

THE LEGAL FRAMEWORK FOR SOCIAL DIALOGUE – THE PREMISE OF SOCIAL ECONOMY

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Abstract

Social dialogue is a component of economic and social life, which consists of discussions and agreements between social partners – trade unions and employers, and governmental factors, which aims to harmonize the interests of employers with those of employees, to ensure a climate of peace and Stability Guarantee social. This article describes the main features of social dialogue and its procedures. An important part is ascribed to the legal framework at European and national level, highlighting the main advantages of the new law on social dialogue, introduced in 2011.

Keywords: *domestic legislation, European legislation, social dialogue*

Introduction

Social dialogue is a political *concept* that all interested parties agree to ensure that the specific interests of each are taken into account in making decisions. Although social dialogue east a relatively new concept, today it has acquired a significant importance in the debates taking place worldwide. Several international institutions have played a role in disseminating this concept, one of which the European Union. Social dialogue at community level has become a common feature in

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political decisions in the mid 80s. The role of social dialogue was strengthened during the 90 and on the significant aspects of individuals or communities life.

The objective is to achieve permanent social dialogue social peace through various forms of social dialogue (Beligrădeanu, 1997): negotiation, consultation, information. The need to ensure social public order requires the state to intervene as a factor regulating the labour market and employment in legal relations (Ștefănescu, 2003, p. 25).

The Labour Code (2011) expressly governing art.211 that "to ensure a climate of stability and social peace, the law covered how consultation and dialogue between social partners".

Despite its vast spread, not yet adopted a definition for this concept. Some people understand social dialogue as representing all forms of bipartite or tripartite negotiations or consultations on social issues, taking place on any of the levels of society, nation, industry sector or enterprise and involving employers (or their organizations), employees (organizations or their representatives) and authorities (represented, as appropriate, depending on the level at which social dialogue takes place).

Others think more like a social dialogue process that occurs at relatively high, such as national, regional or sectoral level, excluding the enterprise or workplace.

Some limited use of this concept to relations of cooperation between the parties, others include concept and relationship conflict. In countries where the procedures for negotiating collective agreements are expressly established by law, social dialogue can refer to flexible forms of negotiation, which may be outside the established mechanisms for the final form of formal collective agreements. Social dialogue is sometimes used to refer to dialogue involving more labour than "traditional". Nongovernmental organizations (NGOs) or other representatives of the so-called "civil society" are often invited to take part in negotiations or consultation, together with traditional social partners. But whatever the definition of social dialogue, it includes a

tripartite process that offers both employers and workers the opportunity to voice their opinions, when expressed on the national or regional policy, work or other social (or economic). The concept of social dialogue covers normally, and bipartite dialogue between employers and workers organizations. In this case, we are facing a process that allows workers to formulate views with regard to management decisions. In both cases, social dialogue itself is the expression of a democratic society, embodied the right of workers to organize and bargain collectively. Furthermore, it is clear that social dialogue at central level, by facilitating consensus between the productive forces in the country (employers and workers' organizations) in terms of economic and social policies, contribute to high economic performance.

Procedures of social dialogue

Procedures of social dialogue are: consultation (mid traditional dialogue between authorities and social partners, advisory committees requires interprofessional forum for contact and consultation in accordance with Article 138 of the Treaty of Amsterdam), bi-party dialogue (dialogue between employers and employees , requires macroeconomic dialogue, dialogue on employment and social protection, tripartite social summit for growth and employment) and tri-party dialogue (macro-economic dialogue, social dialogue involves "Val Duchesse" – social dialogue summits, meetings of negotiations) .

Hired in 1985 and provided a legal basis thanks to the Single European Act, European social dialogue aims at associating social partners in building the European internal market. To strengthen the role of trade unions, the Maastricht Treaty requires, since 1992, mandatory consultation of social partners on social issues and also introduce their ability to negotiate framework agreements between them.

Bipartitism as union-employer relationship. The social partners are trade unions and employer organizations. Most times this bipartite

relationship, the government exerts a strong influence on the content and results of union-sponsored dialogue with the role of mediator and arbitrator.

Tripartism as a relation unions, employers and government, is an instrument of social dialogue, which involves consultation, action, coordination and control are involved social partners, representatives of unions and employers together with state power, as economic actors and social, in order to accomplish tasks and interests in line with social welfare.

For collective relations between social partners can take place under optimum conditions required recognition of the tripartite mechanism in making decisions about the best performance in terms of labour relations.

In Romania, the intervention of social partners and social macro translates into the following steps:

- Order prior consultation by the Government representatives of social partners on the projects of laws concerning labour relations;
- Specific mechanisms with the participation of employees and employers in the form of together managing bodies in various fields which have a social impact.

Tripartite bodies are subdivided into the following categories:

- *Together managing bodies* such as the National Agency for Employment^[1], the National Social Security Fund National Accidents and Occupational Diseases, National Health Insurance, National Pension, etc.. In all these bodies, tripartite management is ensured;
- *Advisory bodies* such as Economic and Social Council^[2], social dialogue committees in ministries and the prefecture.

[1] No.145/1998 Act, as amended by EO nr.294/2000

[2] No.109/1997 Act, amended by Law nr.58/2003, published in the Official Gazette, Part I, no.179 of March 21, 2003

The legal basis of European social dialogue and national

European integration is based on certain treaties, including four founding as the framework for key stages of the European social dialogue:

Treaty of Paris in 1951 ECSC Treaty is the oldest of the three treaties that have founded the European Union, was signed in Paris on July 23, 1952 and expired on July 23, 2002, because it was concluded only for fifty years.

Its objective was to set up a common market for coal and steel, formula likely to be extended to other economic areas. Coal and steel are now subject to common law of the EC Treaty.

Treaty of Rome 1957

1. Treaty establishing the European Community (EC) main objective of the Treaty establishing the European Community is to achieve a progressive integration of European states and to establish a common market based on the four freedoms of movement (of goods, persons, capital and services), due to the progressive unification of economic Policor Member States.

Therefore, Member States have given up some of their sovereignty in favor of Community institutions, which have acquired the power to adopt rules directly applicable in Member States (regulations, directives, decisions) and regulations take precedence over national law. EC Treaty in its present form is the result of changes to the treaty that established the European Economic Community (EEC Treaty signed in Rome in 1957 and came into force on January 1, 1958). It was amended on several occasions, notably the Single European Act came into force in 1987, the Treaty of Maastricht (Treaty on European Union) entered into force in 1993, the Treaty of Amsterdam entered into force

in 1999, and the Treaty of Nice, which entered into force in February 2003.

Following these changes, important parts of the EC Treaty have been reformulated to be properly understood today. Treaty now covers almost all economic aspects of interest to the community, and political issues such as asylum and the right to emigrate (see in this respect the Treaty of Amsterdam).

2. The Treaty establishing the European Atomic Energy Treaty establishing the European Atomic Energy Community (Euratom) was signed in Rome on March 25, 1957 and entered into force on 1 January 1958 together with the Treaty. Euratom Treaty objective was to achieve coordination of research programs already undertaken by Member States or programs are being launched with the principles of peaceful uses of nuclear energy. This treaty was largely absorbed by the EC Treaty

Maastricht Treaty (1992) entered into force on 1 November 1993 and renamed simply the European Economic Community "European Community". It also introduces new forms of cooperation between Member State governments – for example in defense, and the area of "justice and home affairs". Adding this to existing intergovernmental cooperation system "Community" Maastricht Treaty created a new structure with three pillars that is both political and economic. This is the European Union. Maastricht Treaty adopted the Protocol on social policy, stipulating that compulsory social partners are consulted on social issues and can negotiate agreements with each frame. Annexed to the Treaty, signed by the twelve member states except Britain, this commitment marks the beginning of a more social Europe. It allows social partners to resort to institutions, procedures and mechanisms of the Treaty, to take from them and apply, to the extent that they are interested, acts and decisions necessary for implementation of this text.

Social protocol brings two key innovations: the appeal procedure qualified for a number of materials and organizing community social

dialogue giving the social partners can negotiate agreements may do so subject to EU directives.

Amsterdam Treaty (1997) was signed on October 2, 1997 and entered into force on May 1, 1999. Two changes can be reported:

- Co-decision procedure to new materials such as increasing the European Union where the Council may decide by qualified majority and not unanimously;
- Transfer certain powers which were previously part of the powers of the EU Treaty (visas, asylum granted, and generally all matters relating to free movement) of the EC Treaty, following the transfer, the heading of Title VI of the EU Treaty (third pillar) was changed to "police and judicial cooperation in criminal matters"

Treaty of Nice (2001) was signed on February 26, 2001 and entered into force on February 1, 2003. The main objective of this treaty was to adapt the functioning of the European Union for enlargement. Among the changes, we can mention:

- Change the decision making process;
- Drastic reduction of cases in which the Council must make decisions based on absolute unanimity, the Council can now decide with qualified majority in numerous areas: free movement of citizens, judicial cooperation in civil, industrial policies, etc.;
- Change the share of votes in the structure of institutions;
- A new distribution of seats in Parliament;
- Giving up the second post of Commissioner for France, Germany, UK and Italy;
- Strengthening the powers of the President of the European Commission;

In Romania, the legal framework of social dialogue is defined by Law 62/2011. Social Dialogue Law (Law 62/2011) was published in Official Gazette no. 322/10.05.2011 and make new provisions regarding: the establishment, organization and functioning of trade unions, reorganization and dissolution of trade union organizations, forms of association of trade unions, representatives of trade unions, establishment, organiza-

tion and functioning of employers' organizations, employers' organizations Dissolution ; representativeness of employers' organizations.

Meanwhile, in order to promote best practice in tripartite social dialogue at the highest level, it is through this law the National Tripartite Social Council, called in the National Tripartite Council, an advisory body to the national social partners.

Law brings new provisions and in terms of powers, organization and functioning of Economic and Social Council. A novelty is the establishment and functioning of social dialogue in central public administration and local level (whose regulation is provided in Annex 3).

Another novelty is that time – organizing and carrying out collective bargaining and conclusion of collective agreements are covered by this law. Law 62/2011 regulates the modes of settling labour disputes.

Bipartite and tripartite social dialogue – a prerequisite for social economy

Tripartite social dialogue is regulated and conducted in the following structures:

- Economic and Social Council – the advisory structure established that the Government and Parliament in 1997 is composed of government representatives, representatives of trade unions and employers' national. Economic and Social Council of the tasks specified in the particular legislative acts approving all economic and social. This advisory opinion accompanying the draft legislation in debates in government and in the legislation. Economic and Social Council is the main consultative structure in the national tripartite social partnership. Functioning of Economic and Social Council is regulated by Law no. 109/1997 with subsequent amendments.

- Sectoral tripartite social dialogue is governed by Government no. 314/2001 amended by H.G. no. 569/2002, relating to establishment, organization and functioning of social dialogue. These committees are established and operating in all ministries are made up of representatives of the ministry and representatives of trade unions and employers' national. In these commissions social partners are consulted

on all normative acts in the ministry and other matters of interest to labour.

- Social dialogue in a territory. The administrative structures (counties) are established territorial social dialogue commissions which include local government representatives and representatives of organizations representing the social partners. Depending on the issues discussed in the work of these commissions may participate as invited experts or representatives of other administrative or civil society structures.

Advisory opinions developed in the social dialogue commissions are communicated Economic and Social Council for each draft law under discussion.

- Other tripartite structures. Occasionally the complexity of the issues discussed are ad hoc tripartite structure for the discussion of more specific problems (eg tripartite ministerial committee for improving the business environment, etc.).

For smooth running of the tripartite social dialogue is established Government Department for Social Dialogue, led by a Secretary of State is responsible management of social dialogue commissions and ministries regularly held meetings with representatives of Prime Minister of the Economic and Social Council.

Also, within each ministry is appointed Secretary of State for coordination of social dialogue committee's work and relationship with trade unions and employers.

Government decided to set up National Tripartite Social Council, composed of representatives of Government, employers and trade union confederations, with the main duties providing the minimum salary consultation and analysis on government projects. Introduction to Social Dialogue Law (62/2011) the provision establishing the National Tripartite Social Council was made at the request of social partners, in consultation held for drawing up the bill.

CNTDS goal is to promote good practice in tripartite social dialogue at the highest level. National Tripartite Council has the following structure:

a) employers and trade union confederation presidents nationally representative;

b) Government representatives, appointed by Prime Minister's decision, at least at the level of Secretary of State of each ministry and other state structures, as agreed with social partners;

c) representative National Bank, Economic and Social Council President and other members agreed with social partners.

This council is chaired by the Prime Minister and the secretariat is provided by the Ministry of Labour, Family and Social Protection.

Bipartite social dialogue (trade unions, employers) are found mainly in the negotiation and conclusion of collective agreements.

In Romania, collective agreements are concluded at national, sectoral (branch and groups of units) and business units (those with over 21 employees). The negotiation of trade unions and employers involved nationally representative, branch or unit. Because of the principle of "erga omnes" application, negotiate and conclude collective agreements are particularly important. Negotiation is covered by Law no. 130/1996 which specifies the content, procedure and applicability of the collective labour agreement and representativeness criteria for social partners.

Another form is the bipartite social dialogue for the settlement of labour disputes by Law no. 168/1999 – the settlement of labour disputes, which provides for the settlement of labour disputes (conciliation, mediation, arbitration or strike).

Priorities of bipartite social dialogue mention increasing coverage of collective agreements at sectoral level and capacity of social partners in collective bargaining process and implementation of the *acquis communautaire*.

Conclusions

Institutionalized tripartite social dialogue has been created in order to provide a regulated framework for consulting social partners at national, sectoral and territorial providing consultation and partnerships with the trade union organizations comprehensive and effective.

We appreciate that the development prospects of bipartite social dialogue based on increasing capacity of social partners will generate increased their involvement in solving economic and social problems and generate new forms of partnership beneficial to ensure a climate of peace and social stability

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