice; Labour Research Department; October 2002) found that employee involvement continued to exist in at least two publicly-owned bus companies. These were Nottingham City Transport, where 82% of shares were owned by Nottingham City Council and Lothian Buses, which is wholly owned by the local authorities (91% Edinburgh 9% the adjacent councils).
outstanding wages, do not transfer to the new business. Instead they become payable by the government through the National Insurance Fund, in the same way as they would if a business closed but there was no transfer. Any remaining debts not met by the fund then transfer to the new owner.

The provisions apply where insolvency proceedings have been started, except where the proceedings consist of the liquidation of assets.

Secondly, the regulations allow for changes to terms and conditions after the transfer to take place. The normal restrictions do not apply and more limited restrictions apply in their place. Variations to terms and conditions can be agreed with the union representative or other appropriate representatives. Union representatives are entitled to paid time off for this purpose.

Operations affecting shareholders
Takeovers are not a relevant transfer under the regulations relating to business transfers and neither employee representatives at workplace level nor unions have a right to be consulted.

State aid
The Acas Code of Practice on Disclosure of Information to Trade Unions for Collective Bargaining Purposes lists “details of government financial assistance” as an example which it could be relevant to disclose for the purposes of collective bargaining. Other than this limited possibility of disclosure, there is no obligation to involve employee representatives or unions in obtaining state aid.
PART THREE.
EUROPEAN PROTAGONISTS
PART THREE. EUROPEAN PROTAGONISTS

I - THE SOCIAL PARTNERS

I.1 TRADE UNION ORGANIZATIONS

I.1.1 The European Trade Union Confederation (ETUC)

The ETUC exists to speak with a single voice in representation of the common interests of workers at European level. Founded in 1973, its membership now comprises 81 trade union organizations in 36 European countries, plus 12 industry-based federations. Its mission is to promote the European Social Model and to work for the development of a united Europe of peace and stability where working people and their families can enjoy full human and civil rights and high living standards.

The ETUC is one of the European social partners and it is recognized by the European Union, the Council of Europe and the European Free Trade Association (EFTA) as the only representative cross-sectoral trade union organization at European level. It comprises 81 affiliated organizations in 36 EU and non-EU European countries, plus 12 European Industry Federations. The number of ETUC affiliations continues to grow steadily. Trade union organizations from many of the central and eastern European countries were already affiliated before the EU’s enlargement to the new Member States in 2004, and more have joined since then. The ETUC has affiliates and three observers’ organizations in the EU candidate countries (Turkey, Croatia and Macedonia) as well as in countries outside the EU. It also coordinates the activities of 40 Inter-regional Trade Union Councils (ITUCs), which organise cross-border cooperation between trade unions.

ETUC-affiliated trade union organisations maintain their own decision-making structures. Delegates from the member organisations decide ETUC policies and activities at European level democratically, and the ETUC itself does not have a mandate to impose a line on national confederations.

The European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS) exists to support ETUC activities in these three specialist areas. In addition, the Social Development Agency (SDA) - a non-profitmaking organisation set up in 2004 and supported by the ETUC - promotes Europe’s social dimension in a global context.

The ETUC cooperates with trade union movements in countries and regions associated with the EU, and in cooperation with international confederations. It cooperates closely with the Pan-European Regional Council (PERC) of the International Trade Union Confederation (ITUC), established on 19 March 2007 at a founding assembly in Rome. The PERC comprises all the ITUC’s European affiliates and covers a wider area than the ETUC itself. It shares the same General Secretary as the ETUC. In addition to this, there are reciprocal observer arrangements between the ETUC and the ITUC in respective governing bodies and Congresses.

European institutional involvement

As a European social partner, with formal recognition in the founding Treaty of the European Community, the ETUC works with all the EU institutions in developing employment, social and macroeconomic policy. This involves taking part in the annual Tripartite Social Summits and other activities such as putting the trade union point of view in European Commission proposals; liaising with a cross-party Intergroup of MEPs in the European Parliament; and coordinating trade union participation in a number of advisory bodies, including the Economic and Social Committee and the EU agencies for vocational training (CEDEFOP), living and working conditions (European Foundation for the Improvement of Working and Living Conditions), and health and safety. Twice a year, meetings are held between the EU Economic and Financial Affairs Council (ECOFIN), the European Central Bank (ECB), the Commission and the social partners within the framework of the Macroeconomic Dialogue (MED), established in 1998.
I.1.2 Other International trade unions organizations

As a result of the challenges facing workers and their representatives as a result of globalisation, a new International Trade Union Confederation (ITUC) was created in 2006, basically aimed at merging both the largest International Confederations (worldwide) existing to date: the International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL). The opening up of world markets and the economy has prompted this historical decision to create a global trade union centre.

The ITUC’s primary mission is the promotion and defence of workers’ rights and interests, through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. Currently existing ICFTU and WCL regional organizations for Africa, the Americas and Asia-Pacific are expected to be unified by November 2007. The ITUC also cooperates closely with the ETUC, including through the ITUC Pan-European Regional Council. The ITUC has close relations with the Global Union Federations and the Trade Union Advisory Committee to the OECD (TUAC), working together through the Global Unions Council.

Representativeness

The question of representativeness of the organizations is fundamental as it constitutes the basis of their legitimacy for consultation by the Commission and for their recognition as a European social partner. The criteria of representativeness defined by the Commission in its December 1993 communication, established that, in order to be eligible for consultation, social partner organizations must:

- Be cross-industry, or relate to specific sectors or categories and be organized at European level.
- Consist of organisations which are themselves an integral and recognized part of Member States’ social partner structures and with the capacity to negotiate agreements, and which are representative of all Member States, as far as possible;
- To have adequate structures to ensure effective participation in the consultation process.

Organizations meeting these criteria are considered as having the legitimacy to be consulted in accordance with article 138 of the Treaty, which can lead to negotiations.

The European Commission has listed organisations to be consulted in different categories. In the category “general cross-industry organizations” one finds UNICE Union des Industries de la Communauté Européenne (Confederation of European Business), ETUC and CEEP Centre Européen des Entreprises à Participation (European Centre of Enterprises with Public Participation and Enterprises of General Economic Interest). In the category “organizations representing certain categories of workers or undertakings”, one finds UEAPME Union Européenne de l’Artisanat et des Petites et Moyennes Entreprises (European Association of Craft, Small and Medium-sized Enterprises), Eurocadres (Council of European Professional and Managerial Staff), and CEC Confédération Européenne des Cadres (European Confederation of Managers). In the category, “specific organizations”, one finds Eurochambres. The organizations engaged in a sectoral social dialogue at EU level belong to the category “sectoral organizations”. This breakdown by categories also underpins the composition of delegations for Tripartite social summit meetings.

I.2 EMPLOYERS’ ORGANIZATIONS

I.2.1 BUSINESSEUROPE

Since January 2007, the Confederation of European Business has been renamed BUSINESSEUROPE. It represents more than 20 million small, medium and large companies through its 39 leading national business federations from 33 countries. According to the mission statement, BUSINESSEUROPE actively promotes the role of business in Europe and advocates a favourable and competitive business environment to foster sustainable economic growth and sound economic governance.
BUSINESSEUROPE members are the most central and general business federations representative of employers and businessmen of Europe. Currently, the organisation operates a policy of accepting only one federation per country, although under previous Statutes it accepted more, especially when business representation was divided along “employers” and “industrialist” lines, as was the case in Germany and Denmark, to name two examples. Currently, there are associate member (countries which are negotiating accession with the EU) and full members. The country must be a member of the Council of Europe. All the federations from the countries of the 2004 and 2006 enlargements were members of BUSINESSEUROPE long before the enlargement. As the political centre of gravity pulls more and more from Brussels, this business organization is receiving applications from federations from countries likely to be member states.

BUSINESSEUROPE is not an authentic service-providing body as a national federation might be; it only issues publications which support a particular point of view. It has established a network which allows its members to be informed about EU developments on both general policy and specific dossiers as well as coordinating national viewpoints to create a continent-wide series of positions on policy and issues. BUSINESSEUROPE is not a member of any world-level or international institution as such. However, the nature of its concerns naturally leads to constant contact and collaboration with bodies such as the World Trade Organisation, the International Organisation of Employers, the TransAtlantic Business Dialogue and others.

Organizations affiliated to ETUC and BUSINESSEUROPE in the European Economic Area and candidate countries

<table>
<thead>
<tr>
<th>ETUC</th>
<th>BUSINESSEUROPE</th>
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<tbody>
<tr>
<td>OGB</td>
<td>Osterreichischer Gewerkschaftsbund (Austrian Trade Union Federation)</td>
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<tr>
<td>ABVV / FGTB</td>
<td>Algemeen Belgisch Vakverbond / Fédération Générale du Travail de Belgique (General Labour Federation of Belgium)</td>
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<tr>
<td>ACV / CSC</td>
<td>Algemeen Christelijk Vakverbond / Confédération des Syndicats chrétien (Confederation of Christian Trade Unions)</td>
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<tr>
<td>CGSLB</td>
<td>Centrale Générale des Syndicats Libéraux de Belgique (General Confederation of Liberal Trade Unions of Belgium)</td>
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<tr>
<td>CITUB</td>
<td>(Confederation of Independent Trade Unions of Bulgaria)</td>
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<tr>
<td>PODKREPA</td>
<td>(Confederation of Labour)</td>
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<tr>
<td>SSSH / UATUC</td>
<td>Saveza Samotnih Sindikata Hrvatske (Union of Autonomous Trade Unions of Croatia)</td>
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<tr>
<td>SEK</td>
<td>Synomopospondia Ergaton Kyprou (Cyprus Workers' Confederation)</td>
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<tr>
<td>CMK OS</td>
<td>(Czech Moravian Confederation of Trade Unions)</td>
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<tr>
<td>AC</td>
<td>Akademikernes Centralorganisation (Danish Confederation of Professional Associations)</td>
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<td>FTF</td>
<td>Funktionærenes og Tjenestemændenes Fællesråd (Salaried Employees' and Civil Servants' Confederation)</td>
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<tr>
<td>LO-DK</td>
<td>Landesorganisationen i Danmark (Danish Confederation of Trade Unions)</td>
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<td>EAKL</td>
<td>Eesti Ametiühingute Kesklit (Association of Estonian Trade Unions)</td>
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<td>TALO</td>
<td>Teenistujate Ametiliitude Organisatsioon (Estonian Employees‘ Unions’ Association)</td>
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<tr>
<td>AKAVA</td>
<td>(Confederation of Unions for Academic Professionals in Finland)</td>
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<tr>
<td>SAK</td>
<td>Suomen Ammattiliittojen Keskusjärjestö (Central Organisation of Finnish Trade Unions)</td>
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<td>STTJ</td>
<td>Toimihenkilökeskusjärjestö (Finnish Confederation of Salaried Employees)</td>
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<tr>
<td>CFDT</td>
<td>Confédération Française Démocratique du Travail (French Democratic Confederation of Labour)</td>
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<tr>
<td>CFTC</td>
<td>Confédération Française des Travailleurs chrétiens (French Christian Confederation)</td>
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<tr>
<td>ETUC</td>
<td>BUSINESSEUROPE</td>
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<tr>
<td>Confédération Générale du Travail (General Confederation of Labour)</td>
<td>BDI Bundesverband der Deutschen Industriebereiche e.V.</td>
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<tr>
<td>Confederation of Christian Workers)</td>
<td>BDA Bundesvereinigung der Deutschen Arbeitgeberverbände e.V.</td>
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<tr>
<td>Deutscher Gewerkschaftsbund Bundesvorstand (German Confederation of Trade Unions)</td>
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<tr>
<td>Anotati Diikisis Enoseon Dimosion Ypallilon (Confederation of Greek Civil Servants’ Trade Unions)</td>
<td>SEV Federation of Greek Industries</td>
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<tr>
<td>Geniki Synomospondia Ergaton Ellados (Greek General Confederation of Labour)</td>
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<tr>
<td>Autonomous Trade Union Confederation</td>
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<td>Democratic League of Independent Trade Unions</td>
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<tr>
<td>National Federation of Workers’ Councils</td>
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<tr>
<td>Szakszervezetek Együttműködési Foruma (Forum for Trade Union Co-operation)</td>
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<tr>
<td>Értelemiségi Szakszervezeti Tömörülés (Confederation of Unions of Professionals)</td>
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<tr>
<td>Irish Congress of Trade Unions</td>
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<tr>
<td>Confederazione Generale Italiana del Lavoro (Italian General Confederation of Labour)</td>
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<tr>
<td>Sindacati Lavoratori (Italian Confederation of Workers’ Trade Unions)</td>
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<tr>
<td>Unione Italiana del Lavoro (Italian Union of Labour)</td>
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<tr>
<td>Althydusamband Islands (Icelandic Confederation of Labour)</td>
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<tr>
<td>Bandalag Starfsmanna Rikis of Bæja (Confederation of State and Municipal Employees)</td>
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<tr>
<td>Latvijas Brivo Arodbiedrību Savienība (Union of Independent Trade Unions of Latvia)</td>
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<tr>
<td>Liechtensteinischer ArbeitnehmerInnenverband (Liechtenstein Federation of Employees)</td>
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<tr>
<td>Lietuvos Darbo Federacija (Lithuanian Labour Federation)</td>
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<tr>
<td>Lietuvos Profesinio Sąjungų Konfedaracija (Lithuanian Trade Union Confederation)</td>
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<tr>
<td>Lietuvos Darbininkų Sąjunga “Solidarumas” (Lithuanian Trade Union “Solidarumas”)</td>
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<tr>
<td>Lietuvos Pramonininkų Konfederaciją (Lithuanian Confederation of Industrialists)</td>
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<td>Lietuvos Pramonininkų Konfederaciją (Lithuanian Confederation of Industrialists)</td>
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<td>Lietuvos Pramonininkų Konfederaciją (Lithuanian Confederation of Industrialists)</td>
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<td>ETUC</td>
<td>BUSINESSEUROPE</td>
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<tr>
<td><strong>UNIO</strong> (Confederation of Unions for Professionals)</td>
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<tr>
<td><strong>CNV</strong> Christelijk Nationaal Vakverbond (National Federation of Christian Trade Unions)</td>
<td><strong>NETHERLANDS</strong></td>
</tr>
<tr>
<td><strong>FNV</strong> Federatie Nederlandse Vakbeweging (Netherlands Trade Union Confederation)</td>
<td><strong>NETHERLANDS</strong></td>
</tr>
<tr>
<td><strong>MHP</strong> Vakcentrale voor middengroepen en hoger personeel (Trade Union Federation for Middle Classes and Higher Level Employees)</td>
<td><strong>NETHERLANDS</strong></td>
</tr>
<tr>
<td><strong>NSZZ Solidarnosc</strong>, Nieraleczny Samorzadny Zwiázków Zawodowych &quot;Solidarnosc&quot; (Independent and Self-Governing Trade Union &quot;Solidarnosc&quot;)</td>
<td><strong>POLAND</strong></td>
</tr>
<tr>
<td><strong>OPZZ</strong> Ogólnopolskie Porozumienie Zwiázków Zawodowych (National Polish Alliance of Trade Unions)</td>
<td><strong>POLAND</strong></td>
</tr>
<tr>
<td><strong>CGTP-IN</strong> Confederação Geral dos Trabalhadores Portugueses (General Confederation of Portuguese Workers)</td>
<td><strong>PORTUGAL</strong></td>
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<tr>
<td><strong>UGT-P</strong> União Geral de Trabalhadores (Portuguese General Workers’ Union)</td>
<td><strong>PORTUGAL</strong></td>
</tr>
<tr>
<td><strong>BNS</strong> (National Trade Unions Block)</td>
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<tr>
<td><strong>CARTEL ALFA</strong> Confederatia Natională Sindicală (National Trade Union Confederation - Cartel ALFA)</td>
<td><strong>ROMANIA</strong></td>
</tr>
<tr>
<td><strong>CNSLR-Fratia</strong> (National Confederation of Free Trade Unions of Romania – FRATIA)</td>
<td><strong>ROMANIA</strong></td>
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<tr>
<td><strong>CSDR</strong> (Democratic Trade Union Confederation of Romania)</td>
<td><strong>ROMANIA</strong></td>
</tr>
<tr>
<td><strong>KÖZ SR</strong> (Confederation of Trade Unions of the Slovak Republic)</td>
<td><strong>SLOVAKIA</strong></td>
</tr>
<tr>
<td><strong>ZSSS</strong> Zveza Svobodnih Sindikatov Slovenije (Slovenian Association of Free Trade Unions)</td>
<td><strong>SLOVENIA</strong></td>
</tr>
<tr>
<td><strong>CC.OO</strong> Confederación Sindical de Comisiones Obreras (Trade Union Confederation of Workers’ Commissions)</td>
<td><strong>SPAIN</strong></td>
</tr>
<tr>
<td><strong>STV-ELA</strong> Solidaridad de Trabajadores Vascos Eusko Langileen Alkartasuna (Basque Workers’ Union)</td>
<td><strong>SPAIN</strong></td>
</tr>
<tr>
<td><strong>UGT-E</strong> Unión General de Trabajadores (Spanish General Workers’ Union)</td>
<td><strong>SPAIN</strong></td>
</tr>
<tr>
<td><strong>USO</strong> Unión Sindical Obrera (Spanish Workers’ Union)</td>
<td><strong>SPAIN</strong></td>
</tr>
<tr>
<td><strong>LO-S</strong> Landsorganisationen i Sverige (Swedish Trade Union Confederation)</td>
<td><strong>SWEDEN</strong></td>
</tr>
<tr>
<td><strong>SACO</strong> Sveriges Akademikers Centralorganisation (Swedish Confederation of Professional Associations)</td>
<td><strong>SWEDEN</strong></td>
</tr>
<tr>
<td><strong>TCO</strong> Tjänstemännens Centralorganisation (Swedish Confederation of Professional Employees)</td>
<td><strong>SWEDEN</strong></td>
</tr>
<tr>
<td><strong>TUC</strong> Trades Union Congress</td>
<td><strong>UNITED KINGDOM</strong></td>
</tr>
<tr>
<td><strong>TURK-SEN</strong> Kıbrıs Türk Isçi Sendikaları Federasyonu (Turkish Workers’ Trade Union Federation)</td>
<td><strong>TURKEY</strong></td>
</tr>
<tr>
<td><strong>DISK</strong> Türkiye Devrimci Isçi Senikaları Konfederasyonu (Confederation of Progressive Trade Unions of Turkey)</td>
<td><strong>TURKEY</strong></td>
</tr>
<tr>
<td><strong>HAK-IS</strong> Türkiye Hak Isçi Sendikaları Konfederasyonu (Confederation of Turkish Real Trade Unions)</td>
<td><strong>TURKEY</strong></td>
</tr>
<tr>
<td><strong>KESK</strong> Kamu Emekçileri Sendikaları Konfederasyonu (Confederation of Public Employee Trade Unions)</td>
<td><strong>TURKEY</strong></td>
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<tr>
<td><strong>TURK-IS</strong> Türkiye Isçi Sendikaları Konfederasyonu (Confederation of Turkish Trade Unions)</td>
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<tr>
<td><strong>DISK</strong> Türkiye Devrimci Isçi Senikaları Konfederasyonu (Confederation of Progressive Trade Unions of Turkey)</td>
<td><strong>TÜSİAD</strong> (Turkish Association of Industrialists and Businessmen)</td>
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<tr>
<td><strong>HAK-IS</strong> Türkiye Hak Isçi Sendikaları Konfederasyonu (Confederation of Turkish Real Trade Unions)</td>
<td><strong>TÜSİAD</strong> (Turkish Association of Industrialists and Businessmen)</td>
</tr>
<tr>
<td><strong>KESK</strong> Kamu Emekçileri Sendikaları Konfederasyonu (Confederation of Public Employee Trade Unions)</td>
<td><strong>TÜSİAD</strong> (Turkish Association of Industrialists and Businessmen)</td>
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<tr>
<td><strong>TURK-IS</strong> Türkiye Isçi Sendikaları Konfederasyonu (Confederation of Turkish Trade Unions)</td>
<td><strong>TÜSİAD</strong> (Turkish Association of Industrialists and Businessmen)</td>
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</tbody>
</table>
1.2.2. (pas de 1.2.1.2.) Other European Employers’ organizations

CEEP Centre Européen des Enterprises à Participation (European Centre of Enterprises with Public Participation and Enterprises of General Economic Interest) was founded in 1961 and has been recognised by the European Commission as a European Social Partner. Its original aims included uniting the national public enterprises’ federations to foster solidarity between them; acting as a spokesperson body to the European institutions. CEEP still works towards maintaining regular consultation with official institutions and consultative bodies, analysing current problems, and contributing to its responses on European draft regulations, directives and other legislation of interest to its members. Its activities focus on different sectors: Energy, Enterprises, Internal market & Competition, Communications, Services of General Interest & Statistics, Economic and Monetary Policy, Social Affairs & Social Dialogue, Sustainable Tourism, Transparent public service evaluation, Transport and Water.

UEAPME Union Européenne de l’Artisanat et des Petites et Moyennes Entreprises (European Association of Craft, Small and Medium-sized Enterprises) is the employer’s organisation representing the interests of European crafts, trades and SMEs at EU level. As the European SME umbrella organisation, UEAPME incorporates 81 member organisations consisting of national cross-sectorial SME federations, European branch federations and other associate members, which support the SME family. UEAPME acts as an ‘agenda setter’ in the area of European SME policy. It has a direct role in all EU policy that has an affect on SMEs, through direct links and contacts with the EU administration, strengthened by its status of Social Partner.

EUROCHAMBRE is the Brussels based Association of European Chambers of Commerce and Industry. Created in 1958, EUROCHAMBRES has member organisations in 45 countries representing a network of 2,000 regional and local Chambers with over 19 million member companies. More than 90% of these enterprises are small or medium enterprises (SMEs). Its mission is to represent, serve and promote European Chambers of Commerce and Industry.

EUROCOMMERCE represents the retail, wholesale and international trade sectors in Europe (6 million companies, mostly SMEs, providing jobs to 30 million people and generating 11% of EU GDP). Its membership includes commerce federations in 29 countries, European and national associations representing specific commerce sectors and individual companies. It promotes the interests of European commerce on all legislative proposals affecting the sector. Established in 1993, it has also been recognised as a social partner, actively engaged in European Social Dialogue. EuroCommerce is represented in a wide number of platforms (over 40) specialised in the various policy areas affecting commerce activities and is a member of FIRAE, the Forum for International Retail Associations Executives, which groups retail associations worldwide.

The Committee of Professional Agricultural Organisations in the European Union (COPA) is made up of 53 organisations from the 27 Member States of the European Union, and other associated partner organisations from Iceland, Norway, Switzerland and Turkey. Created on 6 September 1958, the main objectives of COPA are to represent the interests of the agricultural sector and to examine any matters related to the development of the Common Agricultural Policy.

COGECA, the General Confederation of Agricultural Co-operatives in the European Union, was founded in 1959 by COPA. As an officially recognised representative body of all agricultural and fishery co-operatives in the EU, COGECA represents their general and specific interests vis-à-vis the Community authorities.
Developments in European Social dialogue

The EU Treaty gives the social partners the right to formulate their own legislative proposals through cross-industry agreements on major social policy issues. The social partners have already negotiated three agreements at EU level implemented by important European Directives establishing essential rights for workers: parental leave (1996); part-time work (1997) and fixed-term contract (1999).

Since 2002, the development of a more autonomous social dialogue between employers and workers’ representatives has been promoted. Social partners have concluded “autonomous” agreements on: telework (2002); work-related stress (2004); harassment and violence at work (2007); framework of actions for the lifelong development of competencies and qualifications (2002), and a framework of actions on gender equality (2005). These are implemented by the social partners themselves at national, regional and enterprise level or by European directives.

In March 2006 the European social partners adopted their second Multiannual Work Programme, to run until 2008, identifying areas of joint action. Social dialogue also takes place in 33 different industrial sectors, coordinated on the trade union side by the European Industry Federations. This is an important tool for tackling industry-specific questions at a European level. Sectoral social dialogue committees deal with, for example, training, working time and conditions, health and safety, sustainable development, and free movement of workers. They have adopted around 300 joint texts including joint opinions and agreements, guidelines and codes of conduct.
II - THE INSTITUTIONS OF THE EUROPEAN UNION

II.1 INTRODUCTION

Article 7 of the EC Treaty establishes an institutional architecture of five main bodies, called “Institutions” (Parliament, Council, Commission, Court of Justice, Court of Auditors), which are helped by several other bodies of lower formal rank. Nowadays the Treaty of Nice is the framework of their relationships, established around the principle of “institutional equilibrium”, understood as the mutual respect of their own competences and powers.

After the reforms made by the Treaty of Nice, there are four main legislative procedures, reflecting the different possibilities of that equilibrium:

- The procedure now used for most EU law-making (Article 251 EC) is the co-decision procedure. Parliament does not merely give its opinion: it shares equal legislative power with the Council. It puts Parliament, in principle, on an equal footing with the Council. If they agree, the act is adopted on first reading; if they do not agree, the act can only be adopted after successful conciliation. If Council and Parliament cannot agree on a piece of proposed legislation, it is put before a conciliation committee, composed of an equal number of Council and Parliament representatives. Once this committee has reached an agreement, the agreed text is sent once again to Parliament and the Council so that they can finally adopt it as law. The codecision procedure applies to 46 legal principles in the EC Treaty that allow for the adoption of legislative acts, since the Treaty of Nice came into force. It may therefore be considered a standard legislative procedure.

- The consultation procedure continues to apply in several fields, including some listed in Article 137 EC, and implies the most powerful position of the Council and the less powerful one of the Parliament. This procedure also applies to a new ‘framework-decision’ instrument created by the Amsterdam Treaty under the third pillar (Article 34(2)(b) EU) for the purpose of approximation of laws and regulations. Under the consultation procedure, the Council consults Parliament as well as the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR). Parliament can approve the Commission proposal, reject it or ask for amendments. If Parliament asks for amendments, the Commission will consider all the changes Parliament suggests. If it accepts any of these suggestions it will send the Council an amended proposal. The Council examines the amended proposal and either adopts it or amends it further. In this procedure, as in all others, if the Council amends a Commission proposal it must do so unanimously.

- The assent procedure means that the Council has to obtain the European Parliament’s assent before certain very important decisions are taken. The procedure is the same as in the case of consultation, except that Parliament cannot amend a proposal: it must either accept or reject it. Acceptance (‘assent’) requires an absolute majority of the vote cast. The assent procedure applies to the few legislative areas in which the Council acts by unanimous decision, limited since the Amsterdam Treaty to the Structural Funds and Cohesion (Article 161 EC).

- The cooperation procedure (Article 252 EC) was introduced by the Single European Act. This procedure obliges the Council to take into account at second reading Parliament's amendments adopted by an absolute majority, provided that they have been included by the Commission. This marked the beginning of real legislative power for Parliament. Its importance has been diminished by the general use of the codecision procedure under the Amsterdam Treaty. It survives only in four provisions of Economic and Monetary Policy (Articles 98 et seq.).

II.2 THE EUROPEAN PARLIAMENT

As an institution representing the peoples of Europe, Parliament forms the democratic basis of the Community. In accordance with the Intergovernmental Conference of Nice, a new distribution of seats in the European Parliament was applied at the European elections in 2004. The maximum number of
Members (previously set at 700 according to the Treaty of Amsterdam) was increased to 732. With the accession of Bulgaria and Romania on 1st January 2007 the number of seats in the European Parliament was temporarily raised to 785 in order to accommodate MEPs from these countries. After the 2009 elections the number of seats will be reduced to 736.

Since 1st January 2007, membership of the European Parliament has been as follows:

<table>
<thead>
<tr>
<th>Country</th>
<th>Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>24</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>6</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>18</td>
</tr>
<tr>
<td>Hungary</td>
<td>24</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>24</td>
</tr>
<tr>
<td>Malta</td>
<td>5</td>
</tr>
<tr>
<td>Denmark</td>
<td>14</td>
</tr>
<tr>
<td>Netherlands</td>
<td>27</td>
</tr>
<tr>
<td>Germany</td>
<td>99</td>
</tr>
<tr>
<td>Austria</td>
<td>18</td>
</tr>
<tr>
<td>Estonia</td>
<td>6</td>
</tr>
<tr>
<td>Poland</td>
<td>54</td>
</tr>
<tr>
<td>Greece</td>
<td>24</td>
</tr>
<tr>
<td>Portugal</td>
<td>24</td>
</tr>
<tr>
<td>Spain</td>
<td>54</td>
</tr>
<tr>
<td>Romania</td>
<td>35</td>
</tr>
<tr>
<td>France</td>
<td>78</td>
</tr>
<tr>
<td>Slovenia</td>
<td>7</td>
</tr>
<tr>
<td>Ireland</td>
<td>13</td>
</tr>
<tr>
<td>Slovakia</td>
<td>14</td>
</tr>
<tr>
<td>Italy</td>
<td>78</td>
</tr>
<tr>
<td>Finland</td>
<td>14</td>
</tr>
<tr>
<td>Cyprus</td>
<td>6</td>
</tr>
<tr>
<td>Sweden</td>
<td>19</td>
</tr>
<tr>
<td>Latvia</td>
<td>9</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>78</td>
</tr>
<tr>
<td>Lithuania</td>
<td>13</td>
</tr>
</tbody>
</table>

Total: 785 (absolute majority: 393)

Members do not sit in national delegations but according to their political affinities, in transnational groups. Under the Rules of Procedure, a political group shall comprise Members elected in at least one-fifth of the Member States. After accession of Bulgaria and Romania, the minimum number of Members required to form a political group is twenty, coming from at least six Member States. Several political groupings have founded political parties that operate at European level.

Parliament takes part in the drafting of Community legislation to varying degrees, according to the individual legal basis.

In addition, the Maastricht Treaty also gives Parliament the right of legislative initiative, but this is limited to asking the Commission to put forward a proposal.

Apart from its legislative power, the European Parliament assumes the following responsibilities:

- **Budgetary process**: it is involved in the budgetary process from the preparation stage, notably in laying down the general guidelines and the type of spending. When debating the budget it has the power to make amendments to non-compulsory expenditure but only to propose modifications to compulsory expenditure. It finally adopts the budget and monitors its implementation.

- **Investiture of the Commission**: the approval of the European Parliament is required before the Member States can appoint the President and Members of the Commission as a collegiate body.

- **Motion of censure**: the Treaty of Rome made provision for a motion of censure of the European Parliament against the Commission.

- **Committees of inquiry**: Parliament has the power to set up a temporary committee of inquiry to investigate alleged contraventions or maladministration in the implementation of Community law.
control over common foreign and security policy and police and judicial cooperation: Parliament is entitled to be kept informed in these areas and may address questions or recommendations to the Council. It must be consulted on the main aspects and basic choices of the common foreign and security policy and on any measure envisaged apart from the common positions on police and judicial cooperation.

Parliament has the right to institute proceedings before the Court of Justice in cases of violation of the Treaty by another Institution.

II.3 THE COUNCIL OF EUROPEAN UNION OR THE COUNCIL (OF MINISTERS)

The Council consists of a representative of each Member State, at ministerial level, "authorised to commit the government of that Member State" (Article 203 EC). The Council is chaired by the representative of the Member State that holds the Union's presidency, which changes every six months.

Depending on the area concerned, the Council takes its decision, by simple majority, qualified majority or unanimously:

- **Simple majority**: this means that a decision is taken when there are more votes for than against. Each Member of the Council has one vote.

- **Qualified majority**: In many cases the Treaty requires decisions by qualified majority, which entails more votes than a simple majority. In that case there is no longer equality of voting rights. Each country has a certain number of votes in line with its population (Article 205(2) EC) (29 for Germany, the United Kingdom, France and Italy; 27 for Spain and Poland; 14 for Romania; 13 for the Netherlands; 12 for Greece, the Czech Republic, Belgium, Hungary and Portugal; 10 for Sweden, Bulgaria, Austria and Slovakia; 7 for Denmark, Finland, Ireland and Lithuania; 4 for Latvia, Slovenia, Estonia, Cyprus and Luxembourg; 3 for Malta). Since 1 November 2004, the qualified majority is obtained if (with 27 Member States), decision receives at least 255 votes of a new total of 345 (73.91%), decision is approved by a majority of Member States, and decision is approved by at least 62% of the EU's population (the check on this latter criterion must be requested by a Member State).

- **Unanimity**: is required by the EC Treaty for some of the most important (taxation, social security, etc.).

The Council of Ministers is responsible for the economic policy, the common foreign and security policy and cooperation in the fields of justice and home affairs and the adoption of the Community budget with the European Parliament. In addition, it concludes the international agreements, which are negotiated by the Commission and require Parliament's assent in some cases.

Moreover, the Council lays down the Community legislation. Apart from individual decisions and non-binding recommendations and issues resolutions, the Council adopts legislation in the form of regulations and directives, either jointly with the European Parliament or alone, after consultation with the European Parliament, on proposals presented by the Commission.

II.4 THE COMMISSION OF THE EUROPEAN COMMUNITIES OR EUROPEAN COMMISSION

The Commission is a State-independent institution, representing the common European interest, and resembling a potential European executive. Since 1st November 2004, it consists of one Commissioner per Member State. Since the Union reached the number of 27 Member States on 1st January 2007, the number of Commissioners also stands at 27, nominated by the Council and approved by the European Parliament. Commissioners are appointed for five years on the basis of individual accountability. A commissioner can be dismissed by the Court of Justice, at the request of the Council or the Commission itself. The Commission is collectively liable to Parliament under Article 201 EC. If Parliament adopts a motion of censure against the Commission, all of its Members are required to resign. As a rule, the
Commission takes decisions by a majority vote, under Article 17 of the Merger Treaty of 1965. This establishes the principle of collegiate responsibility.

Because it acts in the common interest, the Commission is responsible for launching Community action and ensuring that it is carried out. It has two main powers:

- **Power of initiative** (full initiative: the power of proposal, and limited initiative: the power of recommendation). As a rule, the Commission has a monopoly on the initiative in Community decision-making, and its proposals can only be changed by the Council through unanimous vote.

- **Powers to monitor the implementation of Community law.** This is its role as guardian of the treaties. The Community treaties require the Commission to ensure they are properly implemented, together with any decision taken to implement them (secondary law). These powers include the capacity of going before the Court and proceeding against Member States for failure to fulfil an obligation.

Furthermore, the Commission enjoys other substantial powers: implementing powers conferred by the treaties (i.e implementing the budget, under Article 274 EC; enforcing competition rules, particularly in monitoring state subsidies, under Article 88(2) EC) or delegated by the Council; the regulatory powers and the consultative powers.

**II.5 THE EUROPEAN COURT OF JUSTICE**

The Court is composed of 27 judges and 8 advocates-general, which stand for 6 years. Nevertheless, the Council, acting unanimously, may increase the number of advocates-general. They are generally appointed by common accord of the governments of the Member States. In accordance with the Treaty of Nice, the Court sits in chambers (of three or five judges), in a Grand Chamber (11 judges) or in a full Court. The main function of the Court is to ensure that 'in the interpretation and application of the Treaties the law is observed'.

The Court assumes the following responsibilities:

- **Direct proceedings against Member States or Community institutions.** The Court gives a ruling on the proceedings against the states or institutions that have not fulfilled their obligations under Community law.
  
  - **Proceedings against the Member States for failure to fulfil an obligation.** These actions are brought: either by the Commission, after a preliminary procedure, or by another Member State, after it has brought the matter before the Commission (Article 227).
  
  - **Proceedings against the Community institutions for annulment and for failure to act.** Subject: cases where the institutions have adopted acts that are contrary to Community law (annulment: Article 230) have infringed Community law or failed to act (failure to act: Article 232). Referral: actions may be brought by the Member States, the institutions themselves or any natural or legal person if it involves a decision affecting them.

- **Other direct proceedings.** Actions against Commission decisions imposing penalties on firms (Article 229).

- **Indirect proceedings: question of validity raised before a national court or tribunal.** The national courts are normally responsible for applying Community law in cases relating to the implementation of the law. However, when an issue relating to the interpretation of the law is raised before a national court or tribunal, the court or tribunal may seek a preliminary ruling from the Court of Justice. If it is a court of last instance, it is compulsory to refer the matter to the Court.
Responsibility at second instance. The Court has the jurisdiction to review appeals limited to points of law in rulings of the Court of First Instance. The appeals do not have suspensory effect.

II.6 THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

The European Economic and Social Council (EESC) is a consultancy organ of the Commission and the Council (art.7.2 ECT), lacking the formal rank of Institution. It may also be consulted by the European Parliament (art. 262 ECT). The EESC is compulsorily consulted on the subjects set forth in the Treaty (social policy, transport, the environment, agriculture, etc) and voluntarily whenever the European institutions deem it appropriate. The compulsory consulting of the EESC forms part of the Community pre-legislation process. Likewise, the EESC may issue opinions (reports) on its own initiative. In accordance with the EUT, the number of members of the EESC may not exceed three hundred and fifty (currently, after the entry of Bulgaria and Rumania, it is formed by 344 members). The “consultants” of the EESC – its members are referred to in this way – are proposed by the Member States and appointed by the Council of Ministers of the European Union, they have a term of four years and they are structured in three Groups: employers, workers and miscellaneous activities. After the expiry of the ECSC treaty, a Consultative Committee on Industrial Modifications (CCMI) was established within the EESC, formed by members of the EESC and delegates representing different European industrial sectors.
III - INTERNATIONAL INSTITUTIONS

III.1 THE INTERNATIONAL LABOUR ORGANISATION (ILO)

The International Labour Organisation was founded after World War I, within the framework of the League of Nations. It survived the disappearance of this organization, moving into the framework of the United Nations after World War II. Nowadays, it is the UN’s organism for labour and social affairs, having as principal institutions the International Labour Conference, the Governing Body and the Internacional Labour Office, headed by the Director General.

As the world's only tripartite multilateral agency, the ILO is dedicated to bringing decent work and livelihoods, job-related security and better living standards to the people of both poor and rich countries. It helps to attain these goals by promoting rights at work, encouraging opportunities for decent employment, enhancing social protection and strengthening dialogue on work-related issues.

Its most important role is the development of universal labour standards, applicable to all the States that ratify its Conventions (nowadays, more than 180, some of them out of force) and non-binding Recommendations. In 1998, the ILO Declaration on Fundamental Principles and Rights at Work proclaimed, as an expression of commitment by governments, employers' and workers' organizations to uphold basic human values, eight key Conventions in four areas: Forced Labour (C29, C105), Freedom of association (C87, C98), Discrimination (C100, C111) and Child Labour (C138, C182).

The most important Conventions on Freedom of Association, Collective Bargaining and Industrial Relations are C87, Freedom of Association and Protection of the Right to Organise, 1948 (ratified by all European Union Member States); C98, Right to Organise and Collective Bargaining, 1949 (ratified by all European Union Member States); C135, Workers’ Representatives, 1971 (not ratified by Belgium, Bulgaria, Ireland nor Slovakia); C151, Labour Relations (Public Service), 1978 (not ratified by Austria, Bulgaria, Czech Republic, Estonia, France, Germany, Ireland, Lithuania, Malta, Romania, Slovakia nor Slovenia); C154, Collective Bargaining, 1981 (not ratified by the majority of Member States); and C173 Protection of Workers’ Claims (Employer's Insolvency), 1992 (ratified only by Austria, Bulgaria, Finland, Latvia, Lithuania, Slovakia, Slovenia and Spain). There are also several other Conventions of lesser importance, such as, C11 Right of Association (Agriculture) Convention, 1921; C84, Right of Association (Non-Metropolitan Territories) Convention, 1947; and C141, Rural Workers’ Organisations Convention, 1975.

The most important Recommendations, linked to these Conventions, on these subject are R91, Collective Agreements Recommendation, 1951; R92, Voluntary Conciliation and Arbitration Recommendation, 1951; R94, Co-operation at the Level of the Undertaking Recommendation, 1952; R113, Consultation (Industrial and National Levels) Recommendation, 1960; R129, Communications within the Undertaking Recommendation, 1967; R130, Examination of Grievances Recommendation, 1967; R143, Workers’ Representatives Recommendation, 1971; R149, Rural Workers’ Organisations Recommendation, 1975; R159, Labour Relations (Public Service) Recommendation, 1978; and R163, Collective Bargaining Recommendation, 1981.

III.2 THE ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD)

Founded as the Organisation for European Economic Co-operation (OEEC) in 1947 to administer American and Canadian aid under the Marshall Plan for the reconstruction of Europe after World War II, the OECD took over from the OEEC in 1961. Since then, its mission has been to help its member countries to achieve sustainable economic growth and employment and to raise the standard of living in member countries while maintaining financial stability – all this in order to contribute to the development of the world economy. Its founding Convention also calls on it to assist sound economic expansion in other countries and to contribute to growth in world trade on a multilateral, non-discriminatory basis.
The OECD brings together the governments of countries committed to democracy and the market economy from around the world to support sustainable economic growth, boost employment, raise living standards, maintain financial stability, assist other countries’ economic development and contribute to growth in world trade.

Combating poverty and social exclusion remain high on the policy agenda in all countries within and outside the OECD. But fostering individual and social development requires more than that. A wide range of issues from employment, trade and labour standards, health, family, gender-equity to education and population ageing, need to be addressed. Creating more and better jobs is a major task for most governments. The OECD work on the Employment Outlook, the Restated OECD Jobs Strategy, labour market policies, upgrading workers’ skills (PIAAC project) and younger, older and disabled people helps address this challenge. Its large range of labour market statistics and indicators also provide the facts needed for a thoughtful study and reflexion.

In its activity in the financial and affairs-related field, the OECD has issued Guidelines for Multinational Enterprises. The Guidelines are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws. Observance of the Guidelines by enterprises is voluntary and not legally enforceable. However, the issuing governments are committed to their application in their own territories. The instrument’s distinctive implementation mechanisms include the operations of National Contact Points (NCP), government offices that promote the Guidelines and act as a forum for discussion of all matters relating to the Guidelines. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the Guidelines in a changing world. Adhering countries comprise all 30 OECD member countries, and ten non-Member countries (Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia).

Guideline IV deals with Industrial Relations’ matters. It establishes that these enterprises should respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers’ associations, with them with a view to reaching agreements on employment conditions. Insisting in their role, it also suggests providing facilities to employee representatives as may be necessary to assist in the development of effective collective agreements, providing information to employee representatives which is needed for meaningful negotiations on conditions of employment, promoting consultation and co-operation between employers and employees and their representatives on matters of mutual concern, and also providing information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

III.3 THE COUNCIL OF EUROPE

Founded in 1949, the Council of Europe (COE) seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals.

The main component parts of the Council of Europe are:

– the Committee of Ministers, the Organisation's decision-making body, composed of the 47 Foreign Ministers or their Strasbourg-based deputies (ambassadors/permanent representatives);

– the Parliamentary Assembly, driving force for European co-operation, grouping 636 members (318 representatives and 318 substitutes) from the 47 national parliaments:

– the Congress of Local and Regional Authorities, the voice of Europe's regions and municipalities, composed of a Chamber of Local Authorities and a Chamber of Regions;

– the 1800-strong secretariat recruited from member states, headed by a Secretary General, elected by the Parliamentary Assembly.

The European Social Charter, adopted in 1961 and revised in 1996, is the COE’s main social text. It guarantees a wide range of social and economic human rights. These include the right to strike, the freedom to form trade unions and employers’ organisations to defend economic and social interests,
including the individual freedom to decide whether or not to join them, and also the promotion of joint consultation, collective bargaining, conciliation and voluntary arbitration. The European Committee of Social Rights (ECSR) is the body responsible for monitoring compliance in the states party to the Charter.

Within the COE’s framework, the primary task of the Directorate General of Social Cohesion (DG III) is to foster social cohesion and to improve the quality of life in Europe for the genuine enjoyment of fundamental human rights and respect of human dignity. The mandate of the Directorate is fulfilled through the promotion of European standards in the social and health field, support of ethnic and cultural diversity, and the implementation of social development co-operation. The Directorate also seeks to develop multi-disciplinary and innovative policies and to give practical support to policy makers, professionals and field workers across Europe through its legal standard-setting instruments, ministerial conferences, intergovernmental committees and groups of experts who meet regularly.
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