

THE PROSPECTS OF AUTONOMOUS SECTORAL DIALOGUE IN HUNGARY

JUDIT IVÁNY CZUGLER

Department of Labour Law and Social Law
Telephon number: (36-1)411-6520
e-mail: cz.ivany.judit@ajk.elte.hu

Within the European social model social dialogue is a key activity between social partners, the employers organisations and trade unions. Social dialogue has to cover the social interests of the workers as well as the future interests of the industry in competitiveness and growth. Social dialogue is a tool for the development of employment and industrial development with a new balance of change and security.¹

As a tool for constellation and negotiation, recognised as an essential dimension of the European social model, the social dialogue is also one of the cornerstones of democracy. For that reason the European Union has progressively established new rules and new mechanisms to strengthen the role of those playing a daily part in the economic and social development of its member countries.²

Since the way in which they are set up and operated was defined in 1998, some 27 sectoral social dialogue committees has been established at EU level in specific areas of activity. On the basis of their experience, they play an increasingly constructive role in the process of improving European governance. In the meantime in the light of the constant reaffirmation of the importance of social cohesion within the European Union, the EU commission has developed its support for and involvement in the operation of these key social dialogue tools.³

At the end of the ninetieth on the course of the negotiations with the new applicants for EU membership, the EU commission attached great importance to promoting social dialogue structures in these countries and presented the social dialogue as a vital part of the community acquis, of its both the legislative and institutional basis.

¹ The sectoral social dialogue in Europe. – EU Commission, Directorate-General for Employment and Social Affairs. Directorate D. – December 2002.

² Articles 138-139. of Treaty of Rome

³ COM [1996] 448 final, 18 September 1996. on the development of social dialogue
COM [1998] 332 final, 20 May 1998 on Adopting and Promoting the social dialogue at community level

**I. Establishment of a new social dialogue structure
at the sectoral level.
(The PHARE program)**

In 1999 the *Accession Partnership* promoting the accession to the EU of applicant and candidate countries for EU membership, set the development of social dialogue as a short-term *priority* in the Central-European candidate countries for EU-membership.

The European Council attached great importance to the structures of social dialogue in the candidate countries, and regards social dialogue as an integral part of the community *acquis*, both on the legal and the institutional side, as the means of implementing the social dimension of the EU. The Maastricht and Amsterdam Treaties provided significant additional powers to the European social partners, granting them not only the right to bargain and the right to sign framework agreements, but also the right to request and receive assistance, support from the community law with respect to the enforcement of the signed agreement.

These steps clearly indicate the message of the EU to the candidate countries: they shall develop the social dialogue and its institutions, structure, and help the social partners, in order to enable these institutions and the social partners to become a part of the EU enlargement process, and at the same time to prepare for their future roles within the EU. The trade unions and the employers' organizations shall be strong, representative and independent, and shall be able to conduct negotiations with each other, and to balance flexibility and security, competitiveness and social justice at the workplace, in the employment relationships.

In the EU, the representatives of the employers and employees, the social partners, through the rights granted to them, have become the main guarantors of the implementation of the basic social principles of the EU.

The EU provided financial and professional assistance to the candidate countries for the short-term priorities, thus the development of social dialogue through the *PHARE-program*, while the candidate countries should specify in detail the legal and operating conditions ensuring the implementation of the priorities of the Accession Partnership, among them the social dialogue, in a National Program for the Adoption of the Acquis.

The EU assisted in the development of social dialogue, the strengthening of the social partners in the Central-European countries primarily through the PHARE-program.

In *Poland*, for example, the strengthening of the social dialogue has started within the frame of a PHARE-project, the aim of which is to set up a social partner committee at national level, the members of which are the representative national trade unions and employers' organizations, and which committee will operate as an advisory body of the Government. The aims also include the setting up of independent, autonomous sectoral social dialogue committees. In *Slovakia* the aim is primarily to establish the conditions of social dialogue at sectoral and company level, and to increase the role of collective agreements. The structure of social dialogue is developed with the support of the European Union in the *Czech Republic* as well.

In 2001 the *Hungarian government* also applied for PHARE-support for the development of social dialogue in Hungary, frequently criticized by the EU.

The Hungarian PHARE-project

The aim of the Hungarian PHARE-project is to promote the bipartite autonomous social dialogue of the social partners at sectoral level. In order to achieve this aim, so called Sectoral Committees will be set up, within the frame of which the social partners would have the opportunity to conduct regular consultations, conciliation, to conclude sectoral collective agreements, as well as to develop closer co-operation between the social partners and the Sectoral Dialogue Committees of the EU. At the same time, the Sectoral Committees can also form a 'connecting link' between the national and company levels of social dialogue. The project sees the role of the Government in this process in the promotion of the development of social dialogue.

During the 18 months of its 'term', the project expects as a result the setting up of at least 20 sectoral committees, or making it possible, which committees would be set up with the joint and voluntary request and participation of the social partners. Secretariats will assist the work of the committees, and their members will receive training during the term of the project to develop their negotiating and deliberating skills.

A Danish expert will assist in the execution of the program, and it will be managed by an Operative Committee made up of the representatives of the social partners and the Government.

How can the implementation of the program promote the development of real sectoral social dialogue?

There are a number of reasons for the deficiencies of sectoral social dialogue in Hungary today, attributable to historical, economic and political reasons, and there are also reasons attributable to defects, deficiencies of the legal regula-

tion. The structure of Hungarian social dialogue today is determined by the fact that on the one hand the trade unions are still, and traditionally organized at the workplace, and the collective agreements are concluded at workplace level, while on the other hand the national employers' organizations and trade union associations play a significant role at national level. This latter phenomenon is perhaps the inevitable concomitant of the social-economic transformation of the last 10 years, among others, due on the one hand to the disintegration of the previously evolved trade union structure, a considerable decline in the unionization of the employees, a significant increase in the number of companies with a small number of employees and on the other hand to the significant labour and social legislation accompanying the economic-social transformation, which could and can be influenced by the employees and employers only at national level.

With the establishment of the institutions of market economy, however, there is an increasing need for the strengthening of the currently non-operative sectoral level, and this requires primarily sectoral social partners, which – especially on the employer side – have not been established yet in all sectors/subsectors.

The PHARE-project, through the development of the institutional framework and the possibility of setting up 'sample committees', can significantly advance the sectoral development. This, however, can establish only the basis, the framework of the genuine operation of sectoral social dialogue, the contents filling the framework depend on many other factors. In addition to the establishment of the framework, a social and legal environment (besides the already existing market economy environment) encouraging the social partners to maintain and continuously operate the dialogue is also required.

Such a social environment is required, which

- regard reaching a consensus between the parties concerned as a basic value and the best means of handling conflicts, even if it takes a lot of time;
- in which the employers and the trade unions regard each other as partners in dealing with labour relations, and in the regulation of employment relationships, and where they are not engaged in lobbying, but real conciliation of interests in the joint presence of those concerned;
- where the employers' organizations and the trade unions are genuine players in the economic life, enjoying wide social recognition.

The change in the social environment requires a change in attitude as well, to be achieved primarily by the players or labour relations themselves, the employers, the trade unions and the state, through their conduct, activity and by respecting and taking each other seriously.

The proper legal, legislative environment

The proper legislative background can also considerably encourage the development of sectoral social dialogue. The PHARE-project, although mentions it, fails to emphasize enough the necessity of concluding collective agreements at sectoral level, though essentially the very role of social dialogue at sectoral level can be collective bargaining, collective negotiation and the conclusion of agreements. For this very reason, within the project aimed at strengthening autonomous social dialogue, the part outlining the scope of the tasks and powers of the sectoral committees will require most of the attention during its implementation. From the point of view of the future, the significance of the committees and the whole sectoral dialogue, it is an essential issue whether they will be only consultative, deliberative, possibly advisory bodies, or bodies with the right to sign sectoral collective agreements as well. Before granting the right to sign collective agreements to the committees, issues such as the composition of the committees, the right of representation of the members and the scope thereof, the regulation of the right to sign collective agreements, the legal nature, effect of the concluded agreements, the rules of procedure of collective bargaining, etc. need to be clarified.

The establishment of all these institutional and legal frameworks, however, creates only the formal possibility of sectoral dialogue, and collective bargaining. It is perhaps even more important, however, to make the social partners interested in signing collective agreements, through creating real bargaining positions on both – the employer and the trade union – sides.

(Today the Labour Code regulates employment relationships in detail, providing undoubtedly a certain level of protection to the employees. This however, is a low level of protection – due to the mostly ‘minimum standard’ nature of the granted rights – and can be raised to a higher level only by a collective agreement/or an individual contract of employment).

This requires legal regulations that leave more leeway than currently to the social partners and collective agreements in the regulation of labour relations and employment relationships, encourage the partners through various concrete rules, legal solutions to conduct collective bargaining, and promote bargaining in good faith and efficient negotiation through the exact regulation of the rules of procedure of collective bargaining. There are a number of examples for legal regulation of this nature in the member states of the EU, which are well worth learning about during the project, and having some of their elements incorporated into the Hungarian law.

For example:

- In addition to the levels for signing collective agreements, several countries also allow *sites, plants*, within a company to sign collective agreements (for example Spain, England, Italy), if they have their own ‘character’.
- During collective bargaining the parties are obliged to act *in good faith* (France, Germany, Spain). In France, for example, in the spirit of this, during collective bargaining the employer shall not take any unilateral action with respect to the issues under negotiation.
- The *rules of procedure* of collective bargaining are specified in detail in provisions of law or collective agreements (for example Portugal, Spain, Italy, France, Sweden, Holland, Belgium). The mechanism of collective bargaining procedures is characterized by a high degree of preparation in a written and documented form, and if necessary, the use of mediators, advisors, and experts. (In Belgium, at sectoral level the mediator is ‘included’ in the system from the beginning). It is also characterized by the use of professional negotiators (the preparation and negotiation of collective agreements has almost become an individual profession), the determination of a time-table for the negotiation in advance, the real intention of the parties to co-operate, and the fact that the legislature itself strives to preclude conflicts (for example through the regulation of the participation of those having the right to sign collective agreements by provisions of law in Spain and Belgium, and in general the clear regulation of representativeness and the right to sign collective agreements).
- In certain countries so called *joint committees*, the institutionalized forms of signing collective agreements, serve the amicable conclusion of collective agreements (Belgium, Spain, England).
- It is a useful rule that any negotiating person delegated to the collective bargaining shall be automatically considered to have authority to sign (Belgium, Portugal).
- The law provides that only collective agreements concluded in *writing* shall be valid.
- In several countries the entry into force of a collective agreement is subject to official *registration*, as well as the *publication* of the collective agreement in *the official gazette*. This, at the same time, also serves to familiarize the collective agreement.

- It can be essential to the validity of the collective agreement and a prerequisite for the registration thereof that it should include provisions on certain issues – indispensable for its application – for example the scope of the collective agreement, the signatory parties, its duration, the possibility and methods of termination, etc.) (Belgium, France, Germany). In Belgium the termination of a collective agreement shall also be published in the official gazette.
- The extension of collective agreements is promoted by the fact that not only the collective agreement as a whole, but individual parts thereof can also be extended (Holland, Portugal, Spain); the extension can apply not only to sectors, but to fields as well (France, Germany). A collective agreement can be extended – in case of similarity – to other sectors as well, if there are no partners with the right to sign an agreement there (for example Portugal); before the extension the social partners concerned shall be consulted (France, Spain, Holland), but it is also possible to take an objection to the extension (France).
- The conditions and the procedure of the extension of collective agreements are specified exactly by the provisions of law (for example the employer/s' organization/ signing the collective agreement to be extended shall employ at least 50% of the employees of the given field of employment, or the parties signing the collective agreement shall represent a considerable majority of the industry, or the collective agreement shall be signed by the most representative organizations of the sector).
- The aim of the extension of a collective agreement can be: public interest, social and economic reasons, the extension is important to the majority of the employees working in the sector, the prevention of discrimination especially with respect to wages, the application of equity, etc.
- The reason for extension can be: there is no collective agreement as there are no contracting partners, or perhaps they, or one of them do not want to sign a collective agreement.
- It is possible to *join* voluntarily in a collective agreement signed by others.
- The survival ('effect after effect') of collective agreements for the period between the termination of a collective agreement and the signing of a new collective agreement is regulated in almost all of the countries.
- In France the law provides at what intervals the parties are obliged to conduct negotiations and with respect to what issues, and also who is obliged to initiate the negotiations.

- The regulation of the termination of collective agreements concluded for definite and indefinite duration is usually different (for example Germany).
- A collective agreement shall not be terminated by the fact that the employer leaves the employers' organization signing the collective agreement.
- In Spain a collective agreement shall always expire on 31st December, and shall become effective on 1st January of the next year.

The regulation of the EU member states applicable to collective agreements is generally characterized by the followings

- the basic aim of regulation by collective agreement – with maximum respect for the autonomy of the contracting parties – is to encourage the social partners to conduct collective bargaining and to sign agreements, as well as to have as many employees as possible covered by collective agreements providing more favourable working and wage conditions than the minimum specified by the law;
- it is aimed at ensuring that the contracting parties are 'strong' enough, but it is not aimed at exclusion. Therefore the specified conditions of collective bargaining capacity (and in parallel with this the rules of representativeness) are 'eased' 'downwards', towards company level, allowing the expansion of the scope of those participating in the conclusion of the agreement, and the better consideration of the special local circumstances;
- it tries to find solutions that do not 'incite' the trade unions against each other, but encourage them to take joint action, to join forces (especially at workplace level);
- it strives to separate the rights, roles of the works councils and the trade unions, leaving the conclusion of collective agreements to the trade unions;
- through the dominance of collective agreements at sectoral level, it ensures the independence of the trade unions from the employers, and that the trade unions, representing more negotiating power and pressure at this level, can enforce the real interests of the employees;
- trade unions – through their representatives – can check compliance with the collective agreements at workplace level.⁴

⁴ Czuglerné Ivány Judit: A munkaügyi jogharmonizáció és az Európai Szociális Partnerség – Foglalkoztatást elősegítő munkaügyi kutatások. OFA Kutatási Évkönyv I. 115-120. old.

In the setting up of the Sectoral Committees, it is advisable to take into account the institutions, experiences of the EU and the EU member states, however, we should not copy any model. We should develop our own model, and in the development of the sectoral level we should take into account the existing structures, traditions as well, and find a place 'embedded' in them, in relation to them for the sectoral committee in the Hungarian social dialogue structure.

The PHARE-project will be a success only if the development of the sectoral structure, the care for it does not end upon the completion thereof. It should be an important aim of the program not only to set up the formal frameworks (legal and institutional) during the project, but also to make the social partners capable of, suitable for operating the system of institutions to be set up; and then the completion of the project will not be the end of something, but on the contrary: the beginning.

The possibility of participation in the sectoral social dialogue of the EU

The preparation of the social partners for the possibility of participation in the sectoral social dialogue of the EU is a very important part of the project.

The project sees the appropriate means of this in the preparation of the members of the sectoral committees to be set up. During the implementation, however, it shall be taken into account that those participating in the sectoral dialogue committees of the EU are not persons, but sectoral trade union associations and employers' organizations organized in Europe and recognized as representative by the EU Commission. The Hungarian social partners can participate in this work only if the individual sectoral trade unions and employers' organizations become members of (join) these European sectoral organizations. Thus it is not enough to be a member of the sectoral committee to be set up! Therefore, within the scope of this, the emphasis shall be primarily on the capability of the individual sectoral organizations to join the European organizations, and afterwards, naturally, the preparation of properly qualified expert representatives for the EU social dialogue will be important. Thus the sectoral committees can play a role in the preparation for and participation in the EU only if the organizations represented in them are the members of a European sectoral organization. The committees could have a role in the conciliation of the opinions of the individual sectoral organizations, thus ensuring that they do not represent different opinions at the EU forums.

The project, in outlining the vision of Sectoral Committees, based it on the organization, operation of the Sectoral Social Dialogue committees set up at EU level. During the implementation, however, this institution should not be 'copied', as these institutions of the EU take into account the requirements of a special sectoral dialogue at transnational level, and their number and sec-

toral/subsectoral articulation is still changing constantly. The articulation of the EU Sectoral Committees does not necessarily correspond to the sectoral/subsectoral articulation organically evolved in the individual member states.

Today the fusion of sectoral organizations is a characteristic trend in the EU member states (for example Germany, Belgium, Holland or England), while at EU level the trend is just the opposite, and the larger sectors conduct their dialogue in smaller subsectors. The main reason for this is that large sectors such as the chemical industry or the metallurgical industry are too heterogeneous for conducting efficient negotiations. Through the decentralization of the social dialogue, for example by conducting it at subsectoral level, a higher homogeneity of interests can be achieved. This type of decentralization, by making the subject to be discussed more specific, more concrete, allows the improvement of the quality of the agreements.

Thus, in the setting up of the Sectoral Committees, both the traditional Hungarian sectoral articulation, organization, and the articulation of the sectoral social committees of the EU should be taken into account. Naturally, this cannot lead to the artificial transformation of our existing and organically evolved sectoral, subsectoral organizations (this would be contrary to the principle of freedom of organization as well).

II. Result of the PHARE-program The sectoral social dialogue committees

At the end of the program (in March of 2004) there were set up 32 sectoral/subsectoral social dialogue committees in the 'economic' field of the industrial relations including the sectoral level social partners of these sectors. Unfortunately in the public sector there were no established yet social dialogue committees because of the disagreement between the government and the social partners about the proper person of the employer, that is who can be seen as real employer in this field?

The structure, the operational rules and the membership of these committees are determined in an Agreement concluded directly by the sectoral social partners. One of the most important elements of the Agreement concerns to the criteria of the membership and representativeness of the partners of the Committees. Unfortunately the legal regulation of them is missing yet and therefore it is questionable this moment whether these rules can be applicable without legislative guarantees in the verification processes. The membership of the newly established sectoral committees is based today on the mutual recognition of the social partners and they activity is limited only to the consultation with

each other. However the elaboration of the legal regulations to be entitled with the right to collective bargaining which would be most important role of the committees will be inevitable in the very near future.

According to the Agreement the most important criteria for the participation on these committees are:

- to be registered as sectoral organization
- to cover a determined percent of workers' support achieving it on the works' council elections (in the case of trade unions) and – in the case of employers organisations – a certain number of employers as members operating in the sector and
- functioning as trade union or employer organisation at least for two years.

The social partners have the right to accept with mutual consent the membership of a sectoral organisation even in the lack of two years long functioning.

There are four special conditions set up in the Agreement to be recognised as 'representative' organization. These criteria for trade unions are: the support of the workers (measured by the results of the works' council elections); number of their members, their capacity for bargaining collectively and finally membership in international (mainly EU) organisations. Criteria for employers' organisations to be seen as representative are in connection with their market position, number of employers and number of their members.

Representative organizations have the right to negotiate and to make decisions, while organizations without representative status can take part only in the consultations.

The committees are supported by a special sectoral Social Dialogue Secretary of which operation is financed by the government.

The committees will function according to the Agreement concluded by them⁵ until the adoption of the new legislation concerning the operation of the Committees and the rights – particularly collective bargaining rights – of the sectoral social partners.

Hopefully this new level of social dialogue – after regulating the legal position of the Sectoral Social Dialogue Committees and the rights of it and their members – will lead to the real development of our collective labour law.

⁵ The text of the Agreement is available on the Website of the Ministry of Employment Policy and Social Affairs (www.fmm.gov.hu – Ágazati párbeszéd)

RESÜMEE

Zukunft der gesellschaftlichen Branchendialoge in Ungarn

JUDIT IVÁNY CZUGLER

Ein wichtiger Teil des mit der Europäischen Union 1999 geschlossenen Assoziationsvertrages war die Entwicklung der Struktur und des Institutionensystems des sozialen Dialogs in den Beitrittsländern, da die Europäische Union den sozialen Dialog als den bestimmenden Teil des gemeinschaftlichen *acquis* betrachtet. Zu diesem Zweck bot die EU den Beitrittsländern – durch das Phare-Programm – finanzielle und fachliche Hilfe an, damit sie die rechtlichen bzw. Funktionsvoraussetzungen für die Beziehungen in der Welt der Arbeit ausbauen bzw. entwickeln können. Die ungarische Regierung nahm die Unterstützung in Anspruch und rief ein 1,5 Jahre dauerndes Programm ins Leben, das sich den institutionellen Ausbau des sozialen Dialogs auf Branchenebene und die Ausarbeitung der rechtlichen Regelung der Branchenbeziehungen in der Welt der Arbeit zum Ziel setzte. Dieses Vorhaben der Regierung fand Unterstützung sowohl bei den Arbeitgeber- als auch bei den Arbeitnehmerorganisationen auf Landesebene. Das Ziel des Programms war die Erarbeitung und Aufstellung der Rahmen zur Hilfe des autonomen Dialogs der Sozialpartner auf Branchenebene, um dadurch die Interessenabstimmung, Konsultationen und kollektiven Gespräche zwischen den Partnern zu fördern. Die Studie zeigt, wie und auf welchen geschichtlichen Grundlagen die neue Institution, die Dialogausschüsse auf Branchenebene entstanden, und wie sich die Partner die Funktionsweise, die Rolle und den Aufbau der neuen Institution vorstellen. Die Studie berichtet über die wichtigsten Regeln, welche in der von den im Ergebnis des Phare-Programms entstandenen Ausschüssen geschlossenen Vereinbarung enthalten sind. Diese Regeln stellen die Kriterien der Repräsentativität klar, die die Teilnahme an den Ausschüssen und die Möglichkeiten der Beteiligung an den Entscheidungen bestimmt. Die institutionellen Rahmen stehen bereits, und in 32 Sektoren bzw. Teilbranchen wurden sogar schon die Ausschüsse aufgestellt, es fehlen jedoch – infolge der zögerlich erarbeiteten rechtlichen Regelung – die rechtlichen Garantien, welche das stabile Funktionieren dieser Ausschüsse gewährleisten könnten, und es fehlen auch die Rechtsnormen zur Förderung des Abschlusses von Branchentarifverträgen zwischen den sozialen Partnern. Die Studie stellt unter Einbeziehung der rechtlichen Regelung in einigen Mitgliedstaaten der EU Beispiele vor, bzw. sie macht Empfehlungen hinsichtlich der zukünftigen rechtlichen Regelung in Ungarn.