

## **REPRESENTATION OF EMPLOYEES IN COLLECTIVE BARGAINING WITHIN THE FIRM**

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### **I. Trade union representation of employees in collective bargaining within the firm**

#### *1.1. Trade union as a traditional form of employees' representation in collective bargaining within the firm*

In Hungary all employee organizations whose primary function is the promotion and protection of employees' interests related to their employment relationship shall be construed as trade unions. Employees shall be entitled to organize trade unions within the work organization. The trade union has right to operate chapters inside any work organization and to involve its members in the operation of such chapters. Trade unions have the right to inform their members of their rights and obligations concerning their financial, social, cultural, as well as living and working conditions, furthermore to represent their members against the employers and before state agencies in matters concerning labour relations and employment matters. In Hungary trade unions can be entitled to represent their members, if duly authorized, before the court or any other authority or agency in matters concerning their living and working conditions. An employer may not deny entry of a person acting on behalf of a trade union who is not employed by the employer onto the employer's premises, if any member of the trade union in question is employed by the employer. The trade union shall notify the employer accordingly in advance. Trade unions are entitled to conclude collective bargaining agreements in accordance with the regulations set in the Labour Code of the Hungarian Republic.

State authorities, local governments and employers have to cooperate with trade unions; within the framework of such cooperation they shall promote their interest representation activities by providing the information required for such activities, and shall notify trade unions of their detailed position and the

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reasons for such position in relation to trade union comments and proposals within a period of thirty days. Employers must consult the local trade union branch prior to passing a decision in respect of any plans for actions affecting a large group of employees, in particular those related to proposals for the employer's reorganization, transformation, the conversion, privatization and modernization of a strategic business unit into an independent organization.

Trade unions in Hungary may request information from employers on all issues related to the economic interests and social welfare of employees in connection with their employment. Employers shall not refuse such information, or the justification of their actions. Additionally, trade unions have the right to express their position and opinion to the employer concerning any employer actions (decisions) and, furthermore, to initiate talks in connection with such actions.

A local trade union branch is forced to contest any unlawful action taken by the employer (or his failure to act) by way of demurrer if such action directly affects the employees or the interest representation organizations of employees. The demurrer must be delivered to the employer's executive officer within a period of five working days upon gaining knowledge regarding the contested action. No demurrer may be delivered later than one month following the introduction of an action. A demurrer may not be submitted if an employee is entitled to file for legal action against the action in question. On the other hand, if an employer has terminated the employment relationship of a trade union official by ordinary dismissal without the prior consent of the immediate superior trade union branch, the local trade union branch shall be entitled to lodge a demurrer. Negotiations are to be held regarding any demurrer with which the employer disagrees. Such negotiations shall commence within a period of three working days following the date when the demurrer was filed. Should such negotiations fail to produce a settlement within a period of seven days, the trade union may file for court action within five days of the declaration of failure of such negotiations. The court shall pass its decision within fifteen days in nonlitigious proceedings. Contested actions may not be executed or, if already in progress, must be suspended until the negotiations between the employer and the trade union are concluded, or until the court's final decision.

Employers offer the opportunity for trade unions to publish the information and announcements they regard as necessary, along with the data related to their activities, in a manner customary at the employer or in any other way deemed appropriate. Trade unions are allowed to use the employer's premises after or during working hours, as agreed with the employer, for the purposes of interest representation activities.

Employers shall provide worktime allowance for trade union officials. For all trade union officials, the total worktime allowance for every three trade union members employed by the employer shall be two hours per month up, unless there is an agreement to stipulate otherwise. Time spent on negotiations with the employer shall not be included in the above-specified allowance. The appropriation of the worktime allowance is determined by trade union. Any absence from work the trade union has to report in advance to the employer.

- two hours per month up to 200 trade union members,
- one and a half hours per month between 201 and 500 trade union members,
- one hour per month for more than 501 trade union members.

Time spent on negotiations with the employer is not being included in the above-specified allowance. Trade union officials receive absentee pay for the duration of the worktime allowance. Based on the total number of trade union members, employers, as agreed in advance, are obliged to provide one extra day of paid vacation each year for every ten trade union members in their employment for the purpose of training or advance training courses organized by the trade union. The trade union decides on the extent of vacation time to be appropriated. Employers must be notified at least thirty days in advance regarding the date of taking such leave of absence. If so requested by the trade union, the employer shall provide reimbursement for the unused portion of worktime allowance (mentioned above), but not to exceed half of such allowance. The amount of reimbursement is counted based on the average earnings during the previous calendar year of the trade union officials affected, and is paid in the gross amount to the trade union subsequently on a monthly basis. The trade union must use such reimbursement moneys solely for the purposes of employee interest representation activities.

Employers may not demand employees to reveal their trade union affiliation. Employment of an employee may not be rendered contingent upon his membership in any trade union, on whether or not the employee terminates his previous trade union membership, or on whether or not he agrees to join a trade union of the employer's choice. Employment of an employee shall not be terminated, and the employee shall not be discriminated against or mistreated in any other way on the grounds of trade union affiliation or trade union activity by the employee.

It is forbidden to render any entitlement or benefit contingent upon affiliation or lack of affiliation with a trade union.

The prior consent of the immediately superior trade union body is required for temporarily appointing an employee who is an elected trade union official, for sending him on an assignment for more than fifteen working days, for transferring him to another employer, for redeploying the employee if it

involves transferring him to another workplace or for terminating the employee's employment by ordinary dismissal. The opinion of the relevant trade union body must be requested prior to terminating the employment relation of such an official by extraordinary dismissal, and the relevant trade union body has to be notified in advance regarding the application of some legal consequences and regarding the transfer of an employed official to another workplace. Trade union must communicate its position in writing with respect to the employer action within eight days of receipt of notification by the employer. If the trade union does not agree with the proposed action, the statement must include the reasons therefore. Failure by the trade union to communicate its opinion to the employer within the above specified deadline shall be construed as agreement with the proposed action. In the event that an official's employment relationship is terminated by extraordinary dismissal, the trade union has to submit its opinion concerning the proposed action within a period of three days following receipt of notification by the employer. Officials are entitled to the protections for the duration of their term and for a period of one year following expiration of such term, provided that the official held the office for at least six months.

*1.2. Trade union employees' representation and pluralism of unions within the firm: a representative trade union(s) or a common union representation as a party of COLLECTIVE BARGAINING? conflict or cooperation between trade unions?*

The interest representation organization of employees and the collective bargaining agreement can be found in the Labour Act. The representation of the trade unions within the firm is similar to the Belgian, Spanish and Portuguese system. In Hungary the trade union has to gain 10 % on the election of the workers' council. If it does not reach the required percentage, it can not participate in the workers' council till the next the next election held in every three years. In Belgian if the trade union does not get the prescribed percentage on the elections of the labour council, it has to wait till the next election held in every four years. It means that it can not participate on the labour council, the departmental and regional committees and on the workers' council at all. In Netherlands the trade unions, which have not been elected to the National Economical and Social Council, can be represented in the departmental and regional committees, if it has the required percentage of representation and in the branch it is important. Many lawyers (Herzóg, Prugberger, Héthy, and Ladó) would like to apply this system above the firm so that the loophole would be removed.

The representation of the trade unions in the workers' council is similar to the Spanish and Portuguese system, because in these systems the elections of the workers' council members decide which trade union will be important in the firm and furthermore the accumulation of the results will appoint the representative trade unions on each level (firm, departmental, regional and national). This system coming from under should be used in Hungary too.

The regulation of the interest representation organization of the employees (trade unions) in the firm is sufficient. Those trade unions can make collective bargaining agreement which get 50% on the election of the workers' council. If there are more representative trade unions in the firm and they have 50% together, they can conclude the collective labour contract together. If only one trade union wants to conclude the contract, it can do it, if it gets 65% on the election of the workers' council. In my opinion 50% would be enough, because it is the majority. The recent 65%/ regulation breaks the principle of majority laid down in the Act when it says: if the trade union or the candidates of the trade union did not receive more than half the votes in the workers' council election, negotiations may be held for the conclusion of the collective bargaining agreement, however conclusion of the agreement is subject to endorsement by the employees. The employees shall vote on such endorsement. The ballot shall be valid upon participation by more than half the employees eligible for election to the workers' council.

It has been already mentioned that those trade unions which do not get 10% on the workers' council election, they can not participate on the conclusion of the collective labour contract for three years. This is a tough rule because it hinders the trade unions in their development, and it is in the way of the establishment of new trade unions. Therefore it would be reasonable to integrate some Scandinavian and British rules into our system. In these countries between the elections held in every four years, new trade unions can be set if they meet the necessary requirements (necessary number of members, ability of the interest representation). In the USA there is a more simply system, where between the elections when there are more members to enter, the trade union can propose new trade union elections to get 50% on the workers' council election. This could be integrated into the Hungarian law too. My suggestion is if a trade union between two elections of workers' council has more than 10% representation, the firm should accept it as a representative trade union, if it had more than 30%, than the workers' council election should be brought forward. Though it must be laid down that the multinational companies do not like the interest representation of the employees, especially the trade unions. Therefore in my opinion if a new trade union would be set up between the elections, the trade union could ask for the recognition of its right to the interest representation according to its number

of members from the County Court or from the Labour Court. If the percentage were more than 10%, the court should declare its representative nature; if the percentage were more than 30% the court should bring forward the workers' council elections.

The rights of the trade unions laid down in the Labour Act sections 19-23 are sufficient for the effective representation. Trade unions may request information from employers on all issues related to the economic interests and social welfare of employees in connection with their employment. Employers shall not refuse such information, or the justification of their actions. Additionally, trade unions shall be entitled to express their position and opinion to the employer concerning any employer actions (decisions) and, furthermore, to initiate talks in connection with such actions. Trade unions can check the work conditions and the work protection. A local trade union branch shall be entitled to contest any unlawful action taken by the employer (or his failure to act) by way of demurrer if such action directly affects the employees or the interest representation organizations of employees. Contested actions shall not be executed or, if already in progress, shall be suspended until the negotiations between the employer and the trade union are concluded, or until the court's final decision. If the action affects only an employee it can not be contested by demurrer, rather an individual labour dispute should be launched.

This solution is considered to have drawbacks, because the employer applies threatening means in the event of a potential contest. Therefore it would be reasonable to give the right to the trade unions to represent the claim of the employee, if it is necessary. This kind of cooperation can be found in the German-Austrian law too, where the workers' council has to cooperate with the employer.

In Hungary there are not any rules regarding the interest representation organisations of employers, while in the Cheque Republic, Slovakia and Poland these rules can be found. Therefore the rights of the trade unions are limited, and of the interest representation of the employers are unlimited. That is why the existence of the trade unions are bound by the required amount gained on the workers' council elections, but the interest representation organisations of employers have no limitations at all.

### *1.3. Trade union representation of employees in collective bargaining within the firm in the light of national experience: who represents a union, scope and procedure of bargaining*

As mentioned above employee organizations whose primary function is the promotion and protection of employees' interests related to their employment relationship shall be construed as trade unions in Hungary. Employees shall be

entitled to organize trade unions within the work organization. The trade union has the right to represent their members against the employers and before state agencies in matters concerning labour relations and employment matters. But they can be entitled to represent their members, if duly authorized, before the court or any other authority or agency in matters concerning their living and working conditions. On the other hand the collective bargaining agreement shall be also applied to the employees of the affected employer who are not members of the trade union concluding the collective bargaining agreement. Collective bargaining agreements may govern:

- rights and obligations originating from employment relationships, the method of exercising and fulfilling and the procedural order of such relationships;
- the relations between the parties to the collective bargaining agreement.

A collective bargaining agreement may be concluded, on the one hand, by an employer, an employer interest representation organization, or several employers, and on the other, by a trade union or several trade unions. One collective bargaining agreement may be concluded with an employer. The trade union or the employer interest representation organization which is independent of the other party in respect of its interest representation activities shall be entitled to conclude a collective bargaining agreement. Authorization by the members shall also be required for an employer interest representation organization for entitlement to conclude a collective bargaining agreement.

If it is only one trade union within the firm for concluding of the collective bargaining agreement with the employer is entitled the trade union, if its candidates have received more than half the votes in the workers' council election.

The Hungarian labour law regulates which trade union is entitled to participate at collective bargaining with the employer if there are more unions at the employer.

If more than one trade union maintains a local branch at an employer, the collective bargaining agreement may be concluded jointly by all the trade unions, provided that the candidates of such trade unions have jointly received more than half the votes in the workers' council election.

In case if the conditions for having the trade unions jointly conclude a collective bargaining agreement are not fulfilled as defined above, the representative trade unions conclude the collective bargaining agreement together, provided the candidates of such trade unions have jointly received more than half the votes in the workers' council election.

If the conditions for having the representative trade unions jointly conclude a collective bargaining agreement are not fulfilled, the trade union whose candidates jointly received more than sixty-five per cent of the votes in the workers' council election shall be entitled to conclude the collective bargaining agreement.

If, in the cases set above, the trade union or the candidates of the trade union did not receive more than half the votes in the workers' council election, negotiations may be held for the conclusion of the collective bargaining agreement, however conclusion of the agreement is subject to endorsement by the employees. The employees shall vote on such endorsement. The ballot shall be valid upon participation by more than half the employees eligible for election to the workers' council.

All trade unions represented at the employer may attend the negotiations for the conclusion of the collective bargaining agreement; such trade unions shall cooperate in the interest of successful conclusion of the negotiations.

As written above in some cases it is allowed for representative to conclude a collective bargaining agreement with the employer. It is very important to decide in sense of the Hungarian labour law witch trade union can be considered as a representative trade union.

The trade union whose candidates received at least ten per cent of the votes in the workers' council election shall be construed as representative. If more than one workers' council is elected at an employer, the results of each workers' council elections shall be combined for the determination of representative rights. A trade union in which at least two-thirds of the employees of the employer in the same employment group (profession) are members shall also be construed as representative. If the workers' council election is declared invalid, representative rights shall be determined by the results of the first round of the election.

The Minister of Labour may extend the scope of the collective bargaining agreement to the entire sector (or subsector), if so requested by the parties, and following request of the opinion of the national employee and employer interest representation organizations affected by such extension of scope, provided the organizations concluding the agreement qualify as representative for the sector (or subsector) in question:

- The employer interest representation organization which - on the basis of its membership, market position and number of employees - is the most significant in its field of activity, shall, in particular, is construed as representative.



- The trade union that, by virtue of its membership and the support it receives from the employees, is the most significant in its field of activity shall be particularly construed as representative.

The degree of employee support of a trade union must be determined primarily on the basis of the results of the last workers' council election prior to the conclusion of the collective bargaining agreement governing the employers falling under the scope of such agreement.

In respect of the extension of the scope of a collective bargaining agreement concluded by more than one trade union, the representative rights of the trade unions have to be reviewed collectively. Termination of a collective bargaining agreement with extended scope shall be reported to the Minister of Labour without delay by the party rescinding the agreement. In the event of termination of a collective bargaining agreement with extended scope, furthermore, for a collective bargaining agreement concluded by more than one trade union, in the event that the collective representative rights of the trade unions cease to exist due to rescission of the agreement by any of the trade unions, the Minister of Labour shall cancel *ex officio* the extension of the scope of the collective bargaining agreement effective as of the last day of the termination notice. The Minister of Labour has to publish his resolution on the initiation or cancellation of extension of scope, and the official text of collective bargaining agreements with extended scope in the Ministry's official gazette. An extension of scope shall become effective on the day of its publication.

Any trade union, employer interest representation organization or employer operating in the sector affected by a collective bargaining agreement may file for court action against a resolution by the Minister of Labour pertaining to the extension of the scope of a collective bargaining agreement.

The effect of a collective bargaining agreement, in the absence of any extension of scope (see as written above) shall apply to employers who:

- concluded the collective bargaining agreement, or
- were a member of the employer interest representation organization at the time the collective bargaining agreement was concluded, or
- subsequently joined the employer interest representation organization.

In the event of joining as set subsequently joined trade union, the consent of the local trade union branch shall be required for the collective bargaining agreement to apply to the employer. Collective bargaining agreements shall include a clause to specify the group of employers to which they apply, if employer is member of employer's interest representation organization. The collective bargaining agreement shall also apply to the employees of the affected

employer who are not members of the trade union concluding the collective bargaining agreement.

Neither party is allowed to reject a proposal for negotiations for the conclusion of a collective bargaining agreement. The trade union must be representative to be entitled to negotiate with the employer. These provisions shall be duly applied in respect of negotiations for the amendment of a collective bargaining agreement. Disputes related to the right to conclude a collective bargaining agreement shall be decided by the court in nonlitigious proceedings, upon request by the organization concerned. In addition to providing the necessary data, each year employers shall submit a proposal to the trade unions entitled to conclude an agreement regarding re-negotiation of the wage clauses in the collective bargaining agreement.

In the absence of an agreement to the contrary, a collective bargaining agreement enters into effect when promulgated. Employers shall provide assistance to employees in order for them to become familiar with the collective bargaining agreement, on the other hand they have to supply a copy of the collective bargaining agreement to each employee whose duty involves the application of the provisions of such agreement, as well as to the members of the workers' council and the officials of the local trade union branch.

According to the Hungarian regulations a collective bargaining agreement may be cancelled by either party to the agreement with three months notice. Neither of the parties shall be entitled to exercise the right of rescission within six months of the conclusion of the collective bargaining agreement. In respect of a collective bargaining agreement concluded jointly by more than one trade union, employer or employer interest representation organization, any of the parties to the agreement may exercise the right of rescission, unless otherwise agreed. Where a collective bargaining agreement was concluded by more than one trade union, they shall agree on the exercise of the right of rescission. In the event of cancellation of a collective bargaining agreement concluded jointly by more than one employer or employer organization, the collective bargaining agreement shall cease to apply only to the employees of the employer exercising the right of rescission. If a new workers' council election grants entitlement to a trade union to conclude a collective bargaining agreement, such trade union may cancel the collective bargaining agreement in accordance with the regulations pertaining to the parties.

Upon dissolution of an employer or a trade union without legal successor, the collective bargaining agreement is terminated as well. If the collective bargaining agreement was concluded by more than one employer or employer interest representation organization, or by more than one trade union, the collective bargaining agreement shall be terminated solely in the event of the

dissolution of all employers and trade unions without legal successor. Dissolution of an employer or trade union with a legal successor shall not affect the validity of the collective bargaining agreement.

In the event the employer is replaced by legal succession, the work conditions, not including the work order, as prescribed in the collective bargaining agreement applicable to the predecessor at the time of succession shall be honoured by the successor employer, in respect of the employees affected by the succession, until the collective bargaining agreement is cancelled by the predecessor employer or the expiration of the collective bargaining agreement, or until another collective bargaining agreement is concluded with the successor employer, or in the absence of such for at least one year following the date of succession. If the work conditions stipulated in a collective bargaining agreement which applies to the successor employer are more favourable for the employees than those stipulated in the collective bargaining agreement which applies to the predecessor employer, the collective bargaining agreement applicable to the successor employer shall be authoritative.

A collective bargaining agreement of limited effect shall only depart from one with a broader scope insofar as it specifies more favourable regulations for employees.

## **II. Non-union representation of employees in collective bargaining within the firm**

### *2.1. Non-union representation of employees within the firm: its reasons and forms*

Trade unions are qualified for safeguarding and representing of workers' interest, but rights of participation in governing of factories are introduced by codifying the legal institution of workers' council.

Employee participation rights are exercised by employee-elected workers' council in name of community of workers of a factory. The elected workers' representative exercises right of workers' council at smaller units of an employer.

The workers' council fulfils a double mission: first it shall perform workers' interests to the employer (function of conflict-prevention) and second it tries to make employees understand that employers decisions are good and useful for employees as well.

It is very important to make clear the most essential differences between trade unions and workers' councils. For example:

- Trade unions take part in collective bargaining as party of concluding the collective bargaining agreement.
- Workers' council does not take part in this procedure.
- The trade union's activity of safeguarding rights and interest of employees is not limited only for the "territory" of one single employer, as collective bargaining agreement can be concluded by more employers or by employer's interest representation organization or by more trade unions as well. Workers' council is entitled to fulfil its activity at only one employer.
- Employees ARE entitled to organize trade unions within the work organization. It is the trade union's right to operate chapters inside any work organization and to involve its members in the operation of such chapters. Participating in the activity of trade unions is only a possibility for employees, it is not compulsory. Organising a tare union is indifferent from number of employees.
- Establish a workers' councils is obligatory by the law in the following cases. Workers' council shall be elected at all employers or at all of the employers' independent operational facilities (divisions) with more than fifty employees. An employee representative shall be elected at an employer or at an independent operational facility (division) of an employer with at least fifteen but no more than fifty-one employees.
- Trade unions are entitled to organise and participate in strikes in connection with their function of representation of workers' interests. As the Hungarian Labour Code prescribes workers' council during a strike organised at the employer has to express a neutral behaviour, is not enforced to take part in organising strikes. We can say that workers' councils have no legal possibilities to force out their will.
- It is also a difference between trade unions and workers' councils that companies having registered offices in more EU member countries are obliged to organise a European workers' council. Organising trade unions is not compulsory by the Hungarian law.

*2.2. Objective of non-union representation within the firm: a partner for information and consultation or also a party to collective bargaining*

According to the Hungarian legal system the communities of employees – as part of labour relations – are entitled to rights of participation at governing the factory. On behalf of the community of employees, participation rights shall be exercised by the workers' council or by the representative elected by the employees. The workers' council in Hungary is not a party of collective bargaining. They are entitled only to participating at the governing of the factory as written in this chapter.

The workers' council shall have the right of codetermination with regard to the appropriation of welfare funds specified in the collective bargaining agreement and with regard to the utilization of institutions and real property of such nature. This is the most important right of the council. Employers shall consult the workers' council prior to passing a decision in respect of

- plans for actions affecting a large group of employees, in particular those related to proposals for the employer's reorganization, transformation, the conversion, privatization and modernization of an organizational unit into an independent organization;
- proposals for setting up a personnel records system, the set of data to be recorded, plans for the contents of the data sheet specified in Section 77 and staff policy plans;
- plans connected with employee training, proposals for the appropriation of job assistance subsidies for the betterment of employment conditions, and drafts of plans for early retirement;
- plans for actions pertaining to the occupational rehabilitation of persons whose capacity to work has been reduced;
- the plan for the annual vacation schedule;
- the introduction of new work organization methods and performance requirements;
- plans for internal regulations affecting the employees' substantive interests;
- tenders announced by the employer offering financial reward or recognition of exemplary performance.

Employers shall notify the workers' council:

- at least every six months regarding the fundamental issues affecting the employer's economic situation, and
- regarding the plans for major decisions pertaining to a significant modification of the employer's sphere of activities and improvement projects;
- at least every six months regarding the trends in wages and salaries, liquidity related to the payment of wages, the characteristic features of employment, utilization of work time, and the characteristics of working conditions.

The workers' council shall convey its opinion in connection with the employer's planned actions written above to the employer within a period of fifteen days. Failure to do so shall be construed as granting consent to such action. The fifteen-day deadline shall commence on the day of receipt of the plan by the chairman or the person designated in the workers' council's procedural order.

Any action taken by an employer in violation of the provisions set above is to be construed invalid. The workers' council may file for court action for the establishment of such invalidity. The court shall pass its decision within fifteen days in nonlitigious proceeding.

Workers' councils shall be entitled to review the employers' files in connection with their rights codified by the Hungarian labour code. Councils are entitled to request information from the employers concerning all issues related to the employees' economic and social interests in connection with employment, and with the observance of the principle of equal treatment. Employers may not refuse to disclose such information. Workers' councils and their members shall be authorized to publish any information or data acquired in the course of operations solely in a manner which does not jeopardize the employer's justified business interests and without violating the employees' personal rights. The workers' councils must remain unbiased in relation to a strike organized against employers. Consequently, it shall neither organize a strike, nor shall it support or impede a strike. The term of workers' council members participating in a strike shall be suspended for the duration of the strike.

Employers shall ensure the opportunity for the workers' councils to publish the information, announcements, as well as data related to their activities, in the manner customary at the employer or any other way deemed appropriate.

Members of the workers' councils shall be entitled to worktime allowance of ten per cent of their monthly worktime, while the chairman of the workers' council shall be entitled to fifteen per cent. The appropriation of the total worktime allowance for workers' council members and the chairman may be established in the operative agreement in derogation from the provisions of the Labour Code Act; nevertheless, the time allowance granted may not exceed half of the members' or chairman's entire worktime. Absentee pay shall be paid for the duration of the worktime allowance. The provisions pertaining to elected trade union officials shall be duly applied for the protection of workers' council members under the labour law.

Employers shall cover the justified and necessary costs of election and operation of the workers' council. The extent of such shall be determined jointly by the employer and the workers' council. Any dispute in connection therewith shall be settled by negotiations.

The chairman of a workers' council operating at an employer with more than one thousand employees shall receive remuneration for such activities.

Remuneration shall be provided by the employer in the amount established by the workers' council in agreement with the employer.

The issues pertaining to the privileges of a workers' council and its relations with the employer shall be set forth in an operative agreement.

*2.3. Non-union representation of employees in collective bargaining within the firm in the light of national experience: the form(s) of non-union representation, scope and procedure of bargaining*

As mentioned in Chapter 2.2. worker' council does not participate in collective bargaining in Hungary. The right to participate in governing of the factory is not declared as collective bargaining.

In Hungary there are no forms of any non-union representation of employees at collective bargaining. As workers' councils are not party of collective bargaining we can not seek about the scope and procedure of bargaining of non-union representation.

### **III. Prospects for employees' representation in collective bargaining within the firm**

The organizational representation of the employees appears differently under and above the firm level. Under the firm level the cooperation of the trade unions represent the interest of the employees, on the firm level and above the firm the branch organizations of the trade unions, the fiduciary and the workers' council. However the workers' council also appears at the concerns and the European enterprises. The trade unions affect the workers' council more a less. The competence and the division of labour between the trade union and the workers' council are separated in the German law system, for example in Germany, Austria and Netherlands. Compared to the Latin and Frank Law systems the two institutions affect each other on a large scale, for example in France, Belgium, Luxemburg, Spain, Portugal and the Scandinavian countries. In Hungary a mixed system can be found. The trade unions have distinct rights on the workers' council elections, on the nominations and on the election committee, however the employees have the right too to nominate the workers' council members. In this respect the rules of the Hungarian council constitution is a mixture of the Spanish-Portuguese-Belgian-French and German law. Though by the first modifying proposal the Labour Code followed the German model, the trade unions and the employer's interest representation refused it and the following compromise has been adopted. The trade union and the workers' council are separated but the trade unions have rights on the election of the workers' council members.

On national level the National Labour Council represents the employees. This is a three sided reconciliation – unlike the German reconciliation model – and it is a worse version of the Holland and Belgian model. In Holland and Belgian the members are elected to the National Economical and Social Council, to the departmental and the regional committees by the numbers of the members and when their departmental covering is more than 50% according to a royal order. By contrast in Hungary these are not declared in the Labour Code, though the 50% representation by the collective bargaining agreement suggests that this is the required representation. In 1997 the rules of the National Labour Council have been declared in a three sided collective bargaining agreement, which laid down the conditions of the representation. These rules have not been implemented in the Labour Code and the representation is defined by the rules of the National Association of the Trade Unions. The National Association of the Hungarian Trade Unions has a representation of 90% and the others have the rest. Nevertheless the departmental and regional committees have not been established yet. There are not any rules laid down in the Labour Code regarding them. It is because of the opposition of the trade unions. If the establishment of these committees would happen they would lose their advantages gained by the property division. Therefore there is a loophole in the Hungarian regulation. The execution of the abovementioned three sided Rules failed. However the departmental and regional committees are ruled in the Public Servant Act, which was adopted later than the Labour Code.

It is a problematic question, that the governmental organizations are not bound by the agreements which are not connected with the national wage minimum, the working time regulations and the termination of employment due to economical reasons, because they are not civil law agreements. This view was presented by the theoretical representative of the Hungarian Labour Law, when the “Bokros-package”<sup>1</sup> had been created, the Government annulled the agreement made by the National Labour Council of the Public Institutions regarding the elevation of the national wage minimum two weeks earlier. Last time the same position was defined by the Supremacy Court regarding the cut back of the civil servants in a three sided nationwide agreement published in the Hungarian Bulletin. If we look at this from the view of the EU legislative technique, this position is totally unacceptable, because in those countries where there is three sided reconciliation, the EU directives can be implemented only by three sided agreements (like in Belgian, Netherlands, Luxemburg etc.)

The employees’ participation right appears by the workers’ councils, which is similar to the German solution. The functionaries of the trade unions

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<sup>1</sup> BOKROS, Lajos, Ministry of Finance between 1st of March 1995 – 29th of February 1996



are entitled to take part at the meetings of the workers' councils if they are members of it. Otherwise only if trade union members are invited. By the Act 22. Of 1992 On Labour Code the functionary of the trade union can be the president of the workers' council.

This is similar to the systems, where the trade unions organises the elections of the workers' councils and where the members of the workers' council must be the member of the trade union. This is the system in Spain and Portugal.

A local trade union branch may independently nominate a candidate from among its members. It would be correct, that the employees could nominate in teams with 3-5 members, depend on the extent of the firm. So they can avoid, that the workers' council or a member of the workers' council play up with the employer. Curiosity from this aspect, that the involvement of the trade union isn't typical by the revocation of the member of the workers' council. Workers' councils shall have the right of codetermination with regard to the appropriation of welfare funds specified in the collective bargaining agreement and with regard to the utilization of institutions and real property of such nature.

This right in Hungary is only formal, because such institutions (crèche, canteen of the firm) have been sold years ago. This shows the weakness of the workers' council. The weakness of the workers' councils is in connection with the fact, that the workers' councils have only few members.

#### **IV. Summary**

As a summary we can say about the employees' participation that it is niggling in the II. Part of the Hungarian Labour Code. Above the firm level the regulations are scant and to the trade unions and to the European Workers' Council detrimental. At the level of the firm the regulations are free from loopholes.

Employers shall notify the workers' council at least every six months regarding the fundamental issues affecting the employer's economic situation, and regarding the plans for major decisions pertaining to a significant modification of the employer's sphere of activities and improvement projects; at least every six months regarding the trends in wages and salaries, liquidity related to the payment of wages, the characteristic features of employment, utilization of work time, and the characteristics of working conditions.

In respect of a company operating under the general management of a company council or general meeting (general assembly), the workers' council shall only be informed.

The workers' council shall convey its opinion in connection with the employer's planned actions to the employer within a period of fifteen days. Failure to do so shall be construed as granting consent to such action.

The employers have to inform the trade union about the planned grouped cut-back, if there isn't workers' council or council representative. Because of the weakness of the workers' councils, it would be reasonable to case the trade unions always. ("Ex lege"). This is compulsory by the Act 20. of 2003 in case of employer's succession.

Employers shall consult the workers' council prior to passing a decision in respect of plans connected with employee training, proposals for the appropriation of job assistance subsidies for the betterment of employment conditions, and drafts of plans for early retirement; plans for actions pertaining to the occupational rehabilitation of persons whose capacity to work has been reduced; the plan for the annual vacation schedule; the introduction of new work organisation methods and performance requirements; plans for internal regulations affecting the employees' substantive interests; tenders announced by the employer offering financial reward or recognition of exemplary performance.

The Hungarian trade unions are the successors of the "SZOT" (National Council of trade Unions), which took part in governing the state before 1990. Therefore the Hungarian Labour Code contains regulation for the independence from the other party and from the state and other political parties by the legislating the coalitions' ability. The functionaries of the trade unions oft become members of the parliament in the list of a party. This is problematical, if the functionaries are elected by the government, adversely the trade union.

#### **A munkavállalók szervezetén belüli érdekképviselte a kollektív tárgyalások során**

##### **Összefoglalás**

*Jelen tanulmány azzal a céllal íródott, hogy kritikai elemzéssel mutassa be a hazai munkavállalók érdekképviselési rendszerét, különös tekintettel a munkaszervezeten belüli kollektív tárgyalások rendjére.*

*Elsőként a magyar szakszervezetek működési sajátosságai kerülnek elemző bemutatásra, mely a magyar kollektív munkajog egyik legfontosabb jogintézményeként funkcionál. Elsőként a szakszervezeti rendszer általános bemutatására kerül sor, mely általános áttekintés alapvető fontosságú annak érdekében, hogy a szerzők a munkavállalói érdekképviselési rendszer vonatkozásában megfelelő következtetéseket vonhassanak le. Ezt követően áttekintjük a hatályos magyar jogszabályokat abból a*

szempontból, hogy a szakszervezetek munkaszervezeten belüli egysége vagy többsége milyen hatásokkal bír a kollektív tárgyalások sikerére. Megvizsgálandó kérdésként merült fel a tanulmány szerzői számára, hogy a magyar szabályozás mennyire kedvez a szakszervezetek együttműködésének. A szakszervezetek kollektív tárgyalások során betöltött szerepének elemzése során meg kellett vizsgálni magának a kollektív tárgyalásnak, a kollektív szerződés megkötésére irányuló ügymenetet, illetve azt a kérdést, hogy adott szakszervezet milyen munkavállalói kört képvisel a tárgyalások során.

Másodszor vizsgálat tárgyává tettük az üzemi tanácsok rendszerét, melyek közvetlenül bár nem minősülnek munkavállalói érdekképviselőnek, de közvetett módon mégis a munkavállalók érdekeit szolgálják, képviselve őket az adott vállalat vezetésében. Az üzemi tanácsok rendszerének elemzése során bemutatásra kerülnek a magyar tételes jogi szabályok abból a szempontból is, hogy mennyire képesek a szabályok megvalósítani a jogalkotó és a szociális partnerek által az üzemi tanácsi rendszerrel szemben megfogalmazott elvárásait. Jelen szabályok során nem lehetett figyelmen kívül hagyni azt rendkívül érdekes magyar sajátosságot, hogy a szakszervezetek döntő befolyással bírtak az üzemi tanácsok kialakítása során, illetve folyamatos működtetésükben.

A tanulmány harmadik fejezete foglalkozik a magyar szabályok európai kontextusba helyezésével. Ezen rész foglalkozik részletesen a magyar tételes jogi szabályok kritikai elemzésével, illetve itt kívánjuk a jogalkotó figyelmét felhívni a magyar szabályozásban rejlő ellentmondásokra, illetve az esetleges módosítás irányaira, annak érdekében, hogy a kollektív munkajog egyes jogintézményei, illetve a kollektív tárgyalások rendje ténylegesen kifejthessék hatásukat, és ténylegesen a munkavállalók érdekvédelmét valósíthassák meg a globalizálódó világ Magyar Köztársaságában.