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EU-Enlargement and Labour Relations

New Trends in Poland, Czech and Slowak Republic

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1 Das Projekt

Die Auswirkungen von Direktinvestitionen deutscher Unternehmen auf die Arbeitsbeziehungen in Mittel-/Osteuropa

Am Beispiel ausgewählter Länderfallstudien in Polen, der Tschechischen und Slowakischen Republik

In diesem Forschungsprojekt untersucht das Institut Arbeit und Wirtschaft die Veränderungen der Arbeitsbeziehungen in Betrieb und Unternehmen der EU-Beitrittsländer unter dem Einfluß ausländischer Direktinvestitionen. Die Untersuchung erstreckt sich auf die Branchen Metall/Stahl, Chemie/Energie und die Nahrungsmittel produzierende Industrie in drei ausgewählten mittelosteuropäischen Ländern (Polen, Tschechische Republik und Slowakei). Das Projekt ist anwendungsorientiert und setzt sich das Ziel, an einem Netzwerk von Wissenschaftlern und Praktikern, die mit den Arbeitsbeziehungen befasst sind, mitzuwirken. Dazu dienen eine Reihe von Hearings und Konferenzen in den beteiligten Ländern.

Hauptfragestellungen der Untersuchung sind:

- In welchem Maße können Arbeitnehmervertreter die industriellen Beziehungen in den Zielländern ausländischer Direktinvestitionen mitbestimmen? Wieweit kollidieren die Konzepte der Mutter-Unternehmen dabei mit dem traditionellen System der Arbeitsbeziehungen in den mittelosteuropäischen Tochterunternehmen?

- Wieweit kann die neue Institution der Betriebsräte in Tschechien und der Slowakei den Weg für neue Gewerkschaftsvertretungen öffnen? Oder gibt es Tendenzen der deutschen Mutter-Unternehmen, hier völlig neue Formen eines Systems von Arbeitsbeziehungen auszuprobieren?

- Wie können Arbeitnehmervertreter in den Herkunftsländern und in den Empfängerländern von Direktinvestitionen den Prozess einer Europäisierung der Arbeitsbeziehungen vorantrei-

ben? Können die Europäischen Betriebsräte die Informationslücke zu den Arbeitnehmervertretungen in den mittelosteuropäischen Ländern ausfüllen?

Im vorliegenden Arbeitspapier präsentieren die beteiligten Wissenschaftler einen Überblick über die Entwicklung der Arbeitsbeziehungen in ihren jeweiligen Ländern. Die Reports beruhen auf der Auswertung existierender Forschungsberichte und eigenen Untersuchungen. Im letzten Teil erfolgt eine zusammenfassende Bewertung der Unterschiede und der Gemeinsamkeiten in den Arbeitsbeziehungen der drei Länder.

Das Projekt wird finanziell gefördert durch die Hans-Böckler-Stiftung und die Otto Brenner Stiftung.

The Project

The Impact of Foreign Direct Investments of German Companies on the Labour Relations in Middle-East-European Countries – Taking the Examples of Poland, the Czech Republic and Slovakia

The controversial themes of „free movement of labour“, „free movement of services“, „costs for adaptation“ dominate the discussion about the Eastern enlargement of the EU. The indirect long-term economic and political benefits of the EU enlargement as well as the costs for non-enlargement remain untouched.

The Foreign Direct Investments can play a considerable role to modernise the economy and the social welfare state in Middle/East Europe. But this means, that other social actors than the state as trade unions, employers‘ associations, company management and employee representatives at works and company level have to take over an enormous responsibility. In the wake of foreign direct investments in the CEE countries, social actors from West European as well as from Central and eastern European countries can and must contribute to foster a "social Europe“ more than ever before.

A research project, coordinated by the Institute Labour and Economy, University of Bremen aks for The Impact of Foreign Direct Investments of EU based Companies on Labour Relations in EU Candidate Countries". It covers the chemical, energy, metal, steel and food processing industry in three selected countries of Central and Eastern Europe, Poland, the Czech Republic and Slovakia.

This project is an applied research, advisory and qualification project which also has the character of a model study. Through organizing hearings and conferences of results there should be closer connection to network with researchers and practitioners who are concerned with labour relations. Furthermore considerations regarding dealing with and examining the mutual effects between foreign direct investments and labour relations in the three CEE countries should be discussed and worked on with company and trade union representatives and other experts.

The objective of the study are the labour relations at plant/company level, considering the supra company and legal levels too, if necessary.

Leading questions of the project are:

- To what extent in Foreign Direct Investments representatives of employees will have the possibility to co-determine companies' industrial relations within the framework of the laws and collective agreements in their respective countries? To what extent do the concepts of the mother companies clash with the traditional systems of Industrial Relations in their CEEC sites?

- To what extent can the new institution of „works council" (in the Czech Republic and Slovakia) within Union-free Investments make the path for new union representing bodies? On the other hand, are there trends from German mother companies to experiment a completely new system of industrial relations in their company branches?

- How can union and company representatives in the EU home countries and in the host countries of investment continue to develop the process of Europeanization of Labour Relations? The European Works councils – could they bridge the gap by information and communication?

The empirical work of the study concentrates on evaluation of already existing surveys, expert interview on companies‘ and supra-companies level.

The papers, presented herein, collect preliminary studies of the development of labour relations in the three countries, contributed by the partners in Poland, the Czech Republik and Slovakia. They are based on a evaluation of existing surveys and own research and should be taken as a framework for further investigation and as incentives for the following working packages of the project. In the summary there will be taken a look on the diversities and interfaces of Industrial Relations in the respective countries.

Sponsored by Hans-Böckler-Foundation and Otto Brenner Foundation.

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Zdenka Mansfeldová

2 Labour Relations in Czech Republic

Introduction

After the initial, quite negligible amounts of investments, the role of foreign direct investments (FDI) in the development of Czech economy has been growing during the last few years (see table 1). Between 1999 and 2001 USD 5 – 6 billion in foreign capital has been invested annually in the Czech economy. For the entire transformation period, foreign investments amount to almost USD 30 billion, making the Czech Republic one of the most important destination and transitive countries for the allocation of foreign investments (Kux 2002, pp. 8-9).

Table 1: Economic indicators 1990-2001

Indicator	Measurement unit	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
GDP, comparable prices	change in %	-1.2	-11.6	-0.5	0.1	2.2	5.9	4.3	-0.8	-1.2	-0.4	2.9	3.6
Employment	thousands of people	5,351	5,059	4,927	4,848	4,885	5,012	5,044	4,947	4,883	4,760	4,664	4,677
Unemployment	rate in %	0.8	2.6	3.1	3.0	3.3	3.0	3.1	4.4	6	8.5	9	8.5
Inflation	%	9.7	56.6	11.1	20.8	10	9.1	8.8	8.5	10.7	2.1	3.9	4.7
Direct foreign investments	billion USD	0.1	0.7	0.9	0.7	0.9	2.6	1.4	1.3	2.7	6.3	5	4.9

Source: Kux 2002, pp. 8-9.

Pursuant to the CzechInvest annual report[1] (agency of the Ministry of Industry and Trade for foreign investment) Germany occupied the first rank in 2001 with 26% of incoming foreign investments, followed by

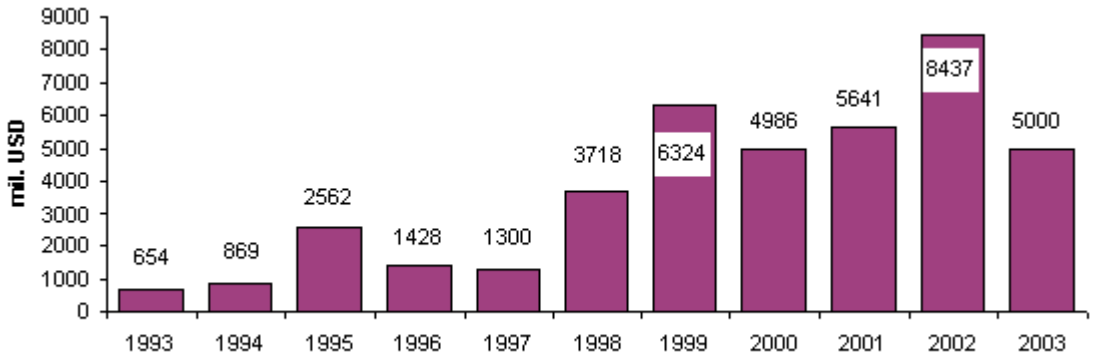
[1] CzechInvest, the agency for foreign investment, was founded in 1992 by the Minister of Industry and Trade Vladimír Dlouhý as a semi-state organisation. The task of this agency is to maximize the inflow of foreign direct investment to the Czech Republic both brownfield and greenfield investment. Beside this it offers free professional assistence by preparing and realisation of investment plans.

Japan (21%) and France (12%) (CzechInvest 2001:4). As a result of completed investments the number of job vacancies has been growing. For a more detailed overview of investment activities, see the table in Appendix 1.**Inflow of Foreign Direct Investment**[2]

The only body collecting statistical data on the inflow of foreign direct investment into the Czech Republic is the Czech National Bank. CNB´s reports and statistics on FDI are available in Czech and English at www.cnb.cz. Czech Republic is one of the most successful transition economies in attracting foreign direct investment. The introduction of investment incentives in 1998 has stimulated a massive inflow of FDI into both greenfield and brownfield projects and since 1993 nearly USD 36 billion in FDI has been recorded.

The FDI boom is expected to continue. The privatisation of remaining government stakes in state-owned enterprises is expected to attract significant amounts of foreign direct investment and the major inflow of greenfield projects is expected to continue. The Economist Intelligence Unit forecasts the annual inflow of foreign direct investment to stay at nearly USD 5 billion.

INFLOW OF FOREIGN DIRECT INVESTMENT TO THE CZECH REPUBLIC

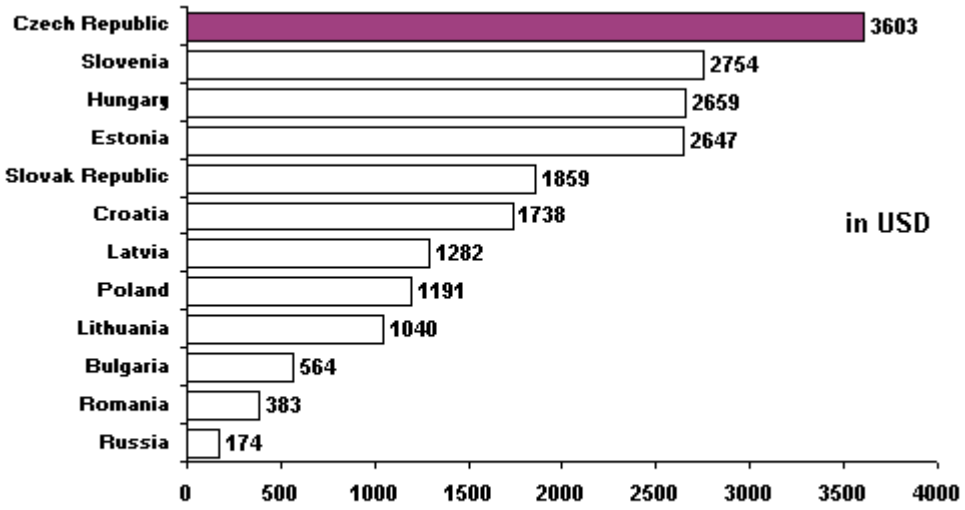


Source: Czech National Bank, March 2003
forecast for 2003: World investment prospects, EIU 2002

FDI STOCK PER CAPITA IN CENTRAL AND EASTERN EUROPE

By the end of 2002 the Czech Republic attracted more foreign direct investment per inhabitant than any other country in Central and Eastern Europe, according to The Vienna Institute for Comparative Economic Studies. This confirms the high attractiveness of the country for foreign investors.

[2] Source for this part is on http://www.czechinvest.org/ci/ci_an.nsf/



Source: The Vienna Institute for Comparative Economic Studies, February 2003

Table 2: FDI INFLOW INTO THE CZECH REPUBLIC BY COUNTRY AND SECTOR (in million USD)[3]

Country	2000		2001		2002		1993 - 2002	
	mil. USD	%	mil. USD	%	mil. USD	%	mil. USD	%
Germany	1,322	26.5	1,313	23.3	4,753	56.3	11,353	31.6
Netherlands	1,036	20.8	948	16.8	951	11.3	6,069	16.9
Austria	738	14.8	264	4.7	812	9.6	3,588	10.0
France	232	4.7	1,539	27.3	336	4.0	2,883	8.0
United States	303	6.1	245	4.3	139	1.6	2,549	7.1
Belgium	53	1.1	161	2.9	251	3.0	2,093	5.8
Switzerland	228	4.6	175	3.1	-106	-1.3	1,597	4.4
United Kingdom	158	3.2	434	7.7	273	3.2	1,687	4.7
Denmark	103	2.1	157	2.8	44	0.5	405	1.1
Sweden	148	3.0	21	0.4	76	0.9	499	1.4
Japan	46	0.9	29	0.5	134	1.6	293	0.8
Italy	36	0.7	-2	0.0	92	1.1	279	0.8
Canada	155	3.1	73	1.3	3	0.0	256	0.7
Other	428	8.6	284	5.0	679	8.0	2,368	6.6
Total	**4,986**	**100.0**	**5,641**	**100.0**	**8,437**	**100.0**	**35,919**	**100.0**

Sector	2000		2001		2002		1993 - 2002	
	mil. USD	%	mil. USD	%	mil. USD	%	mil. USD	%
Manufacturing								
Machinery, equipment	1,052	51.3	807	48.8%	682	39.8	4,238	37.0
Refined petroleum, chemicals	298	14.5	109	6.6%	252	14.7	1,651	14.4
Food and tobacco	176	8.6	246	14.9%	207	12.1	1,705	14.9
Nonmetallic products	115	5.6	153	9.3%	103	6.0	1,225	10.7
Basic metals, metal products	250	12.2	86	5.2%	263	15.3	1,181	10.3
Wood, paper, publishing	51	2.5	150	9.1%	136	7.9	814	7.1
Textiles, wearing apparel	68	3.3	103	6.2%	71	4.1	429	3.7
Recycling, other manufacturing	39	1.9	-1	-0.1%	1	0.1	205	1.8
Total	**2,050**	**100.0**	**1,653**	**100.0**	**1,715**	**100.0**	**11,448**	**100.0**
Nonmanufacturing								
Transport, communications	255	8.7	825	20.7	4,130	61.4	7,305	29.9
Financial intermediation	934	31.8	1,584	39.7	1,243	18.5	6,502	26.6
Trade, hotels and restaurants	549	18.7	704	17.6	443	6.6	4,629	18.9
Real estate	749	25.5	456	11.4	578	8.6	2,585	10.6
Electricity, gas, water supply	206	7.0	270	6.8	353	5.3	2,085	8.5
Construction	100	3.4	78	2.0	167	2.5	809	3.3
Mining and quarrying	77	2.6	36	0.9	-231	-	213	0.9
Other social services	40	1.4	4	0.1	17	0.3	199	0.8
Agriculture and forestry	8	0.3	29	0.7	7	0.1	77	0.3
Health and social work	17	0.6	2	0.1	14	0.2	64	0.3
Education	1	0.0	1	0.0	1	0.0	3	0.0
Total	**2,936**	**100.0**	**3,989**	**100.0**	**6,722**	**100.0**	**24,471**	**100.0**

Source: Czech National Bank, March 2003

[3] The overview on German investment see in appendices.

This positive development has ist own limits. According to the president of CzechInvest Martin Jahn "We can expect continuing interest in manufacturing greenfield investment over the next two years, even though the proportion of investment into strategic services will increase. Then investment will shift into expansion and reinvestment by current investors. Of course, this will also lead to investors whose production depends on cheap labour moving further east or southeast."

The growing volume of foreign investments and the presence of foreign management in enterprise place special demands on industrial relations. Changes that we have been witnessing in this area reflect the process of privatisation, the introduction of foreign owners, with the result of different work cultures and legal traditions being confronted, and the everincreasing impact of globalisation.

In the study at hand I will focus on:

- The representation of employee and employer interests,
- Social dialogue between employers and employees,
- Direct foreign investments as a research subject,
- Direct investments from the point of view of the press coverage.

Parts 1 and 2 are based on the study by Kroupa Ales/ Hála Jaroslav/ Mansfeldovà Zdenka/ Kux Jaroslav / Vaskovà Renáta/ Pleskot Igor: Development of social dialogue in the Czech Republic, Prague, Rilsa 2002

2.1 Trade union and employer organisations

Legislative conditions of association

The formation or association of trade union and employer organisations is governed chiefly by act no. 83/1990 Coll., on association of citizens, as amended. Citizens' associations formed under this act must register with the Ministry of the Interior of the Czech Republic (hereinafter "MI"). In line with the relevant ILO treaties, however, the principle of registration is purely evidential for trade unions and employer organisations and state organs cannot interfere in their formation or activity.

Trade union and employer organisations become a legal entity the day after the registration application is delivered to MI. The act does not dictate criteria of representativeness for either trade union or employer organisations. Limiting the number of trade union organisations or giving advantages to certain trade union organisations in a branch of industry or corporation is forbidden by the Charter of Fundamental Rights and Freedoms. Employers cannot prevent employees joining already existing trade union organisations without coming into conflict with the applicable law. That also applies to the founding of new trade unions and their activity. Employers may not discriminate or disadvantage an employee on grounds of his membership (on the other hand, of course, there is no obligation to support the formation of new trade union organisa-

tions). Soldiers on active service cannot form trade unions. The law lays down a minimum of 40% representativeness for trade union association or the operation of trade union organisations among the police force, the fire service and the customs service.

The rights of trade unions are not governed by a separate law in the Czech Republic, but are regulated through several laws and regulations, including the generally binding labour regulations[4].

As far as employer organisations are concerned, they do not come into existence solely by act no. 83/1990 - interest Coll., on association of citizens: they can be and in reality often are set up as special-interest associations of legal entities under Section 20f) of the Civil Code. In this context one fundamental question with practical impacts has not been resolved yet: namely, whether associations formed in this way can become partners for trade union organisations and bargain for higher-instance collective contracts. Even though the act on collective bargaining, for example, does not expressly prevent such a procedure, merely stating that the authorisation of representatives of employers to bargain collectively must stem from an internal regulation of the employer organisation, the legal view that higher-instance collective contracts can only be concluded by entities established under the act on association of citizens has prevailed. Doubts about the correctness of this interpretation have evidently not been fully dispelled in practice. What is more, over the past years employer organisations founded as special-interest associations have got around this problem. All they had to do was to delegate the authorisation to negotiate higher-instance collective contracts to employer representations situated higher in the hierarchy of employer associations and founded as required by the prevailing legal interpretation.[5]

[4] Since the start of economic and social transformation, changing the Labour Code to reflect all the fundamental changes in labour relations has been an important and contentious issue. There was disagreement on both the form of the new legislation on labour relations and their substance. Since the start of transformation, amendment of the Labour Code was a very important topic for the social partners. One characteristic feature was the government's efforts, continuing over several years, to scrap the Labour Code and to incorporate labour matters into the Civil Code. It was not just the trade unions that stood in the way of this move – employers were to a large degree against it as well. Under the social-democratic government the position of government has changed. The substantial amendment to the Labour Code was adopted. The most recent extensive revision of Labour Code (harmonisation with EC law) was adopted (Act No. 155/2000 Coll.). In spite of this fact in the Czech Republic there doesn´t exit Industrial Relations Court. All cases must be solved by Civil Court.

[5] These include higher-instance collective contracts made by the Federation of Industry and Transport on behalf of the Automobile Industry Association et al.

Membership in trade unions and employer organisations

Seeing that reliable written data on the scale of member bases is sometimes hard to obtain, in a number of cases it was necessary to rely on just the oral statements of the representatives of individual trade union associations. In employer organisations data on collective members is easily accessible but data on individual members less so. Up-to-date information on the scale of the professional component of employer and trade union associations, including those formed by further co-association, is not generally available either.

Trade union membership has been falling for some time. All trade unions and headquarters (with isolated exceptions like the Christian Trade Union Coalition) have encountered shrinking member bases. The trade unions' switching from one association to another caused extensive changes in their member bases. The decline in trade union membership is also reflected in sociological research.

Trade union membership fell by up to 60% between 1990 and 2001. The public's willingness to join trade union organisations and take part in trade union activities continues to lessen. For example, research has shown a fall in the potential willingness to take part in trade union activities fell by as much as 12% between 1995 and 1998. In 1998 just every tenth person contacted declared a desire to become somehow involved in trade unions (Pleskot, 1999). In a survey in the year 2000 IVVM recorded that just 21% of respondents would welcome the founding of a trade union organisation at their place of work. If we compare individual education categories, respondents with university education are the least keen on the existence of a trade union organisation at their workplace (12% in favour), compared to 30% of respondents with the school-leaving exam.

Despite the evident reluctance to join trade unions, the prevailing opinion among the population is that trade unions are necessary to protect the interests of employees, see following table. At the end of the first half and start of the second half of the 1990s three-quarters of respondents believed that trade unions are necessary in this regard. In 1997 the number of those seeing trade unions as necessary to safeguard employees had risen further (but fell again in the year 2000). This trend is probably tied up with the worse economic situation in the Czech Republic in the second half of the 1990s.

Table 3: Answers to the questions "Are trade unions necessary to protect employees‘ interests?" (in %)

	1994	1996	1997	2000
Absolutely essential	33.4	32.7	41.0	24.5
They are necessary, but not essential	41.9	44.3	41.0	48.3
sub-total	75.3	77.0	82.0	72.8
Unnecessary, do more harm than good	12.7	12.2	8.8	15.5
it’s better without them	2.2	1.9	1.3	2.2
sub-total	14.9	14.0	10.1	17.8
Don’t know	9.8	8.9	7.9	9.4

Source: Kadavá 2001.

The large number of those who regard the trade unions as necessary for protecting employees’ interests indicates promising prospects for the trade unions.

Comparison of public opinion data during the time shows the trust into trade unions, which doesn't changed substantially (see table 3).

Table 4: Trust into the trade unions (in %)

Year	1994	1995		1996		1997		1998	1999		2000		2001		2002
Month	5	2	10	2	10	2	10	2	2	10	2	10	2	10	2
YES	29	41	37	36	34	36	37	35	34	36	37	30	30	29	29
NO	47	38	41	36	42	39	41	41	42	42	40	46	41	44	42

Source: Naše spolecnost 2003, 03-03, Sociologický ústav AV CR- Center for Public Opinion Research (CVVM), 2003, p. 4.

The decline in trade unions’ member bases was mainly caused by the extensive privatisation in the 1990s. The owners of new firms and operational units generally did not want trade union organisations set up at the workplace and employees sometimes established what are called local organisations. The available figures often confirm concerns about joining trade unions at the workplace in view of the employer’s possible response. It has been shown (by the “Transformations of Employment Relations” research project

conducted in 1998) that as many as 46% of employees at least partially agreed that trade union activity could be a "thorn in the side" of the company management and hinder employees in their career.

In the past the trade unions repeatedly failed to react quickly to this problem and to recruit socio-professional groups who, though they could articulated their interests clearly, had insufficient support for them within existing organisational structures. The outcome was often the establishment of a new organisation (e.g. the Doctors' Trade Union Club) seeking to defend the interests of its members independently. A similar situation (but with a different result) has occurred in education.

According to the available data and estimates by representatives of trade union headquarters and trade union organisations, the number of trade union members had probably dipped below 1.3 million employees by 2001. According to the Czech Statistical Office, the total number of employees in their primary employment in the civil sector was 3,980,7000 in the second quarter of 2001. Approximately 33% of all employees were trade union members in 2001.

As for collective bargaining, it is obviously more adequate only for two partners to negotiate. Therefore the law stipulates that various trade unions active in the employer's organisation may negotiate the collective agreement only jointly and mutually unless they agree otherwise among themselves and with the employer.

2.2 Characteristics of trade union organisations and their associations

In generally, trade unions in the Czech Republic are organized on the work place principle, not on the regional one. As far as the highest level of trade union association is concerned, several trade union headquarters grouping together independent trade unions and organisations gradually emerged after 1989 and after the collapse of the Revolutionary Trade Union Movement (RTUM). Some of them, particularly those with fewer members, associate both legal entities and natural persons. In Appendix 2 is a list of trade union headquarters and the larger independent trade unions registered with the Ministry of the Interior in 2001.

Main confederations and trade unions

Czech and Moravian Chamber of Trade Unions (CMKOS - CMCTU)
The largest trade union headquarters was formed after the Czech and Slovak Confederation of Trade Unions was wound up in November 1993[6]. As of 30.6.1995 CMCTU was composed of 36 trade unions with

[6] The Czech and Slovak Confederation of Trade Unions was formed in March 1990 after the collapse of Revolution Trade Union Movement (ROH - RTUM) and inherited its member base and all trade union assets.

2.45 million members in base organisations. In 2001 their number fell to 31 trade unions associating 900,000 members. These trade unions (hereinafter "TU") have legal subjectivity and have retained most of their powers. The base organisations are established at company or organisational unit level. Some TUs also have local organisations, but these are a minority. In the process of developing new trade union architecture the headquarters were established democratically, by the will of TUs, as the result of "co-ordinated autonomy" (Fišera 1994).

KOVO

The most numerous trade union is KOVO, which associated 517,00 members in almost 1,100 base organisations in 1996. In the year 2000 KOVO still had 311,500 members. Second place is held by the Bohemian and Moravian Trade Union of Education Workers, followed by the Mining, Geology and Oil Industry Workers TU. Fourth place by number of members goes to the State Organs and Organisations TU and the Woodworking Industry Workers TU (Kubinkova 2001: 8). The number of members in the individual TUs is falling constantly.

Confederation of Art and Culture (KUK - CAC).

After the collapse of the former Trade Union Confederation (ROH) in February 1990 cultural workers trade unions formed their own confederation. After the disintegration of the Czech and Slovak Federative Republic CAC became an international confederation based in Prague and Bratislava. Negotiations with Slovak social partners are a matter for the Slovak trade unions. CAC members strongly advocate the principle of professional association, whereby the individual interests of various professions stand side-by-side with trade union interests. According to leading representatives of CAC, 90,000 members were registered in its member trade unions in 2001. The number of trade union members in CAC is falling constantly.

Association of Independent Trade Unions (ASO - AITU)

AITU was founded in 1995 by the TU of Agriculture and Nutrition Workers of Bohemia and Moravia, which left BMCTU in the same year. Its other founder members are the Czech Trade Union of Northwestern Power Company Workers and the Integrated Union of Private Employees. In 1996 it had around 130,000 members. By 2001 the member base had grown to 200,000. This increase was mainly caused by the accession of the Railway Workers Trade Union Association, which left BMCTU in 1998. The larger member base and change to the CESC Statute in the year 2000 allowed AITU to start taking part in tripartite negotiations. AITU's member base is also shrinking, according to its representatives.

Trade Union Association of Bohemia, Moravia and Silesia (TUABMS)

TUABMS was founded in spring 1991. It is close to the left-wing parties and is more critical of government policy than CMCTU. TUABMS has representation committees in Prague, Ostrava, Opava, Karviná, in North Moravia and North Bohemia.

Christian Trade Union Coalition (CTUC)

CTUC was founded in 1990. It was meant to follow up on the work the Christian trade unions that operated in the inter-war period. Christian trade unions were again founded by workers of the Christian Democratic Union (KDU-CSL) as the Christian Trade Union, which was renamed to zhe Christian Democratic Union (KDU-CSL) as the Christian Trade Union, which was renamed to the Christian Tarde Union Coalition in 1993. In 2001 the member base was approaching 15,000.[7]

Independent Trade Unions

Besides the trade union headquarters there are a number of independent trade unions and trade union organisations (see list below), which were either independent since their inception or left one of the trade union headquarters, particularly CMCTU. These trade unions have an organisational structure organised along local or company lines. The unions are divided either by branch or profession. The only exception is the Doctors' Trade Union Club/Union of Czech Doctors (DTUC/UCD), which, as its name suggests, is simultaneously both a trade union and professional organisation. DTUC/UCD's member base consists solely of doctors and, in exceptional cases and with the board's approval, other university-based healthcare workers[8]. In 2001 DTUC merged with UCD, which increased the member base to 4800. In its manifesto from April 1995 DTUC addresses both doctors in employment and private doctors. According to DTUC/UCD representatives, collective contracts are in place in most hospitals. The organisation does not have a partner for higher-instance collective contracts.

Besides the Railway Workers Trade Union Association, there are five small professionally organised and independent trade unions operating on the railways (Federation of Engine Drivers of the Czech Republic, Federation of Train Crew, Union of Railway Employees, Federation of Carriage Inspectors, Federation of Railway Station Operational Workers). The largest in terms of membership is the Federation of Engine Drivers of the Czech Republic, with 11,000 members. The other unions have roughly 1,000 members each. They only operate on Czech Railways. These unions do not operate in the private sector.

Independent Trade Union Base Organisations

Besides the trade union headquarters and federations, the Ministry of the Interior's register contains a whole series of trade union organisations that are registered under act no. 83/90, as amended, without members of a trade union or association. These organisations exist independently, usually operating within a company and sometimes conducting collective bargaining. The only overview of their existence is the aforementioned register.

[7] Internal data of CUTC

[8] Statutes of the Doctors' Trade Union Club/Union of Czech Doctors (citizens' association of doctors) from 10.4.2001

2.3 Business and Employer Federations

The employer interests are represented by two types of organizations, chambers (Economic Chamber and Agrarian Chamber) and employer associations and federations which are partners in social dialogue for trade unions. For this project is more important Economic chamber of the Czech Republic which is an association of large, medium and small businesses. It is oriented on advise and services to their members in matters related to commercial activities. It provides an information service, organise educational activities and other activities. It is organized on national, regional and district level and the membership is voluntary. At the present time there are 60 regional Economic Chambers and 70 trade associations[9].

Employer organisations were formed by sector or profession and by type of ownership. Membership of employer associations has not changed much over the last years. Rather, individual associations regrouped under umbrella federations. Based on the figures provided by employer organisations and their associations, these band together an estimated total of 10,000 to 12,000 business entities and self-employed persons. For comparison, as of the end of the year 2000 the Czech Statistical Office registered 2,063,883 business entities including the self-employed, 32,000 of which had over 20 employees. Figures on the number of firms' employees grouped in employer organisations are usually insufficient. Some sources state that firms banded together in business federations and their associations employ 1,500,000 employees (Draus 2001: 8). These figures correspond to the assessment according to which employer entities are not very representative on the national scale (Draus 2001: 4).

After 1989 the new businessmen founded a number of associations representing their newly formed, specific interests. Their headquarters and some of the individual associations are citizens' associations arising under act no. 83/1990 Coll. The Association of Agricultural Co-operatives and Corporations (it was re-registered as a citizens' association as of the end of 2001), for example, was formed under other legislation (the Civil Code, the Commercial Code). The majority of other associations forming the Federation of Industry and Transport of the Czech Republic were also set up under other legislation.

As the statutes of most employer organisations make clear, their mission is to represent, co-ordinate and promote the shared business and employer interests of their members in co-operation with state bodies, trade unions, the legislative assemblies and other employer organisations. They often represent the interests of their members in international employer and professional organisations as well. To varying degrees, the programme documents of the individual federations and associations treat of these functions and the issue social dialogue. In their work the federations and associations concentrate on protection of equal conditions of business, on harmonising the conditions of trade with those in the EU etc. They also provide services and advice to their members and broker business contracts and economic and technical information. Educational work is also important. Additionally, they help their members achieve success on the domestic and

[9] The Chamber of Commerce and the Agrarian Chamber enjoy good relations with the Confederation of Employer and Business Associations; with it and the Federation of Industry and Transport they prepared the "Programme for Renewal of the Country's Economic Growth" in May 1998.

international market and secure for them comparable business conditions as those of their competitors. It is clear that employer organisations mainly perform those activities that their members cannot effectively perform themselves. One exception is the Confederation of Employer and Business Associations, whose function, according to its statutes, is restricted to representing, co-ordinating and promoting shared interests, including building ties to organisations with similar interests.

Confederation of Employer and Business Associations (KPZS - CEBA)

CEBA was originally founded as the Co-ordination Council of Business Federations and Associations of the Czech Republic (CCBFA) in August 1990 to represent business interests in the then Council for Social Consensus. In 1993 it took on its current name. CCBFA then grouped together and represented all businesses in the Czech Republic, both large, branch-based business federations (e.g. the Federation of Industry and Transport of the Czech Republic (FIT)), and smaller private entrepreneurs organised in the Association of Entrepreneurs of the Czech Republic, as well as various professional communities. The crystallisation and fragmentation of interests resulting from economic and social transformation brought organisational changes and the largest member, FIT, left CEBA in 1995. At present it has the following members: the Association of the Textile, Clothing and Leather-working Industries (ATCLI), the Federation of Entrepreneurs in Construction in the Czech Republic, the Federation of Trade of the Czech Republic, the Co-operative Association, the Association of Entrepreneurs of the Czech Republic, the Federation of Agricultural Co-operatives and Corporations, the Union of Employer Associations of the Czech Republic. CEBA is represented in CESC bodies. It does not make higher-instance collective contracts.

Federation of Industry and Transport of the Czech Republic (SPD - FIT)

FIT was established in 1990 and takes up the tradition of the inter-war Central Federation of Czechoslovak Industrialists. FIT was part of CEBA up till 1995. Its members are individual members (100 in 2001, 162 in 1996) and collective members (31 in 2001, 29 in 1996), grouped together on the basis of branch, field or regional proximity. In terms of fields and professions, FIT includes 29 branch-based federations, plus one branch-based federation from the regional point of view and one from the ownership point of view. As of 30.10.2001 FIT banded together 1,453 (1,742 as of 1.7.1996) organisations and firms with almost 600,000[10] employees. One specific feature is the collective membership of professionally oriented organisations: the Czech Managers Association, the Association of Machine Engineers, the Club of Personnel Managers and the Association of Jewellers and Watchmakers. Today FIT includes fields like insurance and banking and the Association of Investment Funds, for example, is a member. There are also three joint stock trading companies among the branch associations represented. Besides large enterprise, FIT also represents medium-sized and small enterprise. These interests are represented here by the Union of Medium-sized Businesses, which is a collective member of FIT.

FIT is a member of CESC. Even so, until 1999 there was not much mention of collective bargaining and social dialogue in its strategic materials; economic issues dominated. After 1999 there was a turnaround instigated by the opinion that if FIT wants to influence legislation then it can only do so via social dialogue

[10] Federation of Industry and Transport, information brochure

at the national level. FIT now advocates participation in social dialogue, particularly via co-ordination of collective bargaining at the level of branch federations. FIT is willing to negotiate on the Social Stability Pact and the General Agreement (FIT manifesto) in order to promote the interests of the industrial sphere and to preserve social harmony. FIT does not conclude higher-instance collective contracts – the economic differences between its members and the spectrum of their interests are so wide that this is impossible. In the past FIT negotiated several higher-instance collective contracts based on an empowerment to that effect by the relevant member federation that could not bargain collectively because it had not been founded under the act on association.

2.4 Organisational structure of trade union and employer federations and associations

The basic organisational and power structure of the senior bodies of employer associations and trade unions is basically the same. Differences can be seen at the level of trade unions, where base organisations form what are called mandate wards, or associations thereof, for voting purposes. These associations are founded at the regional level to implement the regional policy of the relevant federation.

Employer and trade union federations usually form larger units under an agreement on co-operation or with the approval by the supreme body's membership. The organisational structure of social partners at the highest level is usually four-level or five-level.

The supreme body is the collective body, i.e. the congress (conference, general assembly) formed of delegates of the individual federations or organisations. The collective body usually approves or is authorised to change statutes, approve the main focus of activity and elect and dismiss members of the board etc. The supreme body generally meets once every two or three years.

The second stratum is another collective body, the assembly of delegates of individual members, which are usually the chairmen of the associations and federations. Assemblies of delegates are convened by the congress and co-ordinate the association's activities between sessions of the congress and decide on matters not set aside for the congress. In some organisations this second level is divided into two, one of which is convened by the supreme body and deals collectively with urgent issues – in some matters standing in for the supreme body. The second sub-level has more of an executive function, which approaches the third level, the board of directors.

The board of directors (representation committee) is an executive and sometimes also a statutory body. Members of the board of directors are elected by the delegates of individual associations and are confirmed by the supreme body. Where there is no second collective body the board of directors carries out the executive function. The activity of the board of directors is run by a chairman (president).

The fourth level of authority (though not in terms of significance) is the review body or commission.

At the regional level, too, trade unions – and to a lesser extent employer organisations – have a similar structure: general assembly (congress in the case of trade unions), board of directors, chairman, control commission. The Confederation of Employer and Business Associations and the Federation of Agricultural Co-operatives and Corporations, for example, have local organisations in twenty predominantly district towns. CMCTU has a much larger and better- developed network (what is called the political network).

Alongside the association's organs, employer organisations have special-interest sections, commissions and expert teams of 10-15 members set up to handle long-term and temporary problems. These groups often

take part in the sessions of the board of directors and generally provide advice. In employer organisations membership is on a voluntary and unpaid basis. This organisational platform on the part of employers has minimal material resources, depending on what each company with an employee in the body pays.

Trade unions also set up similar advice bodies, at all levels, including regional. Members of these bodies tend to be representatives of the relevant senior executive bodies and are supported in material terms by the relevant "sender" organisation. Additionally, some trade unions have district methodological workplaces that form an integrated service network. In addition to this, CMCTU operates legal advice centres in each region (15 centres in total) and these employ professional lawyers and provide advice services to all CMCTU's members and represents them in court.

The executive apparatus of employer organisations usually consists of a secretariat, headed by a director and made up of specialised sections and other administrative staff (roughly 5 people in small associations). The secretariat is at the disposal of the individual bodies of the employer organisation. It also liases between the individual federations in umbrella organisations. The lack of specialists means that the expert employees have to deal with a wide range of issues, which has a negative effect on their expertise work, particularly in the comment process for laws and conceptual materials.

The professional apparatus of employer organisations often draws attention to the chronic lack of resources for operational needs and the necessary broader staffing. Sometimes the executive apparatus is even dramatically cut in size. The lack of professional facilities and resources means that members of employer organisations do not possess an information base comparable with those of the trade unions, which are constantly updated and analysed (CMCTU). Here it should be remembered that employer federations cover a much broader range of activities than trade unions (advice, technical advice, business contacts, PR etc.).

At the branch level trade union organisations by contrast possess incomparably more staff, both in their expert apparatus (specialists in collective bargaining, labour law, health and safety etc.) and in their administrative and technical-organisational apparatus. CMCTU's individual trade unions also enjoy the use of educational facilities. Trade unions in the confederation often have their own editorial boards for union periodicals and a number of them possess substantial tangible and intangible assets that form a constant source of income.

There are considerable differences between CMCTU and its trade unions and other trade union headquarters and independent federations in terms of their material and staff resources. These differences arose when the property of the former socialist trade unions was redistributed at the start of the 1990s and to this day they continue to influence the scale of the individual trade union headquarters' and federations' activities.

In terms of material resources employer organisations are worse off than trade unions. They finance their activity through contributions (sometimes voluntary) from their members. The number of employees de-

termines the size of contributions. Voting rights in the organisation are also dependent on the size of contribution. Some organisations carry on auxiliary work such as an advice service.

So far Czech employers have neglected the need to associate, thinking it unnecessary. What is more, from the tax point of view member contributions are taken out of net profit. Representatives of employer federations (and in this they are supported by the trade unions) are striving to have employer contributions treated as a tax-deductible expense. The goal is to make employers more willing to form associations to defend shared interests, which is a precondition of social dialogue and collective bargaining at the branch level. That makes it in the trade unions' interest as well.

2.5 Social dialogue

Social dialogue at the sectoral level

The legislative framework

At the start of the transformation of Czech society, one of the priorities was to bring legislation into line with international documents on citizens' social and economic rights. As well as incorporation, achieved by a series of legislative amendments, those rights, comprising an integral part of human rights and freedoms, were enshrined in Czech law by the most important legal documents in legislative transformation - the Constitutional Act No. 23/1991 of 9 January 1991, and the Charter of Fundamental Rights and Freedoms. They put in place the legal guarantees essential for the systematic application of the principles of social partnership, and the general conditions for the elaboration of mechanisms and procedures for social dialogue, including collective bargaining.

The Labour Code

A key piece of legislation covering individual labour law relations is the Labour Code (also referred to here as "LC"),[11] which comprises the material law basis for negotiating collective agreements at company and higher levels. The LC stipulates that employees' wages and other labour law entitlements may only be increased and extended within the framework set out by the labour law regulations.[12] In practice, that

[11] The Labour Code was adopted in 1965 as the first codification of labour law in the Czech Republic. Since then it has been revised almost thirty times, formerly with the aim of the meeting the needs of central management, and since 1990 the terms of the market economy, international agreements and European Community (EC) norms. Positive features of the Labour Code are its thoroughness and its well-planned structure. Following 1989 there was a diversification of labour law, and new legislation on collective labour law relations, wages, etc. was taken out of the Labour Code. Today, labour law encompasses a number of legal norms (including regulations on employment). The most recent extensive revision (harmonisation with EC law) in Act No. 155/2000 Coll. is considered to be a substantial revision of the legal system and a significant victory for social dialogue in the Czech Republic, as social partners from the tripartite co-operated on its drafting.

[12] LC article 20

means that labour law entitlements beyond the framework defined by law may only be incorporated into collective agreements if explicitly covered by the Labour Code (i.e. it is not possible to negotiate labour law entitlements for matters not covered by a legal regulation, even though they are not prohibited[13]). That concerns employers operating business activities; other employers may only use that narrower framework when the law stipulates. In addition to that, there is still the general principle that no part of a collective agreement may run counter to the legal regulations, otherwise that collective agreement is invalid.

That restriction has from the start been considered - in terms of legal theory and the practice of collective bargaining - a crucial obstacle which seriously restricts social partners' contractual freedom[14] (that does not apply to wage entitlements - the legislation on negotiating wage entitlements has been substantially more liberal since the start of the transformation era). Labour law entitlements other than wages which can be agreed at a level going beyond the scope defined by law include e.g.:

- reducing working hours below the number stipulated by the LC,

- reducing the level of availability for work at the workplace,

- extending vacations with additional weeks,

- increasing or extending entitlements to paid leave in the public interest,

- extending leave of absence and subsidies for training and vocational study and for time off owing to serious personal reasons,

- increasing redundancy payments to include additional multiples of an employee's average earnings, and stipulating additional terms under which an employee is entitled to increased redundancy payments,[15] etc.

Legislation on employees' labour law entitlements include the problematic - especially in terms of the potential for collective bargaining in the Czech Republic - option of covering certain labour law entitlements by internal regulations issued by the employer.[16] The employer has that option on condition that no trade union organisation operates at his enterprise. An internal regulation issued in accordance with article 21 of the LC does not apply to entitlements to wages and travel expenses; those entitlements are governed by separate acts and related legal regulations. An internal regulation may not establish new legal obligations,

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[13] That opinion is not universally accepted. It is possible to find contrary opinions (cf. e.g. M. Steiner's standpoint in Právní zpravodaj no. 5/2000, in Právo a zaměstnání nos. 5-6/2000, etc.). Entitlements to unnamed labour law performance can quite often be found in collective agreements themselves.

[14] Opinions have been expressed that article 20 para. 2 of the LC is at odds with article 2 para. 3 of the Charter of Fundamental Rights and Freedoms, but the findings of the Constitutional Court have not confirmed those opinions.

[15] Since the beginning of the nineties, that labour law institution has undergone substantial changes. Earlier legislation had allowed increases within the range stipulated by law, but throughout the second half of the nineties redundancy payments had not been included in collective bargaining, as the level of redundancy payments was stipulated by the law. A further change - the waiving of the agreement principle - was introduced by the aforementioned "harmonisation" revision of the LC, allowing redundancy payments to be negotiated as an unlimited number of multiples of average earnings.

[16] The major revision of the LC by Act No. 74/1994 Coll. enshrined this measure, on which there are various opinions concerning its suitability, in terms of practice and legal theory. It was justified on the grounds of the needs of companies where no trade union organisations operated, so employees could not achieve the relevant entitlements by means of a collective agreement (they still had of course the legally guaranteed option of establishing a trade union organisation at their employer's and, following a preparatory phase, to move to collective bargaining). On the basis of similar arguments, the option of governing labour law entitlements by internal regulations remains in place even now, following the latest revisions of the LC.

nor specify in greater detail the obligations ensuing from legal regulations. An internal regulation is subsidiary to a collective agreement. The law stipulates that if certain entitlements are covered by a collective agreement or internal regulation issued prior to the establishing of a trade union organisation, the arrangements contained in the collective agreement apply, and that agreement is also of higher legal "quality", as agreement between the partners to the collective agreement is required to change or annul it, which is not the case for internal regulations. Despite all the aforementioned legislative aspects and arguments in favour of internal regulations, that labour law institution remains a unilateral normative act, representing indirect competition to collective agreements. If the terms stipulated by law are met, it can - like a collective agreement - cover all the labour law entitlements whose extension is permitted by law to the same extent as a collective agreement. In extreme cases the employer as an instrument for social dumping may misuse it, and in general it acts against the expansion of collective bargaining, interfering as it does with collective legal regulations. The fact that replacing the institution of the internal regulation by another legal solution (acceptable to the social partners) ensuring that all employers have the option of providing employees with extended entitlements will not be an easy task.

The crucial factor fatally undermining the normative potential of collective agreements is however the inappropriate overall conception of the Labour Code. It owes too much to the previous socio-economic arrangements, and has been based from the start on the prevalence of cogent norms over dispositions or provisions regulating collective agreements. The Labour Code has yet to come to terms with the basic constitutional principle that everything not explicitly prohibited by the law is permitted, nor does it cover the option of negotiating more significant deviations from the law on the basis of agreement between the parties. In labour law regulations it is often difficult to distinguish binding norms from methodical guidelines and general proclamations, which alongside the fact that apart from courts there is no one competent to give a binding interpretation of the individual provisions for a specific case, is another factor which hinders the drafting of collective agreements (there is no way of anticipating the outcome of a particular disputed problem in the event of a legal dispute).[17] Almost since the beginning of the nineties, a second stage of labour law reform has been anticipated, aimed primarily at drafting a new Labour Code meeting the needs of the market economy in full, which would relax all the restrictions on social partners' autonomy which remain in the present Labour Code.

The Collective Bargaining Act

Legislation on collective labour relations is primarily contained in Act No. 2/1991 Coll., on collective bargaining (the Collective Bargaining Act), whose adjective law approach is primarily aimed at implementing the material law provisions of the Labour Code and other labour law regulations.

Collective bargaining is opened when one of the parties submits to the other party a written proposal for the conclusion of a collective agreement. That partner is then obliged to respond to the proposal in writing without undue delay, and to make a statement on those parts of the proposal which have not been accepted.

[17] The existence of certain controversial provisions which have long been by-passed in practice (the impossibility of agreeing a longer trial period, the restriction on linking employment agreed for a specific period, a change to the legislation on providing leave for study which still corresponds to the situation at the end of the sixties, etc.) has also complicated the negotiating of valid and enforceable undertakings in collective agreements.

Rejecting the proposal as a whole is not admissible under the law, regardless of the justification. The partners are obliged to negotiate with one another and provide any co-operation requested. 60 days at the latest before the expiry of a collective agreement, they are obliged to commence negotiations on concluding a new collective agreement. It is clear that while the collective bargaining procedure is based on the principle of contractual freedom, the act is dominated - thanks to the guarantee of social conciliation - by a common interest in the successful conclusion of those negotiations. In addition, the law also stipulates additional binding regulations for collective bargaining, including the resolution of collective disputes. In that way it is possible to force the other party to conclude a collective agreement and accept certain aspects of it.

A collective agreement is concluded for a period explicitly specified in it. If not stipulated otherwise, it is presumed that the agreement has been concluded for one year. The parties to a collective agreement may agree in it on the possibility of changing it, including the scope of any changes. When making changes or supplementing the agreement, they proceed as when concluding the original collective agreement. If however the option of changing the agreement was not agreed in it, it cannot be enforced by using means otherwise available to the partners when negotiating a collective agreement (including extreme means such as strikes and lock-outs).

Collective agreements are concluded as bilateral agreements between employers and trade unions. Employers are primarily legal entities employing citizens in labour law relations. Employers may also be citizens, natural persons, who employ staff in their enterprises, etc. Employers' organisations may act on behalf of employers. The relevant trade union authority or its authorised representative acts on behalf of a trade union;[18] that may be the trade union organisation as a whole or an organisational unit, e.g. a company union (provided it has legal personality), or a higher trade union authority.

The law distinguishes between company collective agreements (CCA) concluded between the relevant trade union authority and the employer, and higher-level collective agreements concluded between the relevant higher trade union authority and an employers' organisation or organisations, for a larger number of employers. Legislation does not recognise sector collective agreements, concluded for an entire sector.[19] In practice, when there is talk of sector collective agreements in the Czech Republic, it usually refers to higher-level collective agreements (HLCA), regardless of the true scope of the agreement in question. Higher-level collective agreements covering entire sectors may in practice be negotiated between partners who, owing to their articles of association, or commissions from members covering an entire sector, are authorised to act on behalf of the sector in question as a whole. The problem is that there might be one or more actors representing the particular bargaining side.

[18] In collective bargaining and concluding collective agreements, trade unions act an behalf of all employees, regardless of whether or not they are members of those trade unions. That principle, stipulated by the Collective Bargaining Act, applies not only to collective bargaining at company level, but also at the level of the social partners' organisations, but has not yet been uniformly accepted. Trade unionists have pointed out that the results of their work also benefit those employees who make no contribution to financing the trade unions' work. Nor do employees who are not members of trade unions and do not wish trade unions to represent them and negotiate on their behalf always agree with that principle. This representing of all employees, regardless of their membership of trade unions, is also often considered to be one of the reasons for declining trade union membership and the limited significance and authority of collective agreements.

[19] So far, HLCA have not been extended to cover entire sectors.

Neither does the law recognise collective agreements concluded for a holding, even though such collective agreements were concluded in the nineties (of course extra *lege* - e.g. Škoda Plzen, CKD Praha). Given the special features of holdings, they are required as an intermediary level between the present CCA and HLCA. In some cases, holdings require common integrating standards for human resources, arrived at by collective bargaining which goes beyond the corporate framework. Another problematic area is concluding collective agreements for a plant (company organisational unit). Negotiating CCA can be considered if a trade union authority operates at a plant or other company organisational unit, and that authority has been delegated bargaining powers by the trade union's articles of association. In such cases there is often no partner on the employer's side, in view of the absence of legal personality. Nor are collective agreements (HLCA) concluded[20] with a territorially defined scope, having significance with regard to conditions on the labour market which vary from one territory to another, including wage levels.

The identification of legal personality for partners in collective bargaining is then a crucial factor in concluding collective agreements. Insufficient legitimacy for either party would invalidate the collective agreement and the undertakings therein. For higher-level collective agreements, in practice it is not so much the absence of a social representative for employees as the absence of competent bodies or ambiguity over competencies for collective bargaining by employers' association, which cause serious problems. That concerns instances where employers' organisations have not been established in accordance with Act No 83/1990 Coll., or whose articles of association do not feature authorisation for collective bargaining, or that authorisation is restricted to certain members of the organisation and has to be renewed on a case by case basis, etc. A particularly serious problem is legitimacy to conclude HLCA in the public sector. The present conception of the authorisation of a partner representing the employer is an obstacle to collective bargaining, as employers in the public sector do not usually need or want to associate for the purposes of collective bargaining.

According to article 7 of Act No. 2/1991 Coll., on collective bargaining, MLSA may stipulate in a legal regulation that a higher-level collective agreement is also binding for employers who are not members of the employers' organisation which concluded that agreement. An HLCA may only be extended to employers with similar activities and economic and social conditions, and who are not committed to another HLCA. Those general principles are practically all the act has to say about extending HLCA. There is no legal regulation stipulating detailed terms for extending HLCA, including procedural aspects. The objectives, procedure, subject or participants of extension have only been made concrete by practice, accompanied since the act came into force in 1991 by discussions between the social partners, politicians and lawyers.

Branches under the investigation in this project (metal/steel industry, chemical/energy industry and food-processing industry are covered by following employer associations and trade unions:

[20] In practice it does happen, but only exceptionally, as in the case of agreements negotiated by the Association of Moravian and Silesian Industrial Companies.

Metal/steel industry: Trade union KOVO (like IG METAL) represents the employees, employers are represented by Association of Air Producers; Czech-Moravian Electrotechnical Association; Branch Association of Metallurgy. These partners lead collective bargaining and close the higher-level collective agreement. Beside them there are another associations - Association of Producers and Suppliers of Engineering Technology, Association of Automotive Industry, Association of Engineering Companies of Moravia and Silesia.

Chemical/energy industry: Chemicals Trade union, employers are represented by Association of Chemical Industry. These partners lead collective bargaining and close the higher-level collective agreement.

Power Workers Trade Union, Czech Association of Employers in Power Supply. These partners lead collective bargaining and close the higher-level collective agreement.

Foodprocessing industry: Independent TU of Workers in Foodstuffs and Related Industries of Bohemia and Moravia (member of CMCTU). There doesn´t exist employer association in this branch, neither higher-level collective bargaining.

2.6 The representation of employees' interests and collective bargaining at company level

Legislation on the representation of employees' interests in companies

One of the starting points for social rights legislation at the beginning of the nineties was new legislation on the right of association (primarily Act No. 83/1990 Coll., and its revision under Act No. 300/1990 Coll.). The keystone for trade union pluralism in companies was Act No. 120/1990 Coll., governing certain relations between trade union organisations and employers. That act set out the regulations for partnership between trade union authorities operating alongside one another, or for new trade union organisations. If matters concerning all or a large number of employees are involved, where required by the Labour Code employer must discuss his regulations with the relevant authorities of all organisations involved, or request their consent (provided he does not reach an agreement with them). If the authorities of all trade union organisations do not agree within 15 days of being requested to do so, the crucial standpoint belongs to that trade union organisation which has the largest number of members at the employer's. If the issues involved concern an individual employee, the employer negotiates with the relevant authority of that trade union to which the employee belongs. If the employee does not belong to a trade union, the employer negotiates with the relevant authority of the trade union organisation, which has the largest number of members at the employer's (provided the employee does not specify an alternative trade union organisation).

It is of course more appropriate for collective bargaining to be held between just two partners. The law therefore stipulates that the authorities of trade union organisations acting in parallel at an employer's may

only negotiate a collective agreement jointly and in unison, unless they and the employer do not agree on an alternative arrangement.

Act No. 120/1990 Coll. has not been entirely appropriate in practice, being based on the principle of absolute trade union plurality and its application has sometimes resulted in practical problems when negotiating collective agreements. The regulations stipulated by the act primarily allow trade union organisations to be formed with an abnormally small number of members (a minimum of three). That can easily be abused and restrict collective bargaining in a company. Collective bargaining may in practice be blocked if one of the trade union organisations operating at an employer's obstructs agreement on a common approach for a particular, even though only minor, matter. That trade union organisation may have the lowest number of members of all organisations operating at the employer's. In that context, one opinion on current legislation is that the principle of the degree to which a trade union organisation represents employees,[21] or even a separate act on trade unions, would be more appropriate.[22]

Employees' councils and representatives for health and safety at work

EC directives and the Council of Europe European Social Charter oblige member and signatory states to ensure communication between employers and employees or their representatives in national legislation, regardless of differences in their organisation. In view of those international legal documents and in connection with declining trade union membership, a revision of the Labour Code has ensured communication between employers and employees by means of employees' councils and representatives for health and safety at work (HSW) for the cases defined by law. The introduction of those forms of social representation has established the option of holding social dialogue in companies with over 25 employees where no trade union organisations operate. The Labour Code also covers the right of employees in companies operating in the EC to multinational information and negotiation.

The law stipulates that "a works council may be established at an employer with more than 25 employees" (Section 25). The term of the works council is three years. Elections into the works council shall be announced by the employer based on a written proposal signed by at least one third of employees. Only after their election are council members protected by the law against discrimination and penalization due to the performance of their activities (Section 25c). The employer is obligated to allow employees to hold elections of employee representatives for the works council. The employer is also responsible for creating, at its own cost, conditions and means for employee representatives to properly perform their activities, especially to provide them – according to the employer's operating capabilities – with adequately-sized rooms, includ-

[21] E.g. Jakubka, Labour Code 1999.

[22] There are other problems in the application of the legislation on trade union plurality, related to the concept of "relevant trade union authority" in Act No. 120/1990 Coll. According to the act, the relevant trade union authority is that trade union authority operating at the employer's. A trade union authority operating at the employer's is primarily a trade union authority established at the employer's, with the full knowledge of the employer. Another possible legal opinion is that it could also be e.g. a local trade union organisation with one or more members who are employees of the employer in question, which would establish the authority of the trade union organisation in question. The fundamental aspect is the obligation to declare membership of trade union in connection with employment.

ing the necessary equipment, to pay the necessary costs of maintenance and technical operation and costs of required documents.[23]

Section 25 d-l provides for "an access to supranational information and consultation" through the "European Works Council" or an agreed alternate employee information and consultation procedure in community-scale undertakings with a registered seat in the Czech Republic (a community-scale undertaking is understood as an undertaking with at least 1,000 employees of whom 150 work at least within two EU member states each). The employer is responsible for creating – at the employer's cost – conditions and means for the establishment and proper activities of the negotiating body, the European Works Council or another agreed supranational information and consultation procedure, especially to pay the costs of organizing meetings, interpreting, travel expenses etc. This provision follows from an EU directive and comes into force on the date when the agreement on the accession of the Czech Republic to the EU comes into effect. The European Works Council may, however, be expanded to include employee representatives at employers from countries that are not a member of the European Communities if the central management and the negotiating body should so decide.[24]

Unlike trade union organisations, employees' councils and HSW representatives are not entities which can held collective bargaining. Under the Labour Code, they are institutions, which, if there is no trade union organisation at an employer's, facilitate the exchange of opinions and the dissemination of information. If a trade union organisation operates at an employer's, neither an employees' council nor HSW representatives may be elected. If an employees' council and HSW representatives[25] are operating at the employer's when a trade union organisation is established there, their activities are terminated on the day the trade union organisation furnishes the employer with proof that it has been established. The trade union organisation's authority takes on all authorisations to act on behalf of employees. The relevant trade union organisations' authorities also negotiate on a substantially greater range of labour law relations, and remain employees' sole representatives for collective labour law relations. That legislation is the outcome of demands made by social partners, primarily trade union representatives. It came into force at the beginning of this year, so experience in that field remains limited.

2.7 The position of trade union in labour law relations and changes to that position in the nineties

The amendment of the Labour Code by Act No. 3/1991 Coll. abolished the monopoly of a single trade union organisation and significantly revised trade unions' powers in labour law relations. A number of

[23] Act No. 155/2000 Sb., Section 25c, Paragraph 4.

[24] Act No. 155/2000 Sb., Section 25g, Paragraph 2.

[25] In line with EC law and the Council of Europe's European Social Charter, the Labour Code stipulates that if no trade union organisation operates at an employer's, or if no employees' council or HSW representatives have been elected, the employer is obliged to inform employees and negotiate directly with them.

powers previously enjoyed by trade unions, replacing the functions of state authorities, were abolished (e.g. decisions on sickness insurance), and trade unions lost their authorisation to participate in decisions on companies' financial management. That original authorisation was partially brought into the collective bargaining regime.[26] Trade unions have not accepted the new legislation on their position without certain reservations. Moreover, despite the revision, ambiguities remain in collective bargaining. The interpretation of a provision defining the general area for applying trade unions' powers in labour law relations has created difficulties. In practice, trade unions often extend their powers stipulated by law in collective agreements,[27] both HLCA and CCA, but that is at odds with the spirit of the present legislation and does not correspond to the predominant legal interpretation. According to a view relatively widespread amongst employers, the strict formulation of trade unions' powers featured in the act[28] prevents those rights from being negotiated on the basis of the specific needs of the partners in collective bargaining.

Company collective agreements

Collective bargaining to conclude CCA is - in terms of its impact, particularly on the quality of working conditions - the most important form of social dialogue in a company. Thousands of company collective agreements are concluded each year, which means that - along with the number of employees covered by those collective agreements - CCA dominate over higher-level collective agreements. CCA are also impor-

[26] Act No. 3/1991 Coll. primarily made the following changes to trade union authorities' powers:

- the abolition of the employees' right to participate in the expansion, management and control of the work of the employer's organisation, replaced by the employees' right to information on the work of the employer's organisation and fundamental questions relating to its finances and expansion,

- the abolition of the obligation to negotiate with the relevant trade union authority the appointment and recall of senior management,

- the abolition of trade union participation in the preparation, drafting and control of company plans and in analyses of manufacturing and financial activities,

- the abolition of negotiations on fundamental issues concerning the generation and distribution of profit, financial management, investment construction projects, technical development, measures to improve HSW and employee care,

- the abolition of trade unions' role in improving employees' qualifications, including their participation in selecting employees for training courses,

- the requirement for the consent of the relevant trade union authority to immediate dismissal or dismissal with notice has been replaced by a requirement for prior discussion; similarly, the requirement for trade unions' consent to transferring an employee to another function or workplace etc. has been changed to prior discussion.

[27] That concerns that part of collective agreements where, according to some legal opinions, it is assumed that those undertakings are not treated cogently by the labour law regulations and can be decided beyond the framework of the law.

[28] The Labour Code specifies more than 30 instances of a trade union's powers, e.g.:

- to decide with the employer the allocation to the fund for cultural and social needs, and to issue its consent to the employer's working regulations,

- to be informed by the employer on wages and salaries, the employer's economic and financial situation, his legal position and organisational structure, on probable developments in employment, structural changes under consideration, rationalisation or organisational measures in connection with mass redundancy, the status and structure of employees, crucial aspects of working conditions, and health and safety at work (HSW),

- to supervise compliance with the Labour Code and other labour law regulations, including wage regulations and regulations on HSW and employment, to control the employer's compliance with labour law regulations, his internal regulations and the undertakings made in collective agreements,

- to discuss with the employer his economic situation, norms for work and changes to the organisation of work, the system for appraising and rewarding employees, measures to create the conditions for the employment of natural persons, additional measures concerning a larger number of employees, HSW issues, measures by the employer to transfer employees to other functions than those specified in their employment contracts, measures by the employer aimed at avoiding or restricting mass redundancy, to discuss dismissals (and take joint decisions on dismissals involving members of the trade union authority authorised to take joint decisions with the employer),

- to agree with the employer time limits for him to submit reports on new employment contracts concluded, etc. (Kroupa et al. 2001)

tant thanks to their accessibility to users, and therefore their direct impact in a specific corporate environment, as well as easier evaluation and control of the fulfilment of the undertakings agreed.

The general accessibility of CCA remains low overall. There are a number of negative factors at work here:

- There is no regulated duty to record CCA (other than their storage by the relevant partners); the state, sectors, etc do not monitor CCA.
- Trade union organisations at companies are not usually in favour of making CCA accessible outside their companies (other than to trade unions, but that does not hold across the board), sometimes because the employer has committed them to protect the information therein, sometimes because they are ashamed of the poor quality of their CCA, etc.
- employers' organisations do not retain CCA and do not usually work with them,
- trade unions and related associations do not store CCA long-term and do not retain them in full,
- There is no institution with a systematic interest in CCA in full, i.e. without regard to the trade union provenance of the trade union authorities, which negotiated them. The only exception is the aforementioned investigations conducted by TREXIMA s.r.o. Zlín, but that company only works with the available, partial CCA files (primarily featuring CCA concluded by trade union authorities under trade unions belonging to CMCTU).

Data on the extent of collective bargaining at company level is only available to the largest trade union headquarters, CMCTU.[29] It emerges from the table taken from CMCTU that the number of employers where a trade union organisation operates, and the number of company collective agreements concluded, has fallen each year. The exception was 1995, when there was a slight increase in the number of employers and a significant rise in the number of company collective agreements concluded. A similar situation was recorded in 1999 and 2000 for a sub-group of employers with full or partial foreign ownership. With small deviations, particularly in 1999, the same trend applied to the total number of employees covered by CCA.

More favourable results - in terms of the extent of collective bargaining at company level - were recorded for small (up to 50 employees) and medium-sized (51 - 100 employees) companies. There were sharp increases in the number of CCA in those two sub-groups in 1999 and 2000, which was also due to the large increase in the number of employers in those size categories.

Developments in the most important part of collective bargaining, wage remuneration, are alarming. It emerges from CMCTU data that the number of employees paid on the basis of collective agreements is falling more rapidly then the other basic parameters for collective agreements in the corporate sector.

[29] Data were taken from "Zpráva o kolektivním vyjednávání na podnikové úrovni v roce 2001", which summarises the results of a CMCTU survey of wage and working conditions agreed in CCA for 2001. The document was produced for the purposes of that trade union headquarters, member trade unions and trade union organisations, and is not ordinarily available to the public. CMCTU has carried out similar extensive research in cooperation with its member trade unions every year since 1994 (data are always for 31 August of the year in question). Owing to their structure, scope and quality, those analytical materials, together with outputs from the aforementioned ISWC system, are a unique source of information on CCA, for which there are no other recording mechanisms or data of comparable significance (Kroupa et al. 2001).

A yardstick for the success of trade unions' work is the number of trade union organisations, which have managed to conclude CCA. In the context of a long-term decline in collective bargaining at companies, it is positive that the proportion of trade union organisations which have concluded CCA is falling more slowly than the decline in the number of trade union organisations operating at companies (as revealed by CMCTU data in the table).

The CMCTU report lists the reasons usually put forward for not concluding CCA:

- the passivity and ineffectiveness of certain trade union organisations,
- the unwillingness of certain employers to enter collective bargaining, or to conclude excessive commitments in view of their company's financial situation,
- agreements between trade unions and employers not to conclude CCA when HLCA guarantee employees better terms than the trade union organisation would be able to negotiate at company level,
- cases where collective bargaining is eliminated by the employer providing above-average benefits, etc.

In comparison with HLCA, CCA are more individual in nature and more differences can be found between their content, in view of their much larger number and primarily their more specific focus. In many companies there is the opinion that a collective agreement is a kind of calling card for the trade unions and their officials, the owners, management, the company as such, or even the employees themselves. Corporate management (primarily in larger companies) often regards the collective agreement as a management tool, and its issuing to be the adoption of a management act. That is due in part to the long tradition of collective bargaining in companies, which - especially in older companies - has been maintained despite personnel, organisational and ownership changes.

Despite the foregoing, it is necessary to say that CCA overall architecture and contents have many shared elements. Knowledge to date indicates that despite considerable differences in the length of text, the topics covered, the structure and formulation of undertakings, and the quality of the undertakings adopted, CCA have many identical features, and can therefore - with a certain degree of generalisation - be monitored together. That is primarily a consequence of the fact that as - unlike HLCA - the content structure of CCA is not stipulated by law, the authors of those far more specific collective agreements are forced when formulating the labour law entitlements contained in CCA to "weave" to a greater degree between the cogent provisions of the generally binding labour law regulations. Unifying influences can also be ascribed to the integratory role of HLCA. Extensive information work by trade unions, which always publish specimen CCA texts, alongside instructions and general data on forecast economic, financial and wage parameters, before the start of the collective bargaining season, also has an impact on eliminating differences between CCA in a given sector. In view of those and other unifying factors, reasonable doubt can in our opinion be cast on the thesis that a CCA reflects in full e.g. the modern history of a company and could be a true guide to developments in social conditions for the company's employees.

The revision of labour law regulations in force since 2001 has extended the options for the content of collective agreements. Non-wage labour law entitlements include increasing redundancy pay by additional multiples of average earnings, the option of increasing compensation in stoppages over 80% of average

earnings, or compensation for interruptions to work due to poor weather conditions over 60% of average earnings, etc. For working hours it involves specifying a period over which working hours will be unequally spread, reducing the extent of availability for work at the workplace to less then 400 hours a year and stipulating the extent of availability for work outside workplace, reducing the amount of overtime which an employee can be instructed to work below the level specified in the Labour Code, etc. In wages, it is possible to determine a higher minimum wage than that stipulated by the relevant government regulation, agree higher bonuses than those stipulated by the legal regulation for night work and work in environments detrimental to health (CCA may not however define the conditions under which those bonuses are awarded - those are stipulated by the relevant government regulation). There is greater room for collective bargaining concerning salaries, health and safety at work, and relations between social partners.

For the purposes of monitoring the content of CCA, using a broad representative sample,[30] output data from ISWC is of crucial importance. For CCA, that system includes the following aspects, distinguishing between the business sector, public services and administration, and municipalities and regions:

- minimum wage and monthly wage rates,
- monthly wage rates in alternatives to 12-tier rate systems,
- minimum wage and hourly wage rates, in 12-tier and other rate systems,
- wage bonuses
- remuneration for availability for work and compensation,
- average compensation for stoppages and interruptions to work due to poor weather conditions,
- remuneration for work anniversaries,
- remuneration for birthdays,
- number of organisations and their share of the total number of CCA in the set in whose collective agreements remuneration has been agreed by collective agreement, internal wage regulation, individual agreement or a combination of the three,
- number of organisations and their share of the total number of CCA in the set in whose collective agreements the use of wage forms has been agreed, divided into time wages piece wages, proportion wages or a combination of the three,
- number of organisations and their share of the total number of CCA in the set in whose collective agreements is agreed the classification of work activities under functions, professions and wage levels, using a uniform catalogue, or a trade union catalogue, or a company catalogue; the number of CCA of which the company catalogue comprises a part (in an appendix),
- The number of CCA where the provision of 13th, 14th and 15th monthly salaries has been agreed (also designated allowances for leave, Christmas, etc.),

[30] In 2001 that involves a sample of 1 473 CCA concluded by trade union authorities under 27 trade unions in the Czech Republic. The sample includes CCA concluded by trade union authorities under trade unions which are not CMCTU members.

- The use of other wage components (remuneration from the manager's fund, performance bonuses, premiums, etc.),
- agreement on the work of parity committees,
- average overtime included in wages,
- wage rises agreed in CCA by increasing wage rates by a fixed amount or a percentage, increasing the total volume of wages, the average nominal wage by a fixed amount or a percentage, increasing the average real wage, maintaining the average real wage, a combination of the preceding,
- wage rises agreed depending on economic indicators,
- labour law entitlements agreed,
- creation of a social fund, including the method for its creation and its level, and the use of the fund,
- the employer's role in health care for employees, pension insurance, contributions to life insurance, accident insurance, transport to work, and convalescence, reconditioning or rehabilitation,
- Other benefits provided to employees (lending building machinery, tools and instruments, selling company goods at lower prices, etc.),
- measures promoting health and safety at work,
- Measures concerning co-operation between the parties: the provision of economic information by the employer, the collection of members' trade union contributions by deductions from wages, the employer paying health insurance and social security for long-term officials, etc.

Some aspects of CCA are usually regarded negatively by experts, e.g. their disproportionate breadth of subjects, which means that some parts cannot be covered in sufficient detail, or makes collective agreements difficult to use. There is also a wide range of shortcomings in legal terms, and many arrangements are general in nature, or mere proclamations. The formal and material aspects of CCA are often rigid and conservative - partners who have found satisfactory solutions to certain issues do not want to change them. Some shortcomings in CCA (a result of the low level of attention some employers devote to CCA) reflect the fact that motivation management is in its infancy in the Czech Republic and competition for good employees is not particularly intense. The absence of participation elements in Czech management is also a disadvantage for the quality of CCA. The range of opportunities and benefits from the employer for staff training is traditionally very poor - undertakings in CCA rarely go beyond proclamations and generalisations. Trade unions are now considering the advantages which would result for collective bargaining by using professional trade union negotiators, and making trade union participation in collective bargaining at the company level more professional.

2.8 FDI as a research subject

The influence of FDI on industrial relations in the Czech Republic is still on the margin of research interest. For example, the library of the Research Institute of Labour and Social Affairs (Výzkumný ústav práce a sociálních věcí, VÚPSV - RILSA), which can be considered as a very good information source, does not follow foreign investments as a descriptor. Similarly, the literature search at some Czech institutions dealing with industrial sociology (e.g., VÚPSV, Universitas, and Faculty of Social Studies, Masaryk´s University Brno) has yielded very unsatisfactory results.

The existing attention of Czech researchers in this area focuses primarily on issues such as remuneration in foreign firms, the differentials in remuneration of national and foreign employees in foreign companies, and labour-law issues concerning employment in foreign companies. Only infrequently does the attention focus on the socio-economic aspects of the integration of the CR to the EU in the field of employment and labour and social relations.

KUCHAŘ, Pavel: Working Conditions as Perceived by the Employed. A West-Central-East Europe View. /Jak jsou zaměstnanými vnímány jejich pracovní podmínky. Hledisko západní, střední a východní Evropy./

Czech Sociological Review, 5, 1997, Vol. 2, pp. 217-233,

Results of an international research program titled “Conditions of Employment, the Instability of the Labour Market, the Labour Motivation of the Employed and the Unemployed” (1994-1996). A comparison of the situation in the Czech Republic, Slovak Republic, Great Britain, and Bulgaria. The attitudes of employed and unemployed people to the situation on the labour market (finding a job, loss of a job). The investigation of work motivation; general attitudes to work in individual countries. Search for common and different features. Impact of the accession of the Central and Eastern European countries to the EU.

FIŠERA, Ivan: Pokus o typologii vztah mezi zam stnanci a zamstnavateli. /Attempt at a typology of relations between employees and employers/

POHLEDY, 4, 1996, No. 2-3, pp.7-11. The author provides a characterisation of the labour relations before November 1989 and their development and changes during the transformation years. A typology of Czech private enterprises with respect to the relations between employers and employees. Problems with foreign companies.

Sociálně ekonomické souvislosti integrace České republiky do Evropské unie. Vybrané problémové okruhy v oblasti zaměstnanosti, pracovních a sociálních vztahů. Výzkumný ústav práce a sociálních věcí. Hospodářství, 1998, No. 11-12, pp. 1-22. /Social-economic aspects of the integration of the Czech Republic into the European Union. Selected problem areas in the area of employment, labour and social relations/

Collection of analyses of socio-economic aspects of the integration of the CR into the EU in the field of employment and labour and social relations. The goals and mechanisms of European integration in the field of labour and social affairs. Free movement of labour force and European integration. The conditions of international migration of labour force. The relationship between the economic and income levels in the CR and the EU, relation to the labour markets in both territories; consequences of the integration of the CR to the EU. Subsystems of social security in EU countries and in the CR. Allowances in unemployment, old age, disability and sickness. Maternity and family allowances. Coordination of national social security systems. Legal provisions concerning retirement, sickness and injury allowances, allowance in unemployment, and family allowances. Labour relations, the social dialogue, safety and protection of health at work in the EU and in the CR. Equality of opportunities for men and women in the EU and the CR. Consequences of the integration of the CR to the EU in the area of social security, labour law relations and equal opportunities.

ZAMYKALOVÁ, Lenka / POLÍVKA, Milan: Vytváření odpovídajících podmínek pro uplatňování pružných forem organizace práce a pracovní doby jako součást politiky zaměstnanosti. Appendix 3. Prague, VÚPSV 2000. 15 p. /Creation of Adequate Conditions for the Employment of Flexible Forms of Organisation of Labour and Working Hours as Part of the Employment Policy/

International projects or projects conducted within the framework of the PHARE programme are often an impulse to open up new issues or expand existing research topics with new points of view. As an example we can take the Czech-Danish twinning project “Development of Social Dialogue” which was conducted by the Ministry of Labour and Social Affairs of the CR for the Danish Ministry of Labour and the Danish Labour Office (AMS) in consortium with the Danish Confederation of Trade Unions, Confederation of Danish Employers (DI) and the Research Centre of Employment Relations at the University of Copenhagen (FAOS). During the first phase of the project, a study titled *Development of Social Dialogue in the CR* was prepared by the following authors: Kroupa Aleš/ Hála Jaroslav/ Mansfeldová Zdenka/ Kux Jaroslav/ Vašková Renáta/ Pleskot Igor, Prague: VÚPSV 2002. The study, based on, among other things, a number of qualitative interviews provides a comprehensive view of the social dialogue in the CR at the beginning of 1990s. The study focuses on the identification of system barriers restricting the capacity for social dialogue and presents a view of the discovered shortcomings and possible solutions. The study contains information on the political climate and existing legal regulations and information on social partners.

With respect to existing foreign studies and researches and international studies initiated abroad, which touch upon the IR in foreign companies in CR, I would like to point out, in particular, to Gerlinde Dörr and Katharina Bluhm's work (Dörr 1999, Kessel/ Dörr 1998, Bluhm 2001).

The survey in the automobile industry was conducted by *Gerlinde Dörr* (Dörr G.: The Auto Industry's Direct Investment Projects). She examines the transfer of the German model of labour practices, problems such as the transfer of industrial relations practices (such as trade union recognition, collective pay bargaining, shop floor employee representation, employee information, consultation and participation), and quality of personal relationships during transfer processes (Kessel/ Dörr 1998).

Katharina Bluhm studies German FDI in the CR and Poland and focused on three important labour practices – working time accounts, vocational training and approaches to industrial relations. The basic question was whether the pattern of industrial relations could be "exported" to Central Europe through a firm's direct investment. The reason for this is that German firms may appreciate the benefits of their labour policies and industrial relations at home, and wish to maintain these abroad. This, however, encounters many obstacles. With respect to working time regulation and especially overtime, the Czech labour law is much more restrictive that the German one. In case of vocational training the author points to an insufficient support, or rather the negative attitude, to the creation of conditions for the improvement of qualifications among companies and insufficient support or incentives on the part of business and employer associations and chambers. She points to different industrial relations in the CR and in Germany, especially the activities of trade unions within companies and the non-existence of the dual structure of labour representation. It is worth noting that, as has already been stated in section 2 hereof, the Labour Code amendment allows the creation of working councils but this new construction differs from the German model.

2.9 FDI from the point of view of the press coverage

An analysis of the Czech press, which included both national and regional press[31] between 1996 and the beginning of 2002 (a total of 976 articles, see Table 3), has yielded the following findings:

Table 5: number of articles on foreign direct investments in the CR in Czech press

Year	Number of articles
1996	146
1997	123
1998	117
1999	146
2000	224
2001	202
2002 January	18
Total	976

Topics in the press in 1996

Concerned primarily on the economic situation, foreign investment incentives, the state support to foreign investment, and the role of foreign investors on the Czech economy and policy, the sectoral distribution of FDI. Only in two cases the article deals with the problem of labour organisation, personal management, necessary restructuralisation. The articles can be divided into the following groupings:

[31] The analysis covered following print media: Právo, Lidové noviny, Hospodářské noviny, Telegraf, Slovo, Práce, MF dnes, Ekonom, Profit, Pražské noviny, Zemské noviny, Plzeňský deník, Technický týdeník, Euro, The Prague Tribune, Večerník Praha, Svět hospodářství, Banky a finance, Haló noviny, Střední Čechy, Moravskoslezský den, Rovnost. Another source were the Press Agency ČTI , Radiožurnál, Radio Free Europe and TV discussions.

- distribution of direct foreign investments (FDI) according to sector and geographically
- the volume of FDI
- incentives for FDI , activities of the agency CzechInvest to attract FDI
- what attracts foreign investors into the Czech Republic (qualified and cheep labour force) and, on contrary, what dissuades them, e.g. the slow reaction of Czech businesses to the offer of foreign investments,
- the influx of FDI and international politics, investments and politics
- the influence of foreign capital on the Czech policy
- the negative influence of improper handling of economic information on the influx of FDI
- the restructuring and strict denationalisation of key enterprises as the condition for the influx of FDI (greenfield and brownfield investment)
- the legal environment (the non-existence of a global treaty on the protection of foreign investments), non-efficient and rigid administration, the insufficient control of privatised property
- the reason for decline of interest of foreign investors
- the expected higher influx of foreign investment in connection with the Association agreement
- Cross-boarder co-operation and FDI

Topics in the press in 1997

Concerned primarily on the economic situation, foreign investment incentives and the existing legal environment. The articles can be divided into the following groupings:

- distribution of direct foreign investments (FDI) according to sector and geographically, the volume of FDI
- incentives for FDI , activities of the agency CzechInvest to attract FDI
- what attracts foreign investors into the Czech Republic and, on contrary, what dissuades them, e.g. the slow reaction of Czech businesses to the offer of foreign investments, low labour force mobility, language barriers, the illusion of natural comparative advantages
- the influx of FDI and international politics, investments and politics

- the influence of the coupon privatisation on the decreased influx of FDI
- the negative influence of improper handling of economic information on the influx of FDI
- the restructuring and strict denationalisation of key enterprises as the condition for the influx of FDI (greenfield and brownfield investment)
- the legal environment (the non-existence of a global treaty on the protection of foreign investments), non-efficient and rigid administration

Topics in the press in 1998

Again concerned primarily the economic situation, foreign investment incentives, and the existing legal environment. However, this year not only economic and political topics appeared but also those that focused on human capital and the quality of Czech management. The articles may be divided into the following groupings:

- reflection on the worsened economic situation in 1997 and 1998 and its influence on the influx of FDI
- real, expected and demanded steps of the government for the support of FDI and the rejuvenation of investments
- the volume of FDI and their structure over time and in international comparison, the allocation of FDI
- the existing legal environment and its problems, the equality of conditions for investments
- investment funds and the transparency of ownership as the precondition of an influx of FDI
- integration to the EU (the Association Agreement) and its influence on FDI
- FDI versus the Czech managerial culture

Topics in the press and media in 1999

The articles were again concerned primarily the economic situation, foreign investment incentives, and the existing legal environment. However, this year not only economic, institutional and political topics appeared but also those that focused on economic recession in the previous two years, especially on the beginning of the year. The articles may be divided into the following groupings:

- The impact of the worse economic situation in 1997 and 1998 on influence on the influx of FDI, the expectations against FDI.
- real, expected and demanded steps of the government for the support of FDI and the rejuvenation of investments
- the volume of FDI and their structure over time and in international comparison, the allocation of FDI in branches (difference between expected and real structure)
- the existing legal and institutional environment and its problems, the equality of conditions for investments
- the difference between Czech legal and institutional environment and the international one
- integration to the EU (the Association Agreement) and its influence on the influx of FDI
- FDI versus the Czech managerial culture
- number of new jobs created by FDI
- analysis of the influence of FDI on the Czech economy
- contribution of the FDI to the Czech economy is an illusion
- what is necessary for foreign investors for the decision to invest in the Czech Republic

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Ewa Sharman

3 Labour Relations in Poland

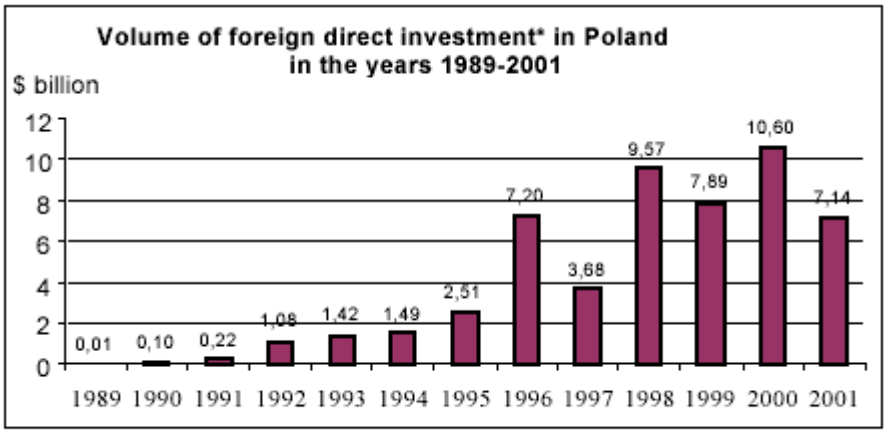
3.1 Foreign investment according to the value of investments, origin of capital and sector of economy

The ongoing system transformation process involving both economic and political changes has become the most important factor attracting foreign investors to Poland. Changes in the Polish legal system, at first aimed at enabling enterprises to operate freely in the new market conditions, are currently directed at harmonisation of Polish legislation with legal principles of EU member states. Moreover, Polish membership in OECD (acquired in 1996) ensured equal treatment of foreign and domestic investors which, naturally, improved Poland's attractiveness as an investment target. All those activities aim at making Poland a country possibly most attractive for foreign investment.

According to recent UNCTAD data, in the year 2000 Poland was a clear leader among other Eastern and Central European countries as far as absorption of foreign investment was concerned accounting for as much as 39% of total FDI made in this part of Europe. Poland was followed by the Czech Republic (18%), Russia (11%) Hungary and Slovakia (8% each).

Polish Agency for Foreign Investment has recently published data for 2001, according to which the total value of foreign investment in Poland exceeded $ 56.83 billion. The total value of capital invested in 2001 alone amounted to $ 7.1 billion, including $ 3.9 billion in the second half of 2001. By the end of last year the highest FDI inflows were registered in the year 2000 when the FDI volume amounted to $ 10.6 billion.

Volume of foreign direct investment* in Poland in the years 1989-2001



* Investment exceeding $ 1 million (source: Polish Agency for Foreign Investment)

The list of largest foreign investors in Poland presenting information about investors who, in the years 1990 - 2000, allocated in Poland capital exceeding $ 1 million comprised 906 companies from 34 countries. It is also of note that 103 enterprises were listed there for the first time, including 42 companies in the second half of 2001.

The largest investment expenditure was incurred by a group of French investors, who invested a total of $10.2 billion, including $ 2.4 billion in 2001 (making them the largest investor group in 2001). American investors came second with $ 7.8 billion, including $ 687 million in 2001 (third largest investor group that year), while German investors came third with $ 7.1 billion investment, including $ 1.36 billion in 2001 (second largest investor group that year).

Foreign investment in Poland according to the origin of capital

(as of Dec. 31, 2001)

	Country of origin	*Invested capital (in $ m)*	*Investment plans (in $ m)*	*Number of investors*
1.	France	10, 220.8	1, 707.8	87
2.	the US	7, 806.0	1, 916.8	125
3.	Germany	7, 138.3	1, 201.2	207
4.	the Netherlands	4, 584.6	518.3	74
5.	Italy	3, 501.4	1, 163.4	61
6.	Great Britain	2, 667.0	290.9	40
7.	Multinational corporations	2, 465.7	763.5	18

8.	Sweden	2, 312.1 350.5	57	
9.	Korea	1, 618.7 20.0	4	
10.	Russia	1, 286.4 301.0	2	

Source: Polish Agency for Foreign Investment

The sectoral analysis of FDI allocation trends in Poland has indicated that the number of sectors in which foreign capital is present is still growing. However, the majority of investment is still being invested in traditional sectors of the economy, such as trade or services. The financial services sector has been especially successful at investment absorption - the aggregate foreign investment value at the end of 2001 reached $ 12.2 billion, i.e. 21.4% of the total FDI inflows to Poland, and is growing steadily. Extremely good results have been also achieved by the sector of trade and repairs ($ 6 billion, i.e. 10.5% of total FDI inflows). It is also worth mentioning that the production sector has been gaining importance with growth trends as far as involvement of foreign investment is concerned (since 1999 its share rose by 10%), and last it reached the total of $ 21.8 billion (38.3%). The largest investment in the production sector was made in foodstuffs production (25.2%), non-metallic materials (24.3%), as well as automotive and electrical & optical appliances (altogether 32.4%). In 2001 three sectors enjoying largest interest on the part of investors - trade and repairs, production and financial services - absorbed 83.6% of the total volume of FDI allocated in that period in Poland.

Table: Cumulated value of foreign investment in Poland by sectors on the basis of European Classification of Activities (December 2001)

ECA	**Capital invested (in $ m)**	**Planned investment (in $ m)**
Manufacturing	21 881.7	4 171.7
food processing	5 505.7	526.9
Automotive	5 395.0	313.9
Other non-metal goods	3 060.0	820.3
Electrical machinery and apparatus	1 683.2	291.6
Publishing and printing	1 567.3	341.4
Chemicals and chemical products	1 304.6	372.4
Wood and wooden products	1 290.7	38.2

Rubber and plastics	612.0	230.5
Furniture production	479.2	292.9
Metals and metal products	447.7	782.7
Machinery and equipment	271.7	113.9
Fabrics and textiles	248.3	46.1
Leather and leather products	16.3	0.9
Financial intermediation	12 251.9	152.6
Trade and repairs	6 054.3	973.5
Transport, storage and communication	5 710.6	493.9
Construction	2 764.8 982.7	
Community, social and personal services	1 624.1	581.0
Power, gas and water supply	1 491.8	580.7
Real estate and business activities	627.8	1 636.1
Hotels and restaurants	617.8	232.2
Mining and quarrying	87.0	-
Agriculture	40.4 12.9	
Value of FDI over $1 million	53 152.2	9 817.3
Estimated value of FDI below $ 1 million	3 681.3	
Total FDI in Poland	56 833.5	

Source: PAIZ

Ownership transformations in the years 1990 - 2001 according to privatisation paths and sectors of the economy

After 12 years of implementation, the sweeping program of ownership transformations in Poland brought the number of state enterprises significantly down from the original figure of 8,453 in 1990. This was achieved through application of a variety of ownership transformation forms and economic

processes: privatisation, liquidation, bankruptcy, transfer of ownership to local governments (municipalisation process).

Within the group participating in ownership transformations, by the end of 2001, 970 Treasury corporations had been privatised through indirect (capital) method (1,515 state enterprises had been commercialised), direct privatisation had been conducted in 2,084 enterprises and 1,751 enterprises had been liquidated for economic reasons on the strength of the law on state enterprises.

3.2 Sale, Direct privatisation, Liquidation for economic reasons

Direct privatisation

This method is applied especially in the case of small and medium size enterprises of local or regional reach. By the end of 2001, out of the total number of 2,084 privatisation projects in the final stage of implementation (i.e. accepted by the Minister of the Treasury), 92.6% processes had been completed and 1,931 entities were removed from the register of state enterprises by way of:

- sale of an enterprise - 470 enterprises,
- contribution of an enterprise to a company - 212 entities,
- giving of an enterprise to be used for a consideration - 1,335 enterprises,
- application of "mixed" solutions - 67 enterprises.

It should be emphasised that as far as the quantity is concerned, direct privatisation has proved to be the most effective privatisation path.

In the case of 101 directly privatised enterprises foreign investors were involved, mainly from Germany, the Netherlands, Sweden and the United States.

It should be noted that the number of directly privatised enterprises has been declining steadily. The largest dynamics of direct privatisation was recorded in the first stage of privatisation, i.e. by the end of 1992 when 696 privatisation applications were accepted, which accounted for over 1/3 of the total number of applications accepted in the years 1990-2001.

Indirect (capital) privatisation

By the end of 2001, capital privatisation had been conducted in 970 Treasury corporations including:

- 315 companies, in which the transfer of shares / stakes was carried out by way of public offer or public invitation to negotiations in (foreign investors acquired shares in 121 entities, the largest external investors were firms from Germany, the United States, France, the Netherlands),
- in 127 companies liabilities were swapped for shares / stakes in accordance with *the law on financial restructuring of enterprises and banks*. This method has been less and less frequently applied - the largest number of bank settlements was concluded in the years 1996 - 1997.
- in 16 companies liability swaps for shares / stakes by way of commercialisation with liability swap were conducted in accordance with Section III of *the law on commercialisation and privatisation of state enterprises*,
- 512 companies were transferred to National Investment Funds - the NIF Program (foreign investors acquired shares / stakes in 27 NIF companies);

The NIF Program, also known as the Mass Privatisation Program, is being implemented in accordance with *the law of April 30, 1993 on National Investment Funds and their privatisation.* The basic objective of the NIF program was to create mechanisms which would expand and accelerate the scope of ownership transformations with simultaneous lowering of privatisation costs.

In recent years the concentration process has been taking place as far as NIF shares ownership is concerned. According to the data for the end of 2001, 17 investors hold more than 10% shares in a single NIF. Out of the total number of 512 companies included in the Program, by the end of December 2001 shares of 27 companies were listed on the Warsaw Stock Exchange, shares of further 14 companies are listed on the Central Table of Offers. According to the data available for Q3 2001, NIFs made available to external investors shares in 325 companies.

As of December 31, 2001, 13 companies were undergoing liquidation procedures, in 75 bankruptcy procedures were being conducted.

At present the Treasury is a minority shareholder of entities participating in the Program: in the case of national investment funds the share of initial capital remains at the level of 16% and in the case of portfolio companies it does not exceed 25%.

The NIF Program was scheduled to last for 10 years, i.e. to be completed in 2004. The Treasury has been successively disposing of its stakes according to the envisaged timetable. Since the Program was initiated, Treasury shares/stakes have been sold in 113 portfolio companies.

Liquidation of state enterprises

By December 31, 2001, the Minister of the Treasury had not registered objection to 1,751 motions for state enterprise liquidation under the framework of art.19 of the law on state enterprises. In the years 1990-2001 liquidation was completed in 870 enterprises, while in 656 liquidated enterprises bankruptcy was declared.

In the first period of ownership transformation liquidation for economic reasons was applied relatively frequently. Later on the number of liquidation processes dropped significantly. In the years 1990-91 535 liquidations were initiated; that number decreased to no more than 60 liquidations per year for the last five years.

Privatisation of enterprises in the main sectors of the economy

In order to recapitulate the privatisation process so far, it should be emphasised that the largest number of transformed enterprises came from the industrial sector (44% of all enterprises under ownership transformations). Among those enterprises the most numerous were firms manufacturing foodstuffs and beverages, producers of machinery and equipment, firms manufacturing products from non-metallic materials.

While analysing the ownership transformation process in the banking sector it should be noted that, as a result of the privatisation process conducted so far, approx. 76% of equity in the Polish banking sector is in the hands of foreign capital. 10 banks have been privatised since October 1992. The Treasury retained control in 7 banks, including 4 institutions controlled indirectly (Bank Rozwoju Budownictwa Mieszkaniowego S.A., Bank Pocztowy S.A., Bank Ochrony Srodowiska S.A., Wschodni Bank Cukrownictwa S.A.) and 3 banks controlled directly:

- Bank Gospodarstwa Krajowego - which will remain in state hands in the long term;
- PKO-BP S.A.- which should remain a universal bank, specialising in services for the general public;
- Bank Gospodarki Zywnosciowej S.A. - which will remain a bank specialising in servicing rural areas and agriculture, participating in support of multi-function development of rural areas. BGZ S.A. should become a universal commercial bank, after co-operative banks have been separated from its structure (currently approx. 34% of the bank's shares is held by co-operative banks). The Government plans to increase the equity of BGZ and listing of its shares on the Warsaw Stock Exchange.

The Government envisages privatisation of PKO BP S.A. and BGZ S.A., at the same time retaining control over those entities through majority blocks of shares or introduction of relevant statutory provisions.

According to the data for Dec. 31, 2001 commercial activity in Poland was conducted by 69 commercial banks. Foreign entities directly controlled 17 joint stock companies in which they held 100% of stakes, 1 branch of a foreign bank and 20 companies in which majority stakes were held by the Polish State Treasury.

Source: Sytuacja finansowa bankow w roku 2001 - Narodowy Bank Polski, Generalny Inspektorat Nadzoru Bankowego; Warszawa, April 2002. (Financial situation of banks in 2001 - National Bank of Poland, General Inspectorate of Bank Supervision; Warsaw, April 2002)

As of Dec. 31, 2001 funds and net assets of the 46 banks with majority stake of foreign investors accounted for 80.2% of funds and 69.2% of net assets of the banking sector. Those banks accounted for 63.9% of non-finance sector deposits and granted 71.3% of net loans.

On the other hand, the 3 banks controlled directly by the Treasury, as of Dec. 31, 2001, accounted for 21.3% of net assets, 27.2% of non-finance sector deposits, 18.4% of net loans and merely 10.6% of the basic and supplementary funds of the banking sector. However, the net assets, deposits, loans and funds of 4 banks indirectly controlled by the Treasury accounted for 1.8%, 1.5%, 2.1%, 1.9% of the banking sector net assets, deposits, loans and funds respectively.

As a result of 12 years of privatisation processes, the Treasury is currently the owner of 803 active enterprises, including approx.. 120 which have received approval of the Minister of the Treasury for completion of direct privatisation. In another 830 enterprises activities are conducted aimed at termination of their activity: 182 state enterprises are under liquidation procedures, in 648 bankruptcy was declared. As of Dec. 31, 2001 the Treasury held stakes in 1,762 commercial companies, including 588 companies in which it held majority stakes (the great majority of those companies is currently being prepared for privatisation).

In the years 1990-2001 privatisation revenues reached the total value of PLN 70.3 billion,

including PLN 66.1 billion from capital privatisation and PLN 4.2 billion from direct privatisation. The largest privatisation transactions carried out in that period include, i.a. the sale of shares in Telekomunikacja Polska S.A., Pekao S.A., PZU S.A., Bank Zachodni S.A., or Bank Handlowy S.A. It should be noted that capital privatisation revenues from transactions concluded with foreign investors in the years 1990 - 2001 account for over 75% of the total value of capital privatisation revenues.

According to the OECD data illustrating the impact of privatisation on the economy in the years 1990-2000[5], the total privatisation revenues in Poland in that period reached the level of 15% of GDP, giving Poland a satisfactory position within OECD member states, in which privatisation revenues in the last 10 years were between 9% of GDP (Finland, Italy) to 27% of GDP (Hungary, Portugal).

3.3 Effectiveness of foreign investors' participation in the privatisation process

Research conducted in the years 1995 – 2000 regarding effects of foreign investors' participation in privatisation of state enterprises (research projects ordered by KBN [State Committee for Scientific Research] on the initiative of the Ministry of the Treasury: „Foreign capital in privatisation" 1995; „Restructuring processes of large enterprises" 2000) indicated that foreign companies are interested mainly in large enterprises, operating in identical or similar sectors as foreign parent companies, located in large urban areas and holding relatively stable domestic and "eastern" sales markets for their products. Therefore capital-significant foreign investment is conducted mainly through acquisition of Treasury shares / stakes and stock exchange transactions.

From comparative analyses of economic performance of privatised enterprises in the years 1995 – 2000 and restructuring and modernisation activities conducted by their management boards it was concluded that companies whose majority investors were of foreign origin are in the group of firms which has the largest growth potential. Research revealed that they achieve the lowest (in the analysed group of 200 enterprises of different ownership form) average cost level indicators and the highest profitability ratios. Investment expenditure of companies sold to foreign investors were at the highest and the most stable level in the entire group; those firms also achieved the highest ratio of new equipment in production assets (production equipment in over 50% of them meets international standards). Those companies have consistently and persistently implemented restructuring and investment programs, financed to a large extent by loans. They modernised production and strengthened their market position, effectively competing with the quality of their products.

The results of research indicate that participation of foreign investors in privatisation of the majority of companies in which shares / stakes were sold to foreign companies, has had a decisively positive impact on their economic performance and strengthened their growth potential. However, the effects achieved by the companies under investigation cannot be evaluated as definitely beneficial in all cases.

Field research and data analysis revealed a clear and relatively permanent differentiation of results, occurring in companies with participation of foreign investors: apart from companies indicating the highest profitability in the group there also operated enterprises which, for 2 years or longer, indicated losses. The analyses indicate that permanently non-profitable enterprises after privatisation in some cases implemented drastic cost reduction programs and comprehensive restructuring. Moreover, research materials clearly indicate that the source of costs, having impact on the book loss of approx. 15% of companies sold to foreign investors, are different forms of co-operation and trade with parent investor companies.

The data and information collected during the research confirmed that strategic investors from the same or related sector, especially large international corporations, as a rule conduct the know-how

transfer and purchase technologies from the firms belonging to the concern. The costs are therefore created in extra-market transactions. Research and development "servicing" under the framework of the concern leads, in turn, to liquidation of those facilities in Poland and resignation from co-operation with Polish scientific and research units.

It can be concluded that despite the high average position of companies privatised with participation of foreign companies - entry of a foreign investor does not have in every case an automatically beneficial influence on its growth potential. As a rule, it is accompanied with sweeping restructuring, difficult for the employees, more demanding workplace and threat of job cuts, especially after the labour protection period, written into the privatisation agreement is over. In certain companies foreign investors subordinate the company strategy to the economic and market interests of parent concerns, pursued at the cost of development needs of their Polish subsidiaries, perceived as peripheral.

3.4 Perception of the role of foreign investors in privatisation by the general public in Poland.

Privatisation, especially with participation of foreign investors, prompted emotional reactions of the general public, as soon as the transformation began. It stirred anxiety related most of all to expected radical increase in work standards and discipline introduced by new owners, elimination of all social functions of an enterprise, a drastic rise in work qualifications requirements and ruthless selection of employees. ‘Capitalist’ production relationships did not have positive associations in the perception of Poles.

Fears related to privatisation, especially in groups which did not participate directly in ownership transformations, were reflected in opinion polls which illustrate - fluctuating in the years 1990 - 2002 but always significant - a percentage of subjects with negative attitude toward the privatisation process and not perceiving beneficial effects of ownership transformation.

The analysis of changes in the acceptance level for the privatisation process reveals clear relationship between the publicised cases of ineffective privatisation, especially in companies whose new owners were foreign investors. The transactions, when enterprises were sold ‘into foreign hands’ which - in the effect of rapid worsening of investors' financial situation (e.g. Daewoo – FSO; Swissair – LOT; Brandt – Polar) turned out to be damaging, evoked strong negative sentiments and almost immediately found their expression in more negative evaluation of the entire privatisation process.

The social climate around privatisation, especially anxiety, suspicion and less or more realistic conviction of negative, from the social and workers' point of view, character of ownership changes, influences significantly strategies of enterprises and decisions made by founding and proprietary bodies of those enterprises. Anxiety - and in consequence the pressure exerted by employees – sometimes necessitated seeking less favourable privatisation programs as far as economic and growth perspectives for the company were concerned.

Diagnoses of attitudes of different social groups towards privatisation, commissioned by the Ministry of the Treasury and regularly conducted by public opinion research centres, indicate that only part of their subjects (approx. 30% in research conducted in the years 1995 – 2001) considers ownership transformations beneficial for the Polish economy and enterprises by seeking private investors. The majority is of the opinion that privatisation is beneficial neither for employees (approx. 50%) nor for the society as a whole (approx. 80%). New owners of enterprises (especially foreign investors) and management boards of companies are considered to be definite beneficiaries of privatisation. The opinion that foreign investors are the group which benefited most from the privatisation of Polish enterprises is consistently shared (according to the research from 1995 to 2000) by more than a half of the total number of subjects.

Research indicates that the general public (more than 50% in the years 1995 – 2000) is willing to accept almost exclusively privatisation decisions only of enterprises in a very bad financial situation, requiring large investment outlays, threatened by bankruptcy. The subjects, especially those with worker background, still definitely prefer sale of enterprises to employee companies or Polish entrepreneurs.

Participation of foreign investors in privatisation is evaluated negatively by more than 50% of subjects; the number of people who support selling Polish enterprises which are in a good financial situation to foreign investors does not exceed 15%.

Almost 50% of subjects of national opinion polls, in recent years, accepted the opinion that foreign investment benefits the economy.

In the years 1995 – 1998 the majority of subjects positively evaluated foreign investment in Poland (in 1995 - 59%; in 1996 - 63%; in 1998 - 62%). Since 1999 the opinions regarding foreign investors have become much more critical: in 1999 the presence of foreign capital was considered beneficial by 51% of subjects, in 2000 - 44%, in 2001 - 35%.

The change of opinion concerning beneficial influence of foreign investment on the economic performance of the country clearly remains in line with more critical opinion regarding the state of the national economy, especially the situation on the labour market.

However, the percentage of positive opinions concerning benefits of foreign investment has remained consistently higher than the acceptance level for participation of foreign investors in privatisation. According to the research, the type of investment especially beneficial for the economy is considered to be greenfield investment.

3.5 Opinions of foreign investors concerning investment environment in Poland

In March 2002 the World Economic Forum (Source: Periodical evaluation of situation in the world economy; World Economic Forum, March 2002) published a ranking of 75 most competitive economies in the world as of the end of 2001. Poland moved to 41. position from position 34. in the year 2000. Among the countries seeking EU membership Poland was lower on the list than Hungary (position 28), Estonia (29), Slovenia (31), the Czech Republic (37) and Slovakia (40). In the opinion of the ranking's authors, deteriorating competitiveness of Poland has been caused by several factors: significant slowdown in economic growth, inefficiency of public institutions and corruption. Although, in the opinion of the World Economic Forum, Poland is at present less attractive as investment target than before, it is worth quoting some opinions regarding investment in Poland, presented by foreign investors.

According to PricewaterhouseCoopers (PwC), which in April 2002 presented the result of its research (based on the PwC clients' opinions) on investment environment in our country, there is a number of positive aspects which ensure attractiveness of the Polish economy. These include: large consumer market, perspective of EU membership, relatively low labour costs, qualified workforce, opportunities for export to the East. The questionnaire also indicated that investors pay attention to possibility of ensuring specialised services of consulting and auditing firms, taking advantage of investment incentives and support on the part of local self-government and communities.

Negative aspect of investment in Poland included: excessive bureaucracy, lack of a stable legal system (it is impossible to predict the changes in legal regulations), corruption, risk related to lack of economic stability, lack of appropriate infrastructure.

When asked about the need to introduce better legal solutions for foreign investors, the PwC clients focused on the necessary changes in the Labour Code, simplification of the tax system and administrative procedures, ensuring better access to financial instruments aimed at support of investment. On the other hand, as far as improvement in daily business practice was concerned, the entrepreneurs pointed to the need to implement the provisions of the contracts which were signed, combating corruption, improvement of corporate governance, timely settlement of payments, timely implementation of contractual duties.

According to research conducted in the year 2000 by Centrum Badania Opinii Społecznej (Public Opinion Research Centre) at the request of Polish Agency for Foreign Investment (PAIZ S.A.) the key factors which foreign investors thought to be the most important, as far as investment in Poland was concerned, were the geographical location, size of the Polish market, growth potential for our economy, labour costs and qualifications of workers. EU accession as a factor increasing our attractiveness for investment was also noted. It should be emphasised that the opinions quoted above are consistent with the results of a recent research conducted in 2001, by PricewaterhouseCoopers(*PricewaterhouseCoopers presentation: Poland as attractive place for investment – perception does matter; April 2002*), surveying opinions of foreign investors, clients of that consulting firm.

The perspective of Polish accession to the EU becomes an increasingly significant stimulating factor for investors choosing Poland as their investment target. In 1997 23.1% of subjects in a research conducted by CBOS (Public Opinion Research Centre) considered this factor important, while in 2000 that figure jumped to 30.5%. This trend has been also confirmed by research conducted by PricewaterhouseCoopers - according to that research, this is the second most important reason for which Poland was chosen by investors.

On the other hand, the results of a questionnaire research conducted in 2001 by Ibo Przemysłowo-Handlowa Inwestorow Zagranicznych (Foreign Investors' Chamber of Industry and Commerce) indicate that a considerable number of enterprises participating in the research pointed to changeability and complexity of legal regulations as well as excessively bureaucratic procedures as the two most important barriers for investment growth in our country.

Investors associated in IPHIZ also draw attention to complicated and time-consuming procedure required in order to acquire real property in Poland and poor infrastructure in the context of investment in particular regions.

3.6 Industrial Relations System

Trade unions

The operation of Polish trade unions is governed by trade union legislation dating from May, 1991, the Trade Unions Act. Arising from the events of the 1980s, the Polish trade union movement has been dominated by two major groups: the Independent and Self-Governing Trade Union “Solidarity” (NSZZ Solidarnosc) and the All-Poland Alliance of Trade Unions (OPZZ).

The Solidarity trade union was established in September 1980 and registered in November of that year following an agreement between the Interfactory Strike Committee (Miedzyzakladowy Komitet Strajkowy) and the communist authorities. In 1982, during the period of martial law, Solidarity- together with other trade-union organizations - was dissolved. It was registered again in April, 1989 following the Round Table Agreement.

Solidarity estimates its membership at 1.3 million, organized in 17,000 factory committees. The union is governed by a National Convention of Delegates (Krajowy Zjazd Delegatow) whose ordinary meetings are held at least once a year; the National Committee (Komisja Krajowa) and the National Revision Committee (Krajowa Komisja Rewizyjna). The National Committee supervises regional boards as well as the secretariat and branch councils.

The OPZZ was established in 1984 by the Meeting of Branch Union Representatives (Zgromadzenie Przedstawicieli Branzowych Zwiazkow Zawodowych). According to OPZZ data (released in January 2001), the union has 1.8 million members, 300,000 of whom are retired. The OPZZ's supreme body is the Congress, which meets every four years. Its main body is the Council whose members are elected in 12 branches - associating 110 national trade union organizations - and in 16 regions (voivodship). The OPZZ is structured along administrative regional lines and also comprises some 265 municipal structures.

In addition to Solidarity and the OPZZ, there are numerous other federations (about 300), as well as 273 trade union organizations which operate nationally and 23,955 local trade unions, of which 17,000 belong to the OPZZ. There are thus approximately 7,000 separate trade unions which are exclusively local and not affiliated to any of the main trade union organizations. Farmers' trade unions have a separate legal status, and they are becoming more and more active in social dialogue due to the current agricultural reforms. The farmers' unions are:

(Register of Acts, 1991, No.55, item 234).

a. the National Union of Farmers' Co-operatives and Organizations (Krakow Zwiazek Rolnikow, Kolek i Organizacji Rolniczych, - KZRKIOR);

b. the Solidarity Farmers' Union (NSZZ Rolnikow Indywidualnych "Solidarnosc"); and

c. the "Self-defence" Farmers' Trade Union (Zwiazek Zawodowy Rolnictwa "Samoobrona").

Trade union density

There are no reliable statistics in Poland regarding trade union membership and the level of unionization in enterprises. The most recent research indicates that trade unions currently operate in about 45 per cent of enterprises. It should be remembered that this is much higher in the public sector than in the private sector. Trade unions are widespread in traditional state-owned enterprises and State Treasury stock companies, while they operate in only 9 per cent of enterprises established since the 1990s as private undertakings. The average level of unionization in enterprises where trade unions operate is 50 per cent, though this figure is declining. A distinctive feature of Polish trade unions is their political activity and the significant role they play in the political system. Since its establishment in 1980, Solidarity was in fact a huge social movement that also fulfilled the function of a trade union organization. The two largest trade union organizations form the basis of the two main political parties in the country: the Solidarity Electoral Alliance (Akcja Wyborcza "Solidarnosc"- AWS), which has only recently been dissolved and the Democratic Left Alliance (Sojusz Lewicy Demokratycznej - SLD).

The political position of Solidarity is mainly determined by its participation in the Governments of the 1991-93 and post-1997 periods.

The political role of both major trade unions is also evidenced by the fact that numerous union leaders sit in Parliament.

A further issue for the Polish trade union movement is the question of how representative trade unions really are, especially at the enterprise level. For the time being, the representativeness of trade unions is regulated by law, yet the issue remains unresolved. In extreme cases, for example in the mining industry, there may be more than a dozen trade unions in a single enterprise, all struggling fiercely to gain influence. The union representation question is under examination and several proposals for resolving this matter are under consideration.

Employers' organizations

There are two main employers' confederations in Poland. One is the Confederation of Polish Employers (KPP) which was created in 1989. It has been active in its present form since September 1991 and based on the Employers' Organization Act of May 1991 . The Confederation is composed of both state-owned enterprises as well as private employers. For historical reasons, the KPP represents the employers' side in the Tripartite Commission for Social and Economic Affairs. The KPP governing structures are the General Assembly, the Executive Committee, the Presidency and the President. Permanent Committees act as advisory bodies to the President. The KPP participates in meetings of the On the basis of the agreement signed in May, 2001, the social partners have agreed that the Union of Handicrafts will become the third confederation of employers to sit in the new Tripartite Commission on Social and Economic Affairs.

The KPP has observer status at the Union of Industrial and Employers' Confederation of Europe (UNICE) and is a member of the International Organization of Employers (IOE) and of the Business and Industry Advisory Committee (BIAC) of the OECD.

The second organization is the Polish Confederation of Private Employers (PKPP) which was registered in January 1999. This Confederation is an organization of private employers and is registered in accordance with the Employers' Organizations Act of May 1991. The Confederation's fundamental objective is the protection of employers' rights and the representation of the interests of member organizations vis-à-vis trade unions, the Government and public administration as well as local government. Its governing structures are:

a) General Assembly;

b) Main Board;

c) Management Board and

d) President.

The Confederation was not a member of the Tripartite Commission for Social and Economic Affairs until the tripartite agreement reached by the social partners in May, 2001 provided that the PKPP would be a member of the newly reformed Tripartite Commission. The Confederation cooperates with the International Labour Organization (ILO), the International Organization of Employers (IOE), and has observer status at the Union of Industrial and Employers' Confederation of Europe (UNICE). In this regard, it should be noted that PKPP opened an office in Brussels in March, 2001. This Confederation represents a wide range of companies including small and medium sized enterprises. According to PKPP data (April 2001), it has 22 branches and 12 regional associations covering 2,150 enterprises employing 450,000 employees.

From a legislative point of view, the Employers' Organizations Act of May 1991 grants all employers the opportunity to organize themselves as associations, giving them full freedom in that respect. It also guarantees them full self-government and independence from government departments, local government and other organizations. The fundamental goal of employers' organizations is to defend the rights and represent the interests of member employers. These organizations also have the right to bargain collectively and to conclude collective labour agreements.

However, it should be said that the low level of activity of trade unions in enterprises meant that there was little incentive for private entrepreneurs to organize, especially at the beginning of the transition period. Many preferred to operate in the grey economy (in this way inducing unfair competition) and it was only public sector employers who initially felt the need to organize. Today, with the substantial changes brought about through economic reforms, more and more private employers and entrepreneurs feel the pressure to organize themselves and to be represented at national level. By strengthening their representation at national level, employers' organizations are trying to gain institutional credibility, but this also needs the loyalty and support of its individual members.

Tripartite institutions and mechanisms

During the early years of economic transition, the Government was completely overwhelmed by a massive and chaotic wave of strikes. In 1992, the social partners and the Government launched discussions about the possibility of introducing a social contract which was eventually signed in

February 1993 by the Government, Solidarity, OPZZ and seven other national branch trade unions. The new Pact on state-owned enterprises in transition included the creation of a tripartite body called the Tripartite Commission for Social and Economic Affairs. This was established by a Resolution of the Council of Ministers. By the end of 2000, the Tripartite Commission had met 75 times in plenary sittings. In addition, the Commission established a number of problem-solving committees, of which the committee for social security reform has proved to be the most productive.

The Commission succeeded in establishing common positions on the following issues:

a. the growth rate of average monthly wages in enterprises during the third and fourth quarters of 1994;

b. the level of resources to be allocated to wages in budget sector institutions in 1995 (central and local government institutions);

c. the maximum annual growth rate of average monthly wages in enterprises for 1995, 1996 and 1997;

d. the expected level of average pay in budget sector institutions and the difference in pay among subsectors for 1996 and 1997;

e.changes to the programme of social security reform;

f. the draft budget for 1996 and 1997;

g.draft legislation on employment and unemployment; and

h.mediators' salaries.

The Tripartite Commission became the main institution of social dialogue in Poland. Its position was strong and its public recognition was especially high during the 1995-97 period when it was headed by the late Andrzej Baczkowski, first as Under-Secretary of State at the Ministry of Labour and Social Policy, and in subsequent years, as Minister. At the time, the Commission was the main forum for wage negotiations, especially wages in the publicly financed sector (central and local government institutions), but also wages in the private sector. This was related to the two major pieces of wage legislation which came into force in late 1994: the Negotiation-based System for Setting Average Wage Increases in Enterprises Act, December 1994 and the Determining Resources for Budget Sector Wages Act, December 1994.

Initially, the negotiation mechanism set out in these Acts functioned very efficiently, not only because it was possible in 1995 and 1996 to reach wage agreements within the framework of the Tripartite Commission, but also because the agreements were respected. This fact should be emphasized in relation to private sector pay where the mechanism set the approximate ceiling for wage increases.

The ceiling could be exceeded but sanctions could be implemented only in the case of state enterprises where excessive wage increases took place in a loss-making enterprises. However, the system did not function properly as a number of state enterprises, especially the larger ones, did not respect wage discipline and increased wages beyond the negotiated ceiling despite poor financial performance.

Sanctions were not applied in a consistent manner and this, in turn, meant that the negotiated, approximate ceiling on wage increases lost its regulatory force. This led to the suspension of the negotiation-based wage regulatory mechanism at the end of 1996.

A second factor contributing to this development was the approach taken by Solidarity. In 1997, for political reasons related to imminent Parliamentary elections, Solidarity withdrew its support for the wage agreements negotiated by the Commission which meant that wage increases in the public sector were effectively determined solely by the Government. Again, no tripartite agreement was reached. Some of the trade unions attributed this to the inflexibility of the Government. These developments weakened the Tripartite Commission as the main forum for social dialogue.

Additionally, towards the end of 1998, the OPZZ suspended its participation in the Commission, on the grounds of a lack of real information, which effectively blocked any further work. The gradual weakening of the Tripartite Commission can also be attributed to its composition as neither the trade unions nor the employers were properly represented. The composition of the Commission was the result of negotiations over the Pact on State-Owned Enterprises. A number of influential trade unions representing workers in the service sector, especially public services, took part in these negotiations. Since then it has proved impossible to regulate the status of the Commission by legislation, and impossible to put a mechanism in place which would ensure that the Commission was composed of truly representative social partners.

In the case of the private sector, the decline in the importance of the Tripartite Commission has led to the spontaneous decentralization of industrial relations, and wage bargaining is now determined more by the balance of forces at local level. The centralized bargaining mechanism operates in a rather chaotic way and influences only a few key sectors in the economy still dominated by state enterprises, such as mining. In the case of the public financed sector, the effect has been to shift bargaining once again towards the sectoral ministries (e.g. the Ministry of Health and Social Security).

The debate on reform of the Commission has ignited a public and "political" debate among all the major social actors. The most important issue at stake is the determination of criteria of representativeness for both trade unions and employers' associations, as well as representation of the Polish National Bank, the State administration, local community institutions and services and other social and professional organizations. In principle, both social partners and the Government have agreed on this representation, although with a number of reservations. The major problem remains the determi-

nation of the quantitative criteria. There have been proposals to designate in legislation the trade unions and employers' organizations which could sit in the Commission.

The Polish Parliament began work in early 2001 on new legal regulations to establish a national social dialogue institution to replace the existing Tripartite Commission for Social and Economic Affairs. Activities are based on two separate projects presented respectively by the Government and by Parliament. Legislation on the role, composition and functioning of a tripartite Commission was already envisaged in the Pact on State-Owned Enterprises concluded in 1994. The importance of this topic grew considerably following the adoption of the new Constitution of the Republic of Poland in April, 1997.

In May 2001, following a series of initiatives and consultations among the social parties, a Joint Declaration was signed by the following national social actors: OPZZ, Solidarity, PKPP, Union of Handicrafts and the Deputy Prime Minister and Minister of Labour and Social Policy. This Declaration addresses the questions of unemployment and job creation, and lays down the basis for the establishment of a new Tripartite Commission on Social and Economic Affairs. The main role of the new Commission will be the development of social dialogue to counteract unemployment and promote job creation, to deal with macroeconomic, fiscal and monetary policies, promotion of economic development, improving competitiveness, labour law reform and relations between employers and employees, education and continuing education and training programmes.

The legal text establishing the new Tripartite Commission was approved by the Parliament (Sejm) in July 2001.14 According to press statements issued by the major social partners, the Commission will finally establish a legal framework for permanent social dialogue. It is interesting to note that Parliament has accepted the proposal that meetings of the Commission will also be attended by representatives of local government, the President of the National Bank of Poland and the President of the Central Statistical Office in an advisory capacity.15 In addition to the composition and organization of the Tripartite Commission at the national level, the law deals with the so-called "voivodship social dialogue commissions" – these are new bodies created at the local level with a view to expressing opinions on matters of mutual concern to the public authorities and the social partners, dealing with all economic and social aspects of the reforms. Its composition is tripartite, although it is possible to extend participation in its meetings to representatives of other interest groups. These commissions are also served by a permanent secretariat (organizational unit) which is considered to be part of the voivodship administration. The law of July 2001 links the new Tripartite Commission with the Prime Minister and his Chancellery. The Chairman and all members of the Tripartite Commission are appointed by the Prime Minister, based on proposals from representative employees' and employers' organisations respectively, local self-government, the President of the National Bank of Poland and the President of the Central Statistical Office. The Chairman of the Tripartite Commission is appointed by the Prime Minister from among member of the Council of Ministers, representing the Council of Ministers in the Commission (their number is defined by the Prime Minister who also appoints and recalls them); thus according to the law the Chairman of the Tripartite Commission and its

staff are situated in the Prime Minister Chancellery and as its organisational unit; the operational costs of the Commissions are covered by the Prime Ministers' Chancellery Budget. It is too early to say whether the Commission will function effectively. The attitude and approach as well as the representativeness of the parties will determine its success.

Sectoral and industry committees

In recent years, due to wide-scale industrial restructuring, privatization and re-organization ofwork in several industries, the Ministry of Labour and Social Policy have created a number of tripartite problem-solving committees. Each of these committees is composed of representatives of the social partners on an equal basis.

Some of the first committees established were:

a. The Tripartite Group for Miners' Social Security;

b. The Tripartite Group for Social Conditions in the Restructuring of the Metal Industry;

c. The Tripartite Group for Restructuring of the Energy Sector;

d. The Tripartite Group for Social Protection of Workers in the Asbestos Industry;

e. The Tripartite Group for Restructuring of the Defence Industry;

f. The Tripartite Group for Restructuring of the Mining and Sulphur Processing Industry;

g. The Tripartite Group for the Textile Industry.

These sectoral committees provided fora for consultations on the social consequences of industrial restructuring. They worked in a very formal manner according to rules and procedures agreed on by the parties themselves. Some consultations resulted in real negotiations and the conclusion of industry agreements including the following:

1. the metallurgy social package (agreement on social protection conditions in the restructuring of the iron and steel industry);
2. agreement on the restructuring programme for the defence industry and support in the field of technical modernization of the Armed Forces of the Republic of Poland,
3. the social protection package for workers in the asbestos industry, 4. a strategic agreement for the textile industry (1999-2002),
5. a restructuring programme for the mining and sulphur processing industries.

In addition to the above, several other sectoral committees have been established. Among others, the Tripartite Commission on Maritime Affairs and Deep Sea Fishing was established in October, 2000.

A new bipartite metal industry committee was created in early 2000. It acts as an advisory group to the Minister for Labour and Social Policy and it monitors the working and employment conditions of metal workers in the restructured metal industry. The committee is composed of representatives of trade unions and employers' organizations in the metallurgy sector.

In addition to these tripartite and bipartite structures, some committees include other actors in society such as chambers of industry and commerce, local and regional government. In these committees, social dialogue has focused on highly specific issues, where it is seen as an essential vehicle for reaching compromise in industries and sectors undergoing restructuring. This practice has been supported by new legislation introduced in Poland in 1991. For example, the public authorities have the obligation to consult workers' and employers' organizations prior to the launching of any industrial restructuring process which is taken at the Government's initiative.

Commission for Collective Labour Agreements

In addition to the above sectoral and industry committees, a Tripartite Commission for Collective Labour Agreements was also established to deal with the amendment of the Labour Code and amendments to selected Acts.18 This Commission is composed of representatives of the following institutions: central government, the Polish Employers' Confederation, Polish Confederation of Private Employers, supra-enterprise trade union organizations19 and the State Labour Inspectorate. The Commission meets when the parties consider it useful to discuss amendments to labour laws.

Other bodies for social dialogue

Apart from the tripartite and bipartite institutions described above, there are also a number of other institutions specializing in social dialogue in Poland. Alongside the representatives of workers and employers other interest groups take part in the wider consultation processes of some of these. Usually, these institutions are organized countrywide. The main areas are:

a. The Central Employment Council (bipartite structure);

b. The Labour Protection Council (multipartite structure);

c. The Social Assistance Council (multipartite structure);

d. The Council of the Guaranteed Worker's Benefits Fund (bipartite structure);

e. The Joint Consultation Committee of the Republic of Poland and the Economic and Social Committee of the EU.

The Polish Communication Committee for Co-operation with the Economic and Social Committee of the European Community was created following agreement between non-governmental organizations. The main task of this Committee is to support the promotion of dialogue and cooperation between groups representing economic and social interests in the European Union and in Poland. The dialogue and co-operation cover the entire span of economic and social aspects of the relationship between the European Union and Poland, especially in the context of implementation of the accession agreement. The Communication Committee is independent of the Government.

3.7 Social dialogue and employment policy

Issues related to employment policy have been and continue to be the main subject of social dialogue. This dialogue takes place at various levels: at the national level - particularly cross-sectoral dialogue - in the forum of the Tripartite Commission for Social and Economic Affairs at the sectoral level - sectoral labour collective agreements on economic and social issues related to restructuring, and at the enterprise level in the form of the right to information, co-operation, collective labour agreements and other agreements provided for by law.

Collective agreements are the direct result of social dialogue. They also provide an opportunity for negotiating provisions on employment policy such as a commitment to create conditions for restructuring, development of plans for adapting workers' skills to the changing needs of employers, adoption of flexible forms of employment and working hours.

Social dialogue at the sectoral level is largely concerned with industrial restructuring and privatization processes, and can be either tripartite or bi-partite. The Government's participation at this level reflects the fact that the State is still the owner of large public enterprises and that the restructuring initiative (including liquidation of enterprises) is initiated by the Government itself and carries significant implications for public expenditure. However, the role of the Government at the sector level is likely to diminish as its role as an employer is reduced. The Government, therefore, supports the development of the "autonomous dialogue" between employers and employees. For this purpose, some legal provisions have been adopted and others are in the pipeline, especially in the field of labour law, labour relations, tax law and social insurance law.

Negotiating issues: wage flexibility and reduction of labour costs

At present, information, consultation and negotiation at the national level is concerned with the urgent need to boost employment and reduce unemployment which is currently at 16 per cent of the registered workforce. The main issues at stake are the reduction of labour costs and flexibility. During 2001 significant attention was paid to increasing wage flexibility by changing the rules governing the setting of the minimum wage. This reflects the employer's view that the minimum wage in Poland, which is binding for new employees and less-skilled workers, is detrimental to job creation especially in regions outside Warsaw. In their strategy for employment creation and human resource development presented to Parliament in January 2000, the Polish authorities proposed indexing the minimum wage to inflation rather than to average wages, and introducing a separate, lower minimum wage (below the current uniform minimum wage) for labour market entrants. The trade unions resisted changes in the rules setting the minimum wage on the grounds that approximately one-quarter of workers earning the minimum wage are below 25 years of age. Some 20 per cent are in the 25 to 34 years age bracket, and another 25 per cent in the 35 to 44 years age bracket. An agreement was reached during 2001 between trade unions, the Government and employers that the cost of labour should no longer be an issue in negotiations.

3.8 Labour Code Amendments

More flexible Labour Code

In late November 2002, a revised and more flexible Labour Code came into force. The single most important change is the introduction of a new possibility of concluding agreements to suspend temporarily the application of collective agreements and similar provisions at companies and other employing entities faced with financial difficulties. This change, which presupposes the existence of employee representatives to sign such 'suspension agreements' , has highlighted a number of shortcomings in Polish labour law, in that there is no statutory form of workforce representation in employing entities at which no trade unions are present.

According to the Ministry of Labour and Social Policy, there were 10 amendments of the Labour Code in Poland between 1945 and 1989, while the period from 1990 to 2002 brought no fewer than 20 such amendments. These constant modifications in recent years have arisen from the search for a compromise between three forces – the successive governments of the country, the trade unions and the European Union. The amendments to Poland's labour law occurring since 1989 can be divided into three distinct periods, as follows:

- the first period, lasting for approximately two years (1989-91), was dominated by the necessity of rapidly adapting the law to the realities of the market economy, in order to regulate phenomena such as mass redundancies;

- the next period, which lasted much longer (1991-2001), was marked by the activity of trade unions which, at that time, exerted considerable influence on the work of parliament. A number of parliamentary commissions involved in the shaping of labour laws included trade union activists-cum-deputies, some of them holding prominent positions in the largest union organisations. As a result of their contributions, the Labour Code came to include provisions which significantly increased the duties of employers towards their employees. The owners of small and medium-sized enterprises (SMEs) became subject to legal duties which translated into higher costs of managing their businesses (such as the requirement of formulating detailed company 'bylaws' or of establishing social funds). The owners of SMEs, assembled in the Confederation of Private Employers (Konfederacja Pracodawcow Prywatnych),constantly criticised these various encumbrances, arguing that they brought about a paradoxical situation whereby the owner of a small business is subject to the same requirements as the board of directors of a major company. At the same time, research conducted by Polish sociologists indicates that the stringent requirements set down by the labour laws are frequently breached by many employers with the tacit consent of their employees; and

- the third period began following the parliamentary election of 2001 and the replacement of the Solidarity Electoral Action (Akcja Wyborcza Solidarnosc, AWS) government by a left-wing coalition of the Democratic Left Alliance (Sojusz Lewicy Demokratycznej, SLD), Polish Peasants Party (Polskie Stronnictwo Ludowe, PSL) and Labour Union (Unia Pracy,). A significant shift in the situation ensued. First, the unions lost what had previously been a very strong position in parliamentary circles. Second, the new coalition, its ostensibly left-wing pedigree notwithstanding, appeared to opt to cast its lot in with private business rather than with the employees. Third, there appeared in parliament a group of deputies representing private business, who are to be found within the governing coalition itself as well as in the ranks of other political parties with parliamentary seats, including Self-Defence, the most populist of the parties.

New labour law flexibility

Work on revision of the Labour Code so as to render it more flexible commenced in 2001 when Jacek Piechota, a member of the 'post-communist' SLD party, assumed in the portfolio of Minister of the Economy. In the previous parliament, Mr Piechota had chaired the SMEs commission. Once he was installed in his ministerial post, his office proceeded to draw up a list of demands from the SME community. This was distributed to a number of appropriate parties, the Ministry of Labour and Social Policy included, and provided the basis for some preliminary proposals as to how Polish labour law could be made less rigid, and general debate ensued.

In the initial stages of the debate, the unions affiliated to the All-Poland Alliance of Trade Unions were much better disposed towards the government's proposals than was the Independent and Self-Governing Trade Union Solidarnosc Statements by the Minister of Labour and Social Policy, soon followed by similar ones by the Prime Minister, to the effect that a more flexible Labour Code would soon bring about more jobs and less unemployment sparked a controversy, with union activists and independent experts both in Poland and abroad stating that reducing unemployment depends first and foremost on increasing demand, reducing the high tax burden on labour and similar factors - meaning that it must be a long-lasting process and that no 'quick fix' is possible. That said, it was generally acknowledged, even in union trade circles, that the inflexible rules put in place by the Labour Code must be amended. However, the unions – most notably NSZZ Solidarnosc – took issue with most of the specific amendments proposed.

Following the legislative Act of 26 July 2002 amending the previous Labour Code and certain other statutes pertaining to labour law, the new Labour Code started to come into force on 29 November 2002.

Temporary suspension of non-Labour Code employment law provisions

According to the new Labour Code, 'where justifiified by the financial situation of the employer, an understanding may be executed concerning suspending the application, in whole or in part, of the provisions of labour law which define the rights and obligations of the parties to an employment relationship; this shall not apply to provisions of the Labour Code and to provisions of other legislative acts and of executory instruments.' Thus, the new Code allows for agreements to be concluded in companies in financial difficulties which suspend temporarily the application of the provisions of 'in-house' instruments such as collective agreements, remuneration rules, or work bylaws (all of which are considered to be 'labour law instruments').

This possibility of temporary suspension does not apply to the provisions of the Labour Code. The original proposal made by the employers, embodied in the preliminary draft of the new Labour Code and considered by the unions, had aimed further and provided that, in the event of financial problems in a firm, the suspension could also extend to some provisions of the Labour Code itself. A provision was proposed whereby, by way of a collective agreement, exceptions to the disadvantage of employees could be introduced with regard to the remuneration guarantees provided for in certain provisions of the Labour Code. In the wake of consultations with the social partners (ie the trade unions) and with one of SLD's coalition partners (UP), however, it was decided that the possibility of suspension could apply only to such provisions as provide employees with privileges beyond what is required by the Labour Code and what arises from the relevant collective agreements and/or employment contracts. In other words, while the original plans for modification of the Labour Code in this area were amended, the new Code, as adopted, has still created leeway for temporarily reducing, by agreement between the parties, the wages paid out to workers. This new provision is of value not only to large employing operations in which collective agreements accord to employees privileges far greater than the Labour Code minimum, but also to small enterprises where no collective agreements have been concluded (in this latter case, an agreement which temporarily reduces the pay agreed in workers'

employment contracts may be resorted to). The Act makes it clear, however, that such an agreement may not reduce pay below the minimum wage, and that it may not modify the rates for additional remuneration (eg for overtime work) set by the Labour Code. The new Code institutes a limit of three years for the period of time during which employee rights may be suspended.

The principle of equality between the parties dictates than any change in the terms and conditions of the labour relationship may not flow solely from the will of the employer. Accordingly, any suspension of the labour law regulations can be effected only with the approval of employee representatives. In some employing operations, there are trade union organisations which are a 'natural' representative of employee interests. However, a major problem arises in workplaces where there are no trade unions - a state of affairs which, with trade union density at around 14%, persists in most Polish business operations - and no other form of employee representation, as is again commonly the case.

To deal with this problem, the legislator has introduce 'via the back door' a new industrial relations institution, providing that, in non-unionised employing operations, any agreement concerning the suspension of collective agreements and other labour law rules can be made with an 'employee representation convened in accordance with procedures in force within that employing entity' . This is the only place in the Labour Code where the need to convene such an 'employee representation' is provided for, although the Code does not make any specific provisions as to how this representation might be established. Aware of the somewhat dubious legitimacy of such ad hoc representation, the legislation provides that an agreement thus reached must be endorsed by the relevant 'district commission for social dialogue' , whose members include union representatives. As one union expert, Jerzy Rel, writes: 'considering that the Labour Code does not regulate the means of appointing workforce representatives or the procedures for the passing of their decisions (resolutions), there will be a special duty incumbent upon the commissions for social dialogue as regards ruling on the propriety (democratic nature) of appointing such representation as well as on the propriety of the agreement’s execution.' The district commissions for social dialogue will thus play a pivotal role in any agreements to suspend labour law provisions concluded at employing entities which do not have trade union representation.

3.9 Non-union forms of employee representation

Trade unions are the main channel of representation of workers' interests in Polish companies. However, the unions' increasing marginalisation and declining membership tends to hamper such representation. Trade unions in Poland have lost members and influence and become increasingly marginalised in recent years, with trade union density having fallen to as low as 14% of the workforce .This hampers the unions' ability to provide effective representation of workers' interests in companies. Polish labour legislation, however, also provides for various forms of non-union employee representation at company level.

Workers' councils

Workers' 'self-government' has a long tradition in Poland. In state-owned enterprises, this is currently governed by the 1981 Act on workers' self-government (since amended), which provides for workers' councils with a representative function, separate from trade unions, in such enterprises (though in no other types of organisation). According to the legislation, workers' councils have the following rights:

- approving and amending the enterprise's annual plan;
- making proposals for investments;
- adopting the enterprise's annual report and approving its balance sheet;
- approving merging and divestment decisions;
- approving changes in the direction of the development of the enterprise;
- deciding, on the recommendation of the management, on the enterprise's works regulations; and
- adopting resolutions on the appointment or dismissal of company directors and other persons with managerial functions in the enterprise.

Currently, the significance of this form of representation of workers' interests is very small. The reasons for this state of affairs include the following:

- the increasing importance of trade unions at the beginning of 1990s, in particular in large state enterprises. As a result, workers' councils most frequently merely voice the opinions of the strongest trade union organisation in the enterprise;
- workers' self-government has been severely affected by the process of economic transformation. Although the idea that workers' councils hinder the privatisation process in companies is a misleading generalisation (in many cases, the contrary is the case), the majority of councils have adopted an attitude of passive approval of any changes within companies, and their activity has been limited to deciding about the details of changes of ownership; and
- a major fall in the number of workers' councils. Given the direction of economic restructuring adopted in Poland, there is a tendency for state enterprises to disappear through 'commercialisation' or privatisation, and where ownership changes hands from the state, workers' councils are automatically abolished. According to estimates from the Ministry of the Treasury, there were 2,054 state enterprises in 2001 (compared with 2,382 in 2000 and 8,453 in 1990).

Representation on supervisory boards

In former state enterprises whose ownership has changed, workers' interests are represented by the appointment of workforce representatives to the supervisory board. According to the 1996 Act on the

privatisation and commercialisation of state enterprises, in companies subject to the process of commercialisation (ie transformation of an enterprise into a partnership) two-fifths of the members of the supervisory board should be selected by the workforce, provided that the State Treasury is the only shareholder of the partnership (according to the Ministry of the Treasury data, in 2001 there were nearly 600 such companies). After the State Treasury cedes over a half of its shares in such an enterprises, workers retain the right to choose:

- two members of supervisory boards consisting of up to six persons;
- three members of supervisory boards consisting of seven to 10 persons; and
- four members of supervisory boards consisting of 11 or more persons.

Moreover, in such companies established in the course of commercialisation and employing over 500 workers annually, one member of the *management* board is chosen by all employees entitled to vote. Up until the end of 2001, the Treasury ceded its shares in over 950 enterprises.

It is widely believed that the representation of workers on supervisory boards is merely symbolic, a view supported by research conducted towards the end of 1990s among workforce representatives on supervisory boards. The representatives' attitude towards their role in these boards was particularly surprising. Over half of the representatives surveyed thought that they should represent the interests of the whole company or its owner. One fifth of respondents believed that the interests of the company and the owner were equally important. Only one fifth placed the workers' interests first.

New forms of representation.

Neither workers' councils not employee representation on supervisory boards exist in former state enterprises which have been directly privatised, or in private enterprises newly established during and since the 1990s. The employees of such companies must rely for representation solely on trade unions, whose influence, as mentioned above, is limited, while non-union employers are not willing to recognise unions. Recent research indicates that private employers view much more favourably the idea of an employee delegate or representative directly selected by the workforce, who would be responsible for contacts with the company's owner or management. However, this idea is criticised by trade unions, which wish to remain the only form of representation of workers' interests at company level in private enterprises.

European Works Councils

It is likely that the trade unions' 'monopoly' of employee representation will be challenged in some private companies by the development of European Works Councils (EWCs). In April 2002, Poland's Act on European Works Councils (Europejskie Rady Zakladowe) was adopted, aimed at implementing European Union Directive (94/45/EC) of 22 September 1994 on the establishment of an European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. The Act, which will come into force on the date of Poland's accession to the EU, regulates the establishment of EWCs in multina-

tional companies based in Poland (or multinationals based outside the European countries covered by the Directive and choosing Poland's legal regime as the basis for their EWC), as well as many aspects relating to Polish involvement in the establishment and operation of EWCs in multinationals based elsewhere but with operations in Poland.

The Polish legislation largely follows the terms of the Directive. However, in certain areas the Directive leaves scope for national-level 'customisation' - notably the method for the election or appointment of the members of the special negotiating body (SNB) which negotiates with management over EWC agreements based on the Directive, and of statutory EWCs based on the Directive's subsidiary requirements (ie essentially where no agreement is reached). On the selection of such Polish employee representatives, the new Act distinguishes between cases where there the multinational concerned has only one Polish operation and cases where it has more than one operation.

Inter-union cooperation in multinationals

Polish trade unions have problems in articulating the relations between different levels of their organisation (workplace, regional/branch and national), exacerbated by the political rift between the two major union organisations, NSZZ Solidarnosc and OPZZ. In 2002, there have been a number of attempts by unions to formulate joint positions and pursue mutual interests, but these generally continue to be of a half-hearted and strictly ad hoc nature. However, the increasing presence of multinational companies in Poland has raised a need for closer cooperation between local union bodies in these multinationals' Polish operations, especially where there is a European Works Council in place.

One of the main problems faced by trade unions in Poland is the articulation of relations between the different levels of their organisation (workplace, regional/branch and national). While this is a problem which plagues many trade unions across Europe, it is compounded in the specific Polish context by the political rift between the two major union organisations, the All-Poland Alliance of Trade Unions) and the Independent and Self-Governing Trade Union Solidarnosc , there have recently been a number of attempts at formulating joint positions and reconciling the unions' mutual interests.

Cooperation in crisis situations

There have been a number of initiatives towards the establishment of joint, inter-union 'operating platforms' at levels above that of the individual company, to address crisis situations. The greatest degree of success, in relative terms, In the second half of 2002, after the national conventions of OPZZ (in May) and NSZZ Solidarnosc (in September), has been achieved by the trade unions in the Silesia region, where a preliminary agreement has been reached between more than a dozen union organisations at the sectoral and regional levels, most notably by the OPZZ Miners' Trade Union) and by the NSZZ Solidarnosc board for the district of Silesia and Dabrowa. In late 2002, this loose coalition of unions is engaged in negotiations with the government concerning the latter's programme for restructuring of the mining sector (a general strike by miners is being threatened). This action was preceded by a joint appeal, in October 2002, by the chairs of the NSZZ Solidarnosc board for the district of Silesia and Dabrowa and of the OPZZ council for Silesia, in which they called on their affiliated un-

ions to reject mutual animosity, past grievances, and political differences in order to mount a concerted effort to protect current jobs and create new ones.

Also in October 2002, Marcie Manicki, the chair of OPZZ and Janusz Sniadek, his counterpart at NSZZ Solidarnosc, signed a joint letter to Prime Minister Leszek Miller, in which they spoke out in defence of the Gdynia shipyards and of the shipbuilding industry as a whole.

Cooperation at the district level, if not always official and formalised, occurs in many localities across Poland. An assortment of agreements and pacts have been made between the secretariats and sectoral units of NSZZ Solidarnosc and the OPZZ unions and federations in sectors such as telecommunications, the metalworking industry or construction. The available data indicates that these agreements are of an occasional nature, and also that they are subject to amendment and updating when a specific need/possibility arises for joint action or to mount a protest in defence of mutual interests. Until now, however, the tendency has been that, once such a specific common purpose has lost its currency, the contacts between the unions would promptly loosen, and the agreements would be forgotten.

Cooperation between enterprise-level union organisations

In many Polish business operations within which a number of different trade unions are represented, these unions will cooperate. It is rare for relations between unions operating under a single roof to degenerate into open conflict, except in situations involving what are known as 'yellow unions' – unions created by the directors of the enterprise in question for the purpose of incapacitating the 'real' unions and preventing them from passing decisions contrary to the interests of the business operation. Yellow unions are also resorted to by some employers to prevent the implementation of collective agreements. Such situations, however, are an exception rather than the rule; in general, whenever the workforce and/or individual groups of workers are faced with the same challenge, the unions seek to address them together and to reach some understanding for this purpose. What is more, initiatives of this sort have recently become so frequent at the level of individual enterprises that one might legitimately speak of the emergence of a pattern of collaboration among various unions at the workplace level. It should, however, be noted that these agreements generally do not take on an institutionalised character and can be readily rescinded.

3.10 New nationwide trade union centre

A new national trade union centre, the Trade Unions Forum (Forum Zwiazkow Zawodowych – FZZ) was established in Poland in 2002.

The OPZZ roots of FZZ

FZZ traces its history to the original All-Poland Alliance of Trade Unions and has now come to pose a challenge to it. OPZZ was created by the communist authorities in 1984 immediately after the end of the martial law period (which was imposed on 13 December 1981). OPZZ was established in the void left after the Independent and Self-Governing Trade Union Solidarnosc was suspended and then officially liquidated. Following its experiences with the free-willed NSZZ Solidarnosc, the communist authorities feared a recurrence of the workers' unity witnessed before the 1981 crackdown. Accordingly, it built new trade unions on a model which was aimed at impeding integrated activity. This model was based on thorough-going autonomy for the various levels of union organisation and on voluntary membership. The individual workplace units ('cells') had legal personality and the right to leave the federal structure, and the federations were free to leave OPZZ. From its inception, OPZZ had a strong sectoral structure, with the territorial structure playing a secondary role only (this essentially continues today). In other words, OPZZ, a thoroughly government-sponsored entity, was built on principles antithetical to those of NSZZ Solidarnosc.

As early as the second half of the 1980s, centrifugal tendencies begin to manifest themselves within the OPZZ structure. Some federations began to depart from the organisation, although some subsequently returned. Following the political changes of 1989, these tendencies grew pronouncedly stronger. Firstly, NSZZ Solidarnosc emerged from underground as a newly legalised organisation which, despite many predictions, did not seek to absorb OPZZ members. NSZZ Solidarnosc extended its support to the new government of Prime Minister Tadeusz Mazowiecki and endorsed the market reforms proposed by Deputy Prime Minister Leszek Balcerowicz. These moves precipitated the departure of some activists strongly attached to the concepts propagated by NSZZ Solidarnosc in the 1980s – such as workers' self-government and social rather than private ownership of large enterprises. Some of them went on to form new smaller union centres, Solidarnosc ’80 and August ’80.

The organisations within OPZZ, meanwhile, had to adapt to the new circumstances presented by the market economy and the competition from NSZZ Solidarnosc. In doing so, they made good use of the opportunities offered by the voluntary structure of OPZZ. There were instances where a workplace OPZZ union would quit its federation and proceed to join the relevant OPZZ territorial structure (thus ceasing to be subordinated to its original federation and becoming a member of the district OPZZ council). In other cases, an entire federation would leave OPZZ, but some of its large workplace organisations would stay behind and join the district structure. OPZZ’s territorial structures grew somewhat stronger, with workplace organisations feeling the need for contacts with district authorities joining the district councils. While there is no dependable data on how many OPZZ members ended up outside the union centre as a result of this manoeuvering, reasonable estimates begin at 200,000.

An analysis carried out in late 2001 by the Public Opinion Research Centre leading public polling organisation, indicated that NSZZ Solidarnosc membership encompassed 2.6% of Poland's adult population and that of OPZZ 2.8%. Union members of all other organisations accounted for 2.8% of adult Poles; of these, a mere 0.3% belonged to organisations active at national level (Solidarnosc '80, Sierpien '80, Kadra, Kontra etc), with the others belonging to organisations which had seceded from OPZZ or were present on a local scale only. A significant share of this latter category was made up of assorted unions active in the healthcare sector, particularly among nurses.

Establishment of the Trade Unions Forum

The Trade Unions Forum (FZZ), was duly registered in the courts, and its first convention was held in April 2002. At that point, the Forum assembled 17 trade unions, including sizeable organisations such as the Federation of Polish National Railways Unions (Federacja Zwiazkow Zawodowych Pracowników Polskich Kolei Panstwowych), the Nationwide Nurses' and Midwives' Union (Ogolnopolski Zwiazek Zawodowy Pielegniarek i Poloznych) and the Technicians' and Engineers' Union (Zwiazek Zawodowy Inzynierow i Technikow). The Forum was also joined by three unions representing police officers, one representing anaesthesiologists, and the Kadra union. Although Solidarnosc '80, a breakaway splinter group from the original NSZZ Solidarnosc, is not an official member of the Forum, it maintains close ties to it. In November 2002, the Forum's chair put the number of associated organisations at 36.

The emergence of this new force, however, does not alter the landscape of Poland's trade union movement in any material way, in that all of FZZ's constituent organisations have been active for some years, and all of them have traditional membership bases and well-defined interests.

Collective agreements

At the end of 2001, some 9,000 collective agreements were in force in Poland - in almost all cases single-establishment agreements. Multi-establishment agreements are rare and the conclusion of agreements is much more common in the public sector than in the private sector.

Collective agreements have existed in Polish law since 1974. The Labour Code passed at that time introduced the collective agreement as an institution determining the mutual relationships between employers and employees within a branch of the economy or an occupation. In particular, collective agreements were supposed to establish, in specific branches of the economy, the conditions of remuneration and the granting of other benefits, as well as the working conditions - including employee privileges, workplace safety and hygiene, and the satisfaction of employees' social and cultural needs. The parties had a margin of freedom to establish rights and obligations other than those mentioned above. The important feature was the possibility of introducing more favourable conditions for employees through collective agreements than those specified in the national regulations. Additionally, the institution of a 'single-establishment collective contract' was created, which was to function at the level of establishments possessing the right to use an internal remuneration system.

The political and economic transformation in 1989 initiated changes in industrial relations in Poland, forcing the social partners to redefine their roles. As a result of this process, acts modelled on European standards regarding trade unions, employers' organisations and the settlement of collective disputes were passed.

The 1994 amendments to the Labour Code focused almost entirely on collective agreements, making them the basic instrument of labour law. The institutions of a multi-establishment collective agreement and a multi-establishment trade union organisation, which was authorised to negotiate and conclude this kind of agreement on behalf of the employees across the entire sector, were defined at this time. The 'single-establishment collective contract' became a 'single-establishment collective agreement' . The transformations were fundamental, and the regulations regarding the agreements became much more detailed. The specification of the employment relationship became the object of collective agreements, and issues which could not be covered by agreements were enumerated - these included: special protection for employees against termination of the employment relationship; employees' rights in cases of unjustified or illegal termination of the employment relationship; responsibility with respect to order and discipline; maternity and childcare leave; and the protection of remuneration for work. An obligation was introduced to register collective agreements.

The legal framework for collective agreements was revised again two years later. Among other changes: conciliation commissions appointed by the parties were introduced in order to settle disputes concerning the interpretation of collective agreements; the jurisdiction of labour courts with regard to the provisions of agreements concluded was unequivocally established; and the list of potential violations of employees' rights was extended - adding the conclusion of civil law contracts instead of contracts of employment delays in concluding contracts of employment in writing and failure to maintain documents concerning employment relationships. The list of work safety and hygiene regulations, the violation of which was subject to penal sanctions, was also extended, and the powers of the State Labour Inspection (Panstwowa Inspekcja Pracy, PIP) with regard to supervising and ensuring the observance of employees' rights, including those granted by collective agreements, were more precisely formulated.

The most recent amendments to the Labour Code, made in 2002 have introduced a very important change with regard to collective agreements, making it possible to suspend (for up to three years) a collective agreement in force, through a joint declaration of the parties, when this is justified by an employer's financial difficulties.

Collective agreements may be concluded for a definite or an indefinite period, and may be amended by additional protocols.

Collective agreements in practice

As mentioned above, 1994 was an important watershed in the functioning of collective agreements in Poland. The newly introduced obligation to register such agreements - single-establishment agreements with provincial labour inspectorates, multi-establishment agreements with the Ministry of Labour (Ministerstwo Pracy i Polityki Spolecznej) - required the registration of all agreements, including

those reached earlier. Since 1995, concluded agreements have been recorded, although the current methodology does not count the number of employees covered by the agreements. Data from the State Labour Inspection show that by the first half of 2001, a total of over 11,000 collective agreements had been concluded (over 9,000 of which were still in force at the end of the year) and over 30,000 additional protocols had been registered. Table 1 below indicates the number of collective agreements and additional protocols for which applications to register were made over 1995-2001, along with the number of successful registrations and refusals.

Table 1. No. of collective agreements and additional protocols (applications to register, registrations and refusals), 1995-2001

	Total	**2001**	**2000**	**1999**	**1998**	**1997**	**1996**	**1995**
Applications to register:	46,980	3,617	4,420	6,806	5,535	6,708	7,441	12,453
- *collective agreements*	13,017	431	549	689	678	978	1,389	8,303
- *additional protocols*	33,963	3,186	3,871	6,117	4,857	5,730	6,052	4,150
Registered:	43,452	3,157	4,144	6,286	5,265	6,462	7,181	10,975
- *collective agreements*	11,784	361	498	622	614	882	1,464	7,343
- *additional protocols*	31,668	2,796	3,646	5,646	4,651	5,580	5,717	3,632
Registration refused:	497	101	77	47	68	64	97	43
- *collective agreements*	155	23	16	10	11	25	43	27
- *additional protocols*	342	78	61	37	57	39	54	16

Source: State Labour Inspection, 2001.

Table 2 indicates the total number of collective agreements registered from 26 November 1994 to 31 December 2001, and the number of agreements in force at the end of 2001.

Table 2. Total no. of collective agreements registered, 1994-2001, and in force at end of 2001

Amended agreements registered	**New agreements registered**	**Total agreements registered**	**Agreements currently in force**	**Remarks**
6,287	5,497	11,784	9,134	Some agreements terminated for reasons specified in section XI of the Labour Code

Source: State Labour Inspection, 2001

The reasons for the termination of some agreements, as specified in section XI of the Labour Code (article 241 paragraph 1), include a joint declaration by the parties, the expiry of the period for which the agreement has been concluded and the expiry of the period of notice to terminate the agreement by one of the parties.

Immediately after the law was amended, the majority of registered agreements were those concluded earlier, which explains the high level of registrations in 1995. In the subsequent years, the influx of registrations slowed down (1999, when the number slightly grew, was an exception). The explanations for the decreasing number of concluded collective agreements include the reluctance of employers to conclude them but also the saturation of the labour market with such agreements: most of the enterprises for which collective agreements are suitable already have them.

As regards multi-establishment agreements, around 140 of them and over 100 additional protocols have been registered (up to the first half of 2001). The overwhelming majority of these agreements have been concluded in the public sector and, in particular, the 'budgetary agencies' (agencies falling within the scope of the state budget). Eleven multi-establishment collective agreements have been concluded outside the domain of budgetary agencies. Multi-establishment collective agreements do not introduce anything new with regard to their content, essentially duplicating the provisions utilised in single-establishment agreements.

The reluctance to conclude collective agreements exhibited by private sector employers is often explained by their unwillingness to accept additional formal restraints (the newly introduced possibility of suspending the agreement is a concession towards them). Moreover, the law gives employers a simpler tool: they may introduce 'rules of remuneration' , which may serve to implement an agreement concerning remuneration. There are now relaxed criteria of national representativeness for the purposes of concluding multi-establishment collective agreements. These apply to both trade unions (a trade union organisation eligible to conclude a multi-establishment agreement must organise at least 10% or 500,000 of the employees covered by the statute of the particular union, but when many trade unions are active in a given sector, the largest trade union organisation becomes representative) and employers' organisations (any registered organisation is considered to be representative), and are meant to encourage the social partners to utilise multi-establishment agreements on a wider scale.

The effectiveness of collective agreements as an institution regulating labour relations is called into question when we take into account the fact that employers often breach the provisions of these agreements. The picture which emerges from the State Labour Inspection data is rather gloomy – in 2001, irregularities with regard to agreed employee benefits were found in as many as 50% of the establishments inspected (193 were inspected) At the same time, a certain improvement was observed with regard to the implementation of the provisions concerning working conditions.

Certain occupational groups are excluded by the law from concluding collective agreements. Such exclusions pertain to persons employed on a basis different from a contract of employment – ie elected, appointed or nominated employees. This means that state administration officials (those belonging to the civil service as well as elected and nominated officials), local administration officials, and judges and prosecutors may not enter into collective agreements.

Ludovit Czíria

4 Labour Relations in Slovak Republic

Introduction

Industrial and labour relations in Slovakia developed much during the last ten years and played an important role in forming the market economy and specially the labour market in the country. There are multilevel mechanisms available for tripartite concertation and bipartite negotiations at the national, sectoral and company levels. This multilevel system was developed hand in hand with the political, economic and social transformation implemented in the country after the collapse of the previous regime. Its basic principles were laid down already in the common Czechoslovak State and continually functioned after the separation of the Czech and the Slovak republics from 1 January 1993.

The tripartite social dialogue at the Council for Economic and Social Concertation (RHSD) has contributed much to relatively peaceful implementation of often problematic, but inevitable economic and social measures.

The next important element of the social dialogue in Slovakia is the bipartite collective bargaining applied on sectoral and company level too. Development of the labour legislation was also an important pillar of the new industrial and labour relations. Changes in the labour legislation were directly influenced by implementation of the Acquis Communautaire during the pre-accession talks of the Slovak Republic (SR) with the EC.

Another very important factor, which influenced the formation of industrial and labour relations was the privatisation of the former state owned companies and the changing role of the state in the economy and the society as well.

4.1 Outlook of foreign direct investments in Slovakia

Foreign direct investments (FDI) in Slovakia are permanently increasing during the last years. Foreign investors play more and more important role in creating new jobs too. One of the first foreign investor in Slovakia was the German Volkswagen Corporation, which bought the Bratislava Car Company (BAZ) already in 1992 and created thousands of new jobs during the last ten years. A brief outlook on FDI in the last seven years is available in tab.1.

Tab.1. Foreign direct investments in Slovakia

Year	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**
FDI in billion SKK	46,1	58,1	78,6	96,0	176,9	228,3	248,5
Of which in business sector	39,8	46,5	65,6	83,1	161,7	176,1	191,2

The highest foreign direct investment in Slovakia reached almost 250 billion SKK in 2002. The majority of these investments (190 bil. SKK) was allocated to companies in the business sector. In the long term perspectives the highest annual FDI increase, in total amount of + 81 billion SKK, was gained in 2000. This amount represented almost 50% of all FDI allocated in the given year. The selling the Slovak Telecommunication Company (ST) to the German Deutsche Telekom, the East Slovakian Steel Company (VSZ) to the US Steel substantially influenced the total amount of FDI in 2000. Similarly, the major part of FDI gained in 2002 was influenced by selling the minority shares of the Slovak Gas Industry (SPP) to consortia of Ruhrgas-Gas de France- Gasprom.

As far as the branches concerns, the majority of FDI was recently allocated in industrial production (41%), in banking and insurance (28%), transport and communication, and commerce (almost 13%).

From regional point of view the majority of FDI is allocated in County Bratislava (68%) and in County Kosice (13%). The leading country investing in Slovakia is the Germany (23% share of total FDI), followed by Austria and the Netherlands (both with almost 19% share), Italy (10%), USA and UK (6%).

When considering the total amount of FDI per capita, the position of the Slovak Republic within the other Central European Countries is still rather poor.

Tab.2 Total amount of FDI per capita

Indicator	Czech Republic	Hungary	Poland	Slovakia	Slovenia
Total FDI per capita in USD	2,609	2, 269	1, 055	869	1,660

Although the majority shares of the most lucrative state owned companies were already sold to foreign investors, first signals of 2003 show that increase of FDI in Slovakia could further continue. As an example could be mentioned the greenfield investment of French car producer consortia P.S.A. to build up a new plant in western part of the country, near to Trnava city.

4.2 Organisation of the social partners

Organisation of the employees representation

After the dissolution of the Revolutionary Trade Union Movement (Revolucné odborové hnutie, ROH) in March 1990 a new Trade Union Confederation was established on full acceptance of the ILO principles, however several previous trade union representatives remained and continued their activities in newly formed unions.

The right of citizens to unionise is among the fundamental rights and freedoms guaranteed by the Constitution of the Slovak Republic and is guaranteed also by the Bill of Fundamental Rights and Freedoms introduced in the state legal order by the Constitutional Law No. 23/1991 of the Code of Laws. Further significant documents concerning the assertion of the trade union rights adopted by the Slovak Republic are ILO Conventions.

The formation of new trade union structures was accomplished while still under the Federal State of Czechoslovakia, and in 1990 the trade unions constituted two relatively independent Trade Union Confederations of the Czech Lands and Moravia and that of Slovakia. These two largest nation-wide trade unions centres were associated on the federal level in the Czech and Slovak Trade Union Confederation. The creation of the confederation structure made it possible for the structures of the national Confederations to remain principally unchanged, even after the inception of autonomous the Slovak and the Czech Republics.

Confederation of the Trade Unions of the Slovak Republic (Konfederácia odborových zvazov Slovenskej republiky, KOZ SR) became the largest trade union organisation in Slovakia associating almost all branch trade unions. Apart from the KOZ SR there are also some other trade union centres with a relatively small membership base e.g. the Confederation of Art and Cultural Workers and the Independent Christian Trade Unions of Slovakia.

The KOZ SR currently associates more than 90% of all trade unionists in Slovakia. During the past decade, no substantial changes occurred in the trade unions structures but the trade union membership,

particularly in the private sector has substantially decreased. For example while the TU membership in 1993 was about 1.8 million, at present, the membership of trade unions associated in the KOZ SR is estimated about 650, 000, what could represent about 35 per cent rate (according to the official data reflecting the situation in January 2002).

Trade unions used to be organised on the base of industrial branches, rather than by occupation, although unions of professional drivers, doctors and teachers are exceptions. The trade unions associated in the KOZ SR are organised on the basis of economic sectors or industrial branches and there are 37 member unions representing both the industry and service sectors and, eventually, the private and public sectors.

The management and professional staff of sectoral/branch trade unions is generally made up of one or two members but up to 25 in the largest trade unions. Some of them also have affiliated workplaces. The ten biggest trade unions have more than 70% membership of all trade unions, which are KOZ SR members. Among the largest and most influential trade unions in the SR are the Metal trade union (OZ KOVO) with about 80,000 members and the Chemistry trade union with about 25,000 members.

The most relevant role of the KOZ SR is the co-ordination of the activities of sectoral/branch trade unions in negotiations with the Government and employers representatives at the top-level tripartite social dialogue. KOZ SR represents its members also in international organisations like the International Confederation of Free Trade Unions, European Trade Union Confederation, in the ILO Conferences etc.

Organisation of the employers' representation

A historically different development marked the formation of structures representing the employers. At a time when the trade union structures were already built-up (as mentioned above, by being transformed from the former trade union organisations), the process of employers' representation formation had just started. This time shift was caused by the fact that the state was almost the only employer in the past. Along with the process of so-called minor and, especially, major privatisation the employers' organisations came into being, too.

Currently employers' associations are stabilised, continuously developing and their position is becoming even stronger. Employers associations are ready to bargain collectively with trade unions at the sectoral or branch level.

Several dozens of employers' organisations were formed during the past ten years. Most of them are associated in the Federation of Employers' Associations of the SR (Asociácia zamestnávatelských zvazov a zdruzení Slovenskej republiky, AZZZ SR). The AZZZ SR combines employers' associations operating in the field of industry, transport, telecommunications, co-operative farms, small and medium-sized enterprises, banks and insurance companies, education, food industry etc. The AZZZ SR is the leading representative of employers as a social partner of the Government and trade unions, and it

associates 37 various employers' associations from the private sector, co-operative sector and public sector as well. It is a special-interest association with the status of a legal entity. It was established in 1991 to create conditions for the dynamic development of entrepreneurship in Slovakia and for the protection and assertion of the common business and commercial interests of their members.

Membership in AZZZ SR is voluntary and conditional upon associating employers' entities that employ people having a representative character, nation-wide competence and, as a rule, concluding collective agreements. The AZZZ SR plays the most important role in co-ordination of the activities of employers associations in negotiations with the other partners at the tripartite social dialogue too. It does represent its members also in several international organisations like Union of Industrial and Employers' Confederations of Europe, in ILO Conferences etc.

From the total number of legal business entities active in Slovakia approximately 50% are AZZZ SR members. Among the largest and most influential employers associations associated in the AZZZ SR is the Slovak Council of Industrial Associations, which includes e.g. the Association of Chemical and Pharmaceutical Industry of the SR with more than 24 000 employees.

In order to decentralise their activities the AZZZ SR as well the KOZ SR, have established also their regional representative structures reflecting the regional administration division of the Slovak Republic into eight counties. The KOZ SR established in the most counties its county councils (Krajská rada konfederácie, KRK) where the representatives of the most influential sectoral/branch trade unions of the given region are functioning. The AZZZ SR established its regional offices too, but in fewer regions.

Organisations of social partners in selected sectors/branches relevant to further analysis are the following:

On the trade union side:

- Trade Union Association KOVO (the Metal)
- Trade Union of Workers in Chemical Industry
- Slovak Trade Union of Energy Sector Workers
- Trade Union of Food-Industry Workers of the SR
- Trade Union Association of Agriculture Workers in Slovakia

On the employers side:

- Association of Chemical and Pharmaceutical Industry of SR
- Association of Mechanical Engineering Industry of the SR

- Association of Employers in Energy Sector in Slovakia
- Union of Entrepreneurs and Employers in Food Industry of SR.
- Association of Electrical Technology Industry of the SR

Chamber of commerce and industry

Slovak Chamber of Commerce and Industry (Slovenská obchodná a priemyselná komora, SOPK) is a public legal institution. The Slovak National Council Act No. 9/1992 of the Chambers of Commerce and Industry Code conditions its status under the provisions of the Slovak National Council Act No. 121/1996 of Code of Laws. Its activities are focused on member support and protection when performing business both at home and abroad. Membership is voluntary. Among current members are natural and legal persons performing business activities in various fields of economy, with exception of agriculture and food industries. SOPK bodies (Assembly of the Delegates, Board of Directors, Supervisory Board, President and Secretary General) are subject to internal elections. This aids appropriate presentation and promotion of entrepreneurial sector interests. Presently, the chamber consists of 9 regional chambers and 6 offices in important Slovak business capitals. In regional OPK Bratislava is member e.g. Volkswagen Financial services division.

SOPK pays considerable attention to immediate support of domestic and foreign business entities in the form of consultancy and advisory. Areas of interest are legal protection of business, trade, finance, tax and customs duties, foreign trade regulations and rules goods origin. The chamber offers review of draft business contracts, incorporation and other relevant documents, together with due expert opinion reports. SOPK, as a nationally accredited association can provide certificates about facts important in international business legal relations. The chamber search and mediate contacts between both domestic and foreign legal entities, that promotes the development of business and manufacture activities. In this regard they provide information about Slovak economy potential and prospects, legal regulations for business activity in Slovakia and business information on particular foreign territories. SOPK organizes professional workshops and meetings oriented on expanding member and general entrepreneurial public legal awareness in doing business. Seminars discussing current entrepreneurial public problems are organized. Publishing activities aimed at increasing member and general entrepreneurial public knowledge background can be grouped in the areas of own professional expert publications, mostly with the topic of international trade and translations of publications of International Chamber of Commerce in Paris. SOPK is a member of International Chamber of Commerce in Paris and associate member of Eurochambers in Brussels.

One of basic chamber activities in international relations is the development of legal cooperation framework, this means concluding cooperation contracts with foreign chambers. These are contracts about cooperation with foreign chambers of commerce, in some cases mixed economic committees and chambers of commerce were formed. SOPK signed agreements on cooperation with more than 80

national chambers of commerce, among others the Agreement on Co-operation between the SOPK and the German Industrial and Trade Assembly, signed on 12 October 1993.

An important SOPK activity is consultancy and advisory when searching foreign business partners. They organise business missions of Slovak companies abroad, company presentations within their own exposition space on domestic and foreign fairs and shows, as well as product and services presentations for foreign chambers of commerce and diplomatic missions. SOPK creates also their sector sections. One of them is the Section of the Energy, where apart from companies of Energy industry are members also some companies from chemical industry (e.g. Slovnaft Bratislava, Chemko Strázske) and from steel industry (US Steel). Generally speaking, relatively low number of German companies operating in Slovakia are members of SOPK.

4.3 Changing role of the State

The state as a third social partner has also undergone a remarkable transformation. It was previously the largest employer but its role in this position is substantially reduced. The social partners represented by the KOZ SR and the AZZZ SR are independent of the state and make up independent legal entities. Their bodies are elected in agreement with their internal guidelines. The relationship between the social partners and the state played an extremely important role in the process of economic and social transformation from as early as 1990. Even though this process was not entirely without conflicts during the past decade the strife between the social partners did not result in any radical social actions. There was not recorded any labour strike that involved full work stoppage, until the railway workers strike took place in the threshold of January/February 2003 (more information is available in section 8.2).

As a result of privatisation and development of a market economy the role of the state in economy was defined anew. The new role manifested itself in diminishing the direct interventions of the state authorities in activities of individual industrial branches, sectors, enterprises and plants and in effecting the economy by rather indirect tools of tax and fiscal policies. In industrial relations area the state set the legal framework for the labour market and social policy, including the rules for collective bargaining.

Nevertheless the state also represents still a significant employer in the public sector, e.g. in education, health care system, post and railways. The main role of the state in social dialogue is in negotiations with the representatives of employers and of employees at the national level tripartism or in bipartite negotiations in some sectors/branches.

4.4 Tripartite concertation

General framework

Tripartite concertation exists in Slovakia for more than ten years - from the time of the common Czechoslovak State. It was established with aim to carry out the transformation in co-operation with the newly formed social partners and as far as possible in agreement upon the intentions and aims of economic and social development. There was also the intention to avoid social tension and to create conditions for preserving social peace.

The Council for Economic and Social Concertation (Rada hospodárskej a sociálnej dohody, RHSD) was established as a platform for tripartite negotiations. The Council for Economic and Social Concertation handles topical most important economic and social issues of the governmental policy. It discusses and gives its opinions on those issues of agenda of the Government negotiations and on those legislative rules concerning matters of employment, labour relations, working conditions and other principal economic and social issues. The results of the tripartite concertation do not have legal validity however (e.g. such as that of the collective agreements). Some conclusions of the tripartite concertations at the RHSD, e.g. setting the national minimum wage may, after approval by the parliament, also serve as a starting point for sector/branch collective bargaining on wages.

The RHSD activities are regulated by legislative rule[32] now. The participation of the employers´ and trade unions´ organisations in RHSD is ruled by their representativeness. Each organisation should be influential in the economy, i.e. to represent at least 10% of active population and be active at least in five regions (counties) of the country. The AZZZ SR represents the employers and the KOZ SR represents trade unions. Each party has seven representatives at the RHSD. RHSD can establish also permanent and temporary *ad hoc* working groups dealing with specific issues. Tripartite negotiations at the RHSD could result also in national General Agreements. Such General Agreements were concluded in each year from 1991 up to 1996. Due to principal disagreements between the trade unions and the Government no General Agreements were signed for years 1997-1999. After the three years break the parties signed again the General Agreement for 2000.

[32] Act No. 106 on Economic and Social Partnership of 12 May 1999 now regulates the tripartite social dialogue in Slovakia.

General Agreement for 2000

General Agreement for year 2000 (GA 2000) was the last tripartite General agreement signed by social partners and the Government in Slovakia. It consists of four main areas: economic policy, employment policy, incomes policy and social policy and the most commitments included are duties of the Government.

In *Economic policy* there were agreed duties to improve the institutional and legal framework for running the private businesses more effectively e.g. to increase the companies' competitiveness, support the development of small and medium size companies (SMEs), restructuring of the banking sector and the state monopolies, to attract the foreign investments and reduce the taxation burden. Special attention has been required to the regional development plans, including facilitation the access of social partners to relevant information on potential business development activities.

The *Employment policy* was, and still is the hottest issue because of very high unemployment rate (close to 20% in 2000 and about 18% in 2002; 30% unemployment is not an exception in some regions). According to the GA 2000, the Government in co-operation with the employers should implement measures to successive decrease of the unemployment rate, at least by 3% till the end of 2000. The highest priority should have been given to regions with more than 25% unemployment rate. To combat the unemployment effectively the National Labour Office implemented special development programmes for young unemployed. To combat the long-term unemployment the Government provided for special supplementary funding of the Public useful jobs from the state budget. The other measures agreed in employment policy were: elimination of the illegal work, more effective protection of working conditions and health and safety at work and better reflection of the labour market demands by the education system.

The *Income policy* was always a sensitive issue of general agreements concluded in previous years and it was a very important part of GA 2000 too. The government promised to adopt measures, supporting the real wage increase in the public sector as well as in private business sector. The Government agreed not to apply the wage regulation in business sector, to adopt a new wage tariffs in civil and public service and to develop the taxation scheme too. The government also promised not to introduce any proposals for increasing the prices and taxation burden, without consultations with the social partners. The employers´ and the trade unions´ representatives on sector/branch level promised to bargain for such a wage increase, which will avoid, at least, the negative impact of the inflation on the real wages.

In *Social policy* the Government promised to reform the social insurance system, including the more effective supplementary retirement insurance, and health care insurance, based on individual personal accounts, to secure that all children will be entitled for receiving benefit, regardless to families' net income from year 2001.

It is obvious that the most commitments in GA 2000 were related to the Government, which declared its willingness to consult all relevant measures in economic and social policy with the social partners.

In spring 2001 the parties involved evaluated how were the agreed goals achieved and social partners, especially trade unions had several critical comments. Though some goals were achieved (e.g. some reduction in the taxation burden), some politically and socially very sensitive issues (e.g. increase in the real wages, reduction of the high unemployment) were not met. Therefore the KOZ SR declared its dissatisfaction with fulfilling of the tasks of the Government and refused to negotiate for the General Agreement for 2001, until the goals of GA 2000 are not achieved (parties involved in tripartite concertation at the RHSD did not agree on conclusion of a new tripartite General Agreement until now).

In the mean time several tasks of the Government were already accomplished, e.g. average real wages increased in 2001, real wages in public sector increased in 2002, restructuring of the banking sector and some state monopolies was almost finished, benefits are provided for all children. At the same time, several active employment policy measures were implemented but the unemployment rate was still not reduced much. However, according to the latest statistics in March 2003 the unemployment rate was - first time from 1998, lower than 16%.

Tripartite concertations are still going regularly on and several issues are discussed monthly. As one the most important achievements could be mentioned the approval of the new labour legislation e.g. new Labour Code and new Acts on Civil Service and Public Service in 2001.

There are also some few direct links between the outcomes of the top-level tripartite concertations and bipartite social dialogue i.e. collective bargaining. The RHSD usually decides on annual increase of the national minimum wages, which influences the annual wage bargaining. Nevertheless the last national minimum wage increase (from SKK 4,920 to SKK 5,570) valid from 1 October 2002 was decided solely by the Government because social partners could not come to a commonly accepted agreement.

Currently there are some disagreements between the parties involved in tripartite concertation, e.g. the trade unions disagree with the new changes proposed by the current Government in the labour legislation and in the social policy.

4.5 Collective bargaining

Act No. 2 of 1991 on Collective Bargaining regulates collective bargaining. This Act appoints the partners for collective bargaining and also defines the respective procedures for collective bargaining. The exclusive right for collective bargaining in Slovakia is assigned to trade unions and employers representatives. The Act also stipulates how to solve disputes between social partners, and it prescribes the mediation and arbitration procedures. If there is discord in collective bargaining, the respective social partners may ask the Ministry of Labour, Social Affairs and Family (Ministerstvo

práce, sociálnych vecí a rodiny Slovenskej republiky, MPSVR SR) to assign a mediator or, if this conciliation is not successful, also a referee for the given dispute. At the same time, the above Act defines the principles and procedures for declaring a strike by trade unions, and the lockout rights of the employer in order to close down the plant or shop.

Collective bargaining in Slovakia is usually carried out on two levels:

- Sector/branch level, where the so-called higher level collective agreements are conclude between representatives of the appropriate employers‘ and trade unions‘ associations and
- Company or organisation level, whre the collective agreements are concluded between local trade union organisations and the company management.

The above Act no. 2 of 1991 provides that collective agreements regulate individual and collective labour relations between employer and employee, and the rights and duties of the parties concerned. Collective bargaining begins with the submission by one party to the other of a written proposal to conclude a collective agreement. The parties have a duty to bargain, unless this is counter to their legitimate interests. The parties to an existing agreement have a duty to begin negotiations on its replacement at least 60 days before it expires. A written response to such a proposal must be given (at the latest in 30 days) commenting on those parts of the claim, which are not accepted. At least 60 days from the date of submission of the first proposal for an agreement are allowed for negotiation before one or other party is allowed to call for a mediator to be appointed.

Collective agreements may improve upon the rights set out under the Labour Code, other laws or Government decrees, but may not reduce them. There is a principle applied that the agreed conditions of employment and wages in sectoral/branch level collective agreements (KZVS) are at a minimum or maximum standard, which must be respected in collective bargaining at the local (company or organisation) levels. A company-level collective agreement may not take away from employee rights agreed at a higher, sector/branch level, nor give more than granted by a higher-level agreement if that sets a maximum. That means, only such conditions of employment may be agreed upon in the collective agreement of a company level, which are more favourable than those agreed upon in the sectoral/branch level collective agreement. Collective agreements, which do not specify their duration, are presumed to last for one year.

Hence, the collective agreement as a legal document is valid only in the event that its provisions do not contradict the respective minimum or maximum standards. Collective agreements concluded by the trade union are equally binding on employees who are not unions' members. The validity of sectoral/branch level collective agreements is subject to their registration at the Ministry of Labour, Social Affairs and Family of the SR (the Ministry). The respective employers association should submit the agreement to registration not later than 15 days after the date it was signed. These collective agreements have to be deposited with the Ministry office but their legal effect is not dependent upon such registration, apart from non-signatory employers who might be bound by extension following deposit with the Ministry.

Collective agreements are normally only binding upon their signatories or upon members of signatory organisations. Sectoral/branch level agreements (i.e. those agreed by multiple employers-their list should be attached to the collective agreement) may be extended to non-signatories in the same sector/branch by simple administrative procedure of the Ministry. Extension should be applied for not later than 6 months before the agreement expires. The signatories have a duty to deposit a copy of the agreement and related decisions of arbiters for five years after expiration. The trade union has a duty to inform employees of the agreement's contents within 15 days of concluding the agreement.

The sector or branch level collective bargaining in Slovakia is wide spread and according to estimations about 50% of all employees could be covered by collective agreements. The available figures show that the number of sectoral/branch collective agreements (KZVS) is quite high and stabile. An outlook of the total number of collective agreements registered by the Ministry is shown in table 3.

Table 3. Development of sectoral/branch collective agreements

Year	Number of collective agreements	Number of their supplements
1998	55	29
1999	23	37
2000	29	43
2001	30	43
2002	37	25

Source: Annual reports on the social situation of the population of the Slovak Republic. Ministry of Labour, Social Affairs and Family of the SR.

After a continuous increase of sectoral/branch collective agreements there is a slight decrease in the last couple of years. The lower number of new collective agreements was caused by the fact that collective agreements concluded in the last years are valid for longer time period - for two or three years (the previous ones were concluded usually for one year only).

Sectoral/branch collective agreements are focused on the following main topics:

- Co-operation and communication between the trade union and management
- Wages and remuneration
- Employment and working conditions
- Health and safety at work

- Social issues
- Settlement of the conflicts between the trade unions and the management.

The outcomes of the survey done by the Research Institute of Labour, Social Affairs and Family (Výskumný ústav práce, sociálnych vecí a rodiny, VÚPSVR) on 56 sectoral/branch collective agreements[33] contracted for the period 1999–2003, highlights the usual content of collective agreements. The analysis of selected collective agreements showed that the agreed provisions are often formulated in general and sometimes they regurgitate provisions of the Labour Code, reflecting the duties of the employers and employees as regard to the issues. Wages and remuneration issues, and rules for managing mass dismissals were the prior issues in these collective agreements. Vocational education and training (VET) were incorporated in less than half (41%) of analysed collective agreements, where the respective provisions were focused mostly on:

- Enhancement of qualification and re-qualification
- Structural changes and re-qualification
- Taking care of vocational schools´ students with the aim to provide their professional development at operational job sites
- Qualification enhancement of secondary school and university graduates.

The recent sectoral/branch collective agreements show that there are differences in numbers of respective trade unions´ and employers´ organisations entitled for collective bargaining. For example the KOVO trade union bargains separately with Employers associations of Mechanical Engineering, of Electrical Technology, of Metallurgy Industry and of Foundries and Forges. Similarly the Slovak Trade Union Association of Workers in Textile, Clothing, and Leather Industry bargains separately with Employers Association of Textile and Clothing Industry of the SR and with Association of Leather and Shoe Industry of the SR.

Selected issues of collective agreements

Principally there are no relevant differences in scope of collective bargaining in respective sectors relevant for the project, however a brief outlook of selected issues agreed in sectoral/branch collective agreements relevant for the project can provide useful information. For this purpose the following sectoral/branch collective agreements are considered:

[33] Role of Social Partners in Vocational Education and Training in the Slovak Republic. VUPSVR - State Institute of Vocational Education and Training - Slovak National Observatory of VET. Bratislava 2000.

- Collective agreement for 2002 signed by Union of entrepreneurs and employers in food industry of Slovakia and Trade union association of agriculture workers in Slovakia
- Collective agreement for 2002-2004 signed by Association of butchers and Trade union association of food industry workers
- Collective agreement for 2002-2003 signed by Association of employers in energy sector in Slovakia and Slovak trade union of energy sector workers
- Collective agreement for 2002-2004 signed by Association of mechanical engineering industry of Slovakia and Trade union association KOVO

Collective agreement for 2002-2004 signed by Association of chemical and pharmaceutical industry of the Slovak Republic and Association of managers in chemical and pharmaceutical industry of Slovakia and Trade union of workers in chemical industry.

Tab. 4 Selected issues agreed in above collective agreements

Indicators	Chemical industry	Food industry	Energy sector	Metal industry
Weekly max. working time (hours)	37.5 (35.5 in continuous processes)	37.5	37.5 (36 in continuous processes)	37.5
Minimum wage (SKK/month)	5,450 (4,950 in selected organisations)	5,120 5,000*	4,650	5,350
Agreed minimum wage increase (%)	5-8%	3%*	5-7.5%	8%
Paid holiday (weeks)	4 (+1 for given employees categories)	4	4	4
Social Fund contribution	1%	1%	1%	1%
Agreements are concluded for years	1.5	1	1.5	2

** In meat processing companies*

For comparison, at the time of conclusion of the above collective agreements the following minimum/maximum standards were set by the Labour Code and other relevant labour legislation:

- Maximum standard working time was 40 hours per week for full timers working in single shift
- Minimum 4 week paid holiday
- Minimum 0.6% of wages paid out
- Minimum monthly wage for full timers was SKK 4,920.

4.6 Employees participation

Employees participation through trade unions

The trade unions have the right to be informed and consulted on given issues. This is laid down in the Labour Code[34] and is applied, as a rule, priory to the dismissal of workers and significant organisational changes. According to the valid Labour Code the employers should:

- Decide jointly with the trade union on the working time arrangement and about the creation and utilisation of the company Social Fund[35]
- Consult with the trade union the terms of employment (especially these of women taking care of children and of young and disabled people), social policy issues, organisational changes substantially influencing the employers business activities, improvements in working conditions and at health and safety and any other measures concerning considerable number of the employees
- Inform the trade union about principal issues of employers business activities and about the achieved and expected economic results
- Allow the trade unions to Control the implementation of the labour legislation and the commitments included in the collective agreement.

The trade unions´ participation rights actually used to be extended in both in the sectoral/branch collective agreements and as well as in company collective agreements over the above Labour Code standards. For example trade union representatives do participate in decision-making on such issues as women's night work, setting the company holiday date and dismissal of a union delegate. Trade unions are very often provided by information also about the labour cost and wage development, organisational changes and new and terminated employment contracts.

[34] Act No. 311 of 2001 on Labour Code, as amended.

[35] Social fund is created according to Act No. 152 of 1994, as amended in amount of 0.6% of paid wages as a minimum. One of the most common areas where the Social Fund is used is subsidising the cost of meals provided for the employees.

Employee participation through Works Councils

The recent weak point of social dialogue was that in many small and medium size private companies no local trade unions have been established. This situation caused that there was a lack in legitimate representation of the employees in social dialogue with the management. In these organisations were practically not created conditions for implementation of workers' rights neither to collective bargaining, nor to consultations, information and joint decision-making. Since 1 April 2002 when the new Labour Code was implemented, employees have the right to elect also non –union representatives – the Works Councils.

The Works Council is a body representing all employees of the employer if there is no trade union organisation. Employees are authorised to apply their rights pursuant to labour relations via the Works Council. In relations with the employer, the Works Council posses the right to negotiate, even including those cases, in which the trade union body is entitled to co-decision making, as well as to information and the right to inspect adherence to labour regulations.

The Works Council may operate in companies and organisations employing at least 20 employees. In such cases when the employer employs less than 20 employees, but at least 5 employees, a shop steward shall operate. The rights and obligations of the shop steward are equal to those of the works council. Works councils and shop stewards become operational on election grounds.

An employer, who fulfils preconditions for the works council operation, is obliged to secure election of the members of the works council to which all employees elect representatives of employees. The number of members of the Works Council depends on the number of employees. The Works Council has at least 3 members at employer who has up to 100 employees; from 101 to 500 employees it shall comprise at least one additional member for each 100 employees and, from 501 employees shall comprise at least one additional member for each 500 employees.

All employees who have been working with the employer for at least three months have the right to elect members of the Works Council or a shop steward. Each employee who is over 18 years of age, who has never been convicted of a criminal offence, who is not a close person to the employer and who has worked for the employer for at least three months, has the right to be elected as a member of the Works Council or as a shop steward.

Members of the Works Council are elected directly by secret ballot on the basis of a list of candidates proposed by employees. Voting for each candidate is done independently, unless employees decide otherwise. A candidate is elected if he or she receives a simple majority of votes of those employees present for the vote. The shop steward is elected in a similar way i.e. directly by secret ballot, requiring a simple majority of votes of employees present for the vote. The first election of members to the Works Council are organised by an election committee elected by employees; further elections are organised by the Works Council. Expenses arising from the elections are borne by the employer. A

new employer is obliged to secure elections of the members of the works council within three months from being established.

The term of office of the Works Council and of the shop steward is for a period of four years.

Based on the following reasons, the Works Council or the shop steward can lapse upon expiration of the term of office: by resignation or being recalled, by decrease of number of employees with the employer to less than 20 or by establishment of a trade union organisation.

Membership of the Works Council can cease to exist upon termination of employment contract with the employer, by resignation from membership in the Works Council or by recalling from the function as a member of the works council.

The Labour Code further stipulates the conditions for activities of the Works Council and the shop steward for health and safety at work. The employer shall provide for time-off from work with wage compensation, premises, maintain confidentiality and protect these employees. Though the new labour law allows establishing Works Council already from

1 April 2002, there are sorry no detail information available how wide are they spreaded and how are operating.

European works councils

Apart from the above mentioned Works Councils the new Labour Code includes also the rules for establishing the European Works Councils (EWC) in full line with the respective EU Regulation. Provisions concerning the EWCs will enter into force when Slovak Republic became a regular EU member state (expected as of 1 May 2004). Nevertheless some EU multinationals operating in the country (e.g. Volkswagen) already provide for their employee representatives the opportunity to participate at their EWCs meetings.

4.7 Regulation of collective disputes settlement

Mediation and arbitration

The Collective Bargaining Act, No. 2 of 1991, lays down also how such a collective dispute can arise and provides for a procedure to follow at the mediation and arbitration.

Mediation

A proposal for a mediator to be appointed for conclusion of a collective agreement may not be submitted before at least 60 days have elapsed since negotiations for a new agreement opened. Mediation takes place only if the parties desire it, and aims to bring the two parties in a collective dispute to an agreement. If the parties fail to agree on a mediator, either party may apply to the Ministry for one to be appointed from a list kept by the Ministry.

The two parties carry the mediator's costs and remuneration equally. The mediator will propose, in writing, a solution of the dispute within 15 days of having heard the details. Mediation is deemed to have failed unless the dispute is settled within 30 days of hearing the details. The parties may agree a longer period at each stage.

Arbitration

If mediation has failed, the parties may agree to refer the dispute to arbitration. An arbitrator may be appointed by the Ministry at the request of just one party where the dispute concerns interpretation of an existing agreement, or in cases of concluding the collective agreement where strike action is forbidden due to the nature of the work. Arbitrators may only be appointed by the Ministry from a Ministry list, and cannot be the same person as the mediator. The arbitrator's ruling will be delivered within 15 days of appointment, and the costs of arbitration are borne by the Ministry.

Because there is no system of separate Labour Courts in Slovakia, either party may appeal from the arbitrator's ruling on a point of law, within 15 days to the respective County Court for the party most affected by the ruling. Otherwise, the ruling is legally binding. In case the arbitrator's ruling is endorsed as invalid, the same arbitrator will deal with the case again. In case this is impossible, the Ministry will appoint another arbitrator. The situation in the settlement of the disputes by mediation during the last five years highlights the data available in tab.5.

Tab.5 Mediation cases and their results

Years	Total number of the cases	Successfully concluded
1998	46	29
1999	31	21
2000	29	23
2001	27	19
2002	25	13

Source: Annual reports on the social situation of the population of the Slovak Republic. Ministry of Labour, Social Affairs and Family of the SR.

These figures represent the total number of the mediations officially registered, which slightly declined during the last two years. At the same time the figures indicate that the effectiveness of the mediations has increased.

Strikes and other industrial actions

The Collective Bargaining Act, No. 2 of 1991 as amended, regulates apart form settlement of collective disputes also strike actions. Strike is defined as the partial or complete interruption of work by employees. The law implies a "peace clause" into collective agreements, such that strike action concerning the contents of an agreement is banned during its life. A collective dispute must concern the conclusion of a collective agreement or fulfilment of commitments under such an agreement. A dispute of rights under an existing agreement and a dispute of interest, or a claim to a new agreement must go to mediation and if needed to arbitration too.

A strike is expressly referred to in the law as an extreme measure, to which recourse is to be had only after the other possibilities have been exhausted in the process of a dispute over conclusion of a collective agreement. Strikes can also be in sympathy with other employees, but they in turn must have a dispute over conclusion of another collective agreement.

Strike notice is required, of at least three days. The notice must specify the start date, the goals of the strike, and the names of the trade union representatives leading the strikers. The decision about the strike (on both the company or sector/branch level) will be declared by the respective trade union organisation upon the results of the secret voting – majority votes are needed. The voting is valid on condition that the majority of all employees concerned by the strike have participated there. The employer is not allowed to replace employees on strike by recruiting other employees.

The strike may be illegal when it:

- is not preceded by a formal claim for a collective agreement and an attempt at mediation (apart from sympathy strikes);
- takes place during the life of a collective agreement on the issue, or once the arbitration process has started;
- is conducted in breach of the notification requirements etc.

Sympathy disputes may also be illegal if the employer affected cannot influence the course or outcome of the principal dispute. Strikes are also banned at times of emergency or disaster, and in certain occupations, for example employees in nuclear facilities or those with crude oil or pipelines, and in health care facilities where action might endanger life or health (e.g. fire-fighters, soldiers, etc.). The employer's side may go to the relevant regional court in case to seek a ruling that the strike is illegal.

Trade union representatives must allow access to the workplace, and departure from it, to employees wishing to work. They may not threaten them with any detriment, but may discuss with them the interruption of work. Employees may not be forced to participate in the strike, nor prevented from so doing. The trade union must collaborate with the employer to prevent harm to the equipment or processes.

There is no right to pay or to unemployment compensation and sickness pay for strikers in case the entitlement for sickness pay was obtained just during the strike period. Employees wishing to work, but unable to do so due to the strike, are entitled to their normal pay.

The law allows an employer to lockout his business unit as an extreme measure during the process of negotiating a collective agreement, on much the same terms as a trade union may launch a strike. Thus the employer is bound to give three days notice, and it may be illegal for the same reasons as noted above. Employees affected by a legal lockout are entitled to be paid at half their normal rate.

Participation in a strike, which has been ruled illegal, is treated as unauthorised absence. Until such a ruling, however, it is authorised absence. Individual employees are not liable for any loss caused simply by the interruption of work due to strike action. However the trade union may be liable for damages sustained as a result of a strike declared illegal.

First strikes took place

After keeping the social peace for more than ten years, the first strike in the history of the independent Slovak Republic took place in early 2003. The trade unions of railway workers actually went for strike in the threshold of January and February 2003. The railway workers trade unions have already had some attempts to call for strike also in the previous years (1998, 1999 and 2001), but never made the final decision for such a radical social action.

First strike actually started on 29 January at 03.00 o'clock morning and lasted for six hours. After the further unsuccessful negotiations between the trade unions, management of the Slovak rails and the representatives of the Government the second strike started on 31 January night (23.00 o'clock) and lasted until 3 February evening (19.00 o'clock), when the trade unions decided to interrupt it because the respective regional court considered their strike as illegal. The court considered the strike as illegal in terms of the Act on Collective Bargaining. The trade unions disagreed with this decision, arguing with the rights for strike laid down (in broader terms than in the above Act) by the European Social

Charter adopted also by the Slovak Republic and made an appeal for the higher court. Both sides are still waiting for the result.

According to the trade union representatives, the main reason for their decision for strike was the failing negotiations with the management of the Slovak railway companies and later on with the Minister of transport, post and telecommunications on postponing the implementation of reductions in the railway services for the public transport planned since 1 February 2003. The measures included cancelling of services of 25 regional railway lines and some reductions in other lines too. It was announced that the proposed measures would be followed by redundancy of several hundreds of railway workers too. In several regions the railway was the main public transport means for school attendees as well as for workers, and about 40 thousand citizens signed the petitions against the proposed reductions in local lines.

The main argument of the Slovak railway companies management, supporting the implementation of the above measures was, that the state owned rails are ineffective and their debt is continuously increasing each year and in 2002 it has reached about SKK 50 billions, including bank loans. However, the state is one of the big railways´ debtor too.

The aim of the proposed reductions of local lines is to reduce the operating cost of the railways by about SKK 650 million per year. Currently the Slovak railways employs more than 40 thousand employees, what is according to the railway companies management, too many for an effective operation of the railways.

Two strikes lasted 74 hours in total and resulted in reasonable economic losses of the railways, preliminarily estimated to more than SKK 60 million. Because the Slovak economy is much dependent on regular and in time material supply and products delivery, the strike not only paralysed the personal transport but also started to threaten the production of several companies, including big multinationals e.g. US Steel, Volkswagen and the monopoly Petrochemical and refinery complex Slovnaft.

Though the trade unions participating in strike did not achieve their original goals and the proposed reductions in railway lines were actually implemented in practice, the trade union representatives considered the strike as relatively successful. The president of the Confederation of Trade Unions (KOZ SR) proclaimed that the railway trade unions have successfully checked their capacity to mobilise their members for strike (about 70% of them participated in strike), and their experience could encourage also the other unions e.g. in negotiations for 2003 collective agreements.

The Government considered the strike in broader perspective as a social action with the political motive and background. Currently the relations between the trade unions and the Government are more conflicting apart from others, because of the Ministry of Labour, Social Policy and Family proposed several amendments in the labour legislation influencing also the position of the trade unions in companies.

Anyway there is also one constructive output of the strike - the starting discussions about the possibilities how to operate the cancelled services in local railway lines again e.g. under the competence of the

regional self-administration bodies. Some few examples confirming the feasibility of this option do already exist and even the Ministry of transport, post and telecommunication considers options for re-starting the operation in some cancelled lines in the near future.

4.8 Latest changes in the Labour Code

Currently new amendments in the Labour Code were discussed and improved by the Parliament on 21 May 2003. According to these amendments e.g. the following changes will be implemented by 1 July 2003:

- Works Councils can operate in all organisations, even if the trade unions are present there
- Yearly limit for overtime was increased from 150 hours to 250 hours
- Employers could terminate the employment contract more easily
- Temporary working contracts can by agreed for three years as a maximum
- No paid time-off for trade unions representatives activities (except from trainings) will be provided
- Part time work can be agreed for up to 20 hours weekly etc.

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5 Diversities and Interfaces of Labour Relations in CEE countries - Path Dependency and Europeanisation in the Czech Republic, Poland and the Slovak Republic

As we have learned from the three country reports, there is a diversity of Labour Relations in the three CEE countries concerned, which has been historically grown. One historic reason for that is to be found in the beginning of the transformation process in the end of the 1980´s. For example, Poland represents the type "negotiated" change in the system.[36] In the Czech Republic there is a mixed form of "negotiated" and "enforced from the bottom" change in the system (Merkel 1999, Chapter IV).

5.1 Historical roots, interfaces of Labour Relations in CEE countries and the impact of Foreign Direct Investment

It is crucial for the development of Labour Relations in the CEE countries as to which type of market economy and capitalism they decided upon. Whilst the American Jeffrey Sachs (1993) pleaded for the introduction of a pure "Thatcher model" (and tried to put this into practice in Russia), others argued – amongst them the German Otto Schlecht (1994) – for the development of the German model of social market economy as an optimum strategy of transformation. With the exception of Poland, the catastrophic effects of the so-called shock therapy and the attempt to transfer other (Western) models of society on a "one-to-one" basis to the societies of transformation, provoked severe criticism in particular from the supporters of the theory of path dependence (Stark 1994, Stark/Bruszt 1998). Their thesis emphasizes the influence of historically-developed structures, norms and the mentality of social developments and therefore the influence on Labour Relations. They reject the idea that the Communist regime has left a political and institutional vacuum. However, this thesis can only be approved to a certain extent when we consider the background of other empirical investigations. In the case of the Greenfield investments there arises a two-way path independence (independent of the Labour Relations of the countries of origin but also of those Labour Relations of the candidate countries).

[36] There arises a stalemate situation between the elites and opposition parties of the regime. In this situation neither side has the determining power to define future political leadership.

If you are considering the European elements of the respective systems of Labour Relations in the different countries, you even can speak of three levels of path (in)dependency.

However, the „models" of Labour Relations in the current member states are partly very different too (Eberwein, Tholen, Schuster 2002, 12), so one of the results are, that some of the CEE features are well-known in current EU member states such as low trade union membership, low collective bargaining coverage, decentralised bargaining and single structure of employees´s representation on company´s/plant´s level – that means no works councils.

Furthermore, despite the national differences between CEE countries, there are some common fields of Labour Relations in the candidate countries (Carley 2002, 12; Kohl, Platzer 2003, 47):

- Trade unions and employers´ associations are coming from very different backgrounds and are located within different stages of development,
- Rather low union density (especially in SMEs), partly falling even now,
- Employers´ associations (esp. on sectoral level) are weaker and more numerous,
- Collective bargaining systems are more decentralized with a strong bias on the company level,
- Partly absence of Works Councils, incorporated in the union´s representation system (with the exception of Hungary and Slovenia), but emerging Works Council Systems, currently rejected by the unions (as in the Slovak and Czech Republic),
- A dominant influence of the administration on collective bargaining and Labour Relations due to weak social actors (unions, employers´ associations),
- In general a contradictory process of deregulation (SMEs, Greenfieldinvestments) and fostering the social welfare state (partly to meet the requirements of the EU Acquis Communautaire).

One of the leading questions of the research project, from which one of the outcomes is this book, is on the role of Foreign Direct Investment to shape the Labour Relations in Candidate Countries or better speaking of future EU member states – taking the examples of the Czech Republic, Poland and the Slovak Republic (as host countries of the FDI) and Germany (as the investing companies´ home country):

1. In the three CEE countries German companies form by far the largest investing group from the EU and – with the exception of Poland, where US-American companies lead the way - represent the largest foreign investing group of all,

2. Almost half of those jobs created and secured by German companies abroad in the 1990s apply to the CEE countries,

3. There is the majority of production activities located in border regions of the candidate countries (bordering Germany and Austria) and this has considerable consequences for the interregional trade union bodies,

4. About 60% of all German foreign direct investments in CEE countries apply to production companies and two thirds of these apply to large-scale mother companies (with more than 500 employees).

It becomes very clear that neither a "one-to-one" transfer of Western production models and (for example German or UK) industrial relation patterns nor the rigid insistence on straight-line extended "path-dependency" along traditional CEE lines both can bring a solution. That is why there is a need for a " hybridization process" (Doerrenbacher et al 2000, 439): This process can appear in different versions as a mixture of

a) Conditions directly in the candidate countries (in the region; special branch conditions, in the case of Brownfield investments special features of the company/plant etc),[37]

b) Elements of the mother company (e.g. from Germany): There is neither evidence for the thesis of the "footless" global company (like Altvater/Mahnkopf 1996) nor for the approach that of a historically-developed (nationally-bound) dependence of Labour Relations also in companies which deal globally (like Mueller-Jentsch 1995, Streeck 1995). The present versions of the German system of Labour Relations points to a compromising transformation but in no way in the sense of a scenario of disintegration (Doerre 1997 and Doerre, Elk-Anders, Speidel 1997). Certain parts of the German system of Labour Relations – and other "models" of Labour Relations in EU member states too - have already become "Europeanized" at company level,

c) influence of third countries or semi-State unions, like the European Union.

[37] It may be asked to what extent a spezial company culture can represent an additional „level" of development of common elements of Labour Relations in (German) mother and (CEE) subsidiary companies. This company culture is considered by Schreyoegg as an individual company and unmistakable pattern of concept and orientation (Schreyoegg 1994,23) and in our empirical study of manager mentality we would prefer to describe it as part of a labour culture which is co-determined and upheld by all company employees (Eberwein/Tholen 1990,223).

5.2 Labour Relations in the Czech Republic, Poland and the Slovak Republic

The following paragraph is not repeating the three country reports with all its developments and details. Instead of this we will focus only on selected interfaces, questions and problems of the Labour Relations in Poland, the Czech and the Slovak Republic.

As mentioned above, there is a diversity of Labour Relations not only between the candidate countries, but between current EU member states, too.

Taking „our“ three CEE countries Czech Republic, Poland and Slovak Republic and add the cases of the UK and Germany to the below showed draft, this will prove our thesis:

Diagram of the Labour Relations in the UK, Poland, Czech Republic, Slovak Republic and Germany

	UK	Poland	Czech R.	Germany	Slovakia
Level 1: Form of conflict regulation	Conflict model	Tripartite	Tripartite	Co-operation / Consensus Model	Tripartite
Level 2: Degree of codification	Bargaining Process	Partial Codification	Partial Codification	Codification	Partial Codification
Level 3: Organizational form of the Unions	Heterogenity of the unions	Pluralistic Diversity of the unions	Unity Union/ Fragmented	Unity union/ Industrial union	Unity union/ highly fragmented
Union Density[38]	29	15	30	29	40
Level 4: Relations between the union and the plant employees´ representation	Monistic Single structure	Monistic Single structure	Monistic/ Dualism: - union bodies in plants - facultative works councils	Dualism Dual structure - Works council - Unions	Monistic/ Dualism: - union bodies in plants - facultative works councils
Level 5: Management / capitalism models	Anglo-American Model, Share-holder-value capitalism	Transition/ Direction rather unclear	Transition/ Direction rather unclear	Rhine-alpine Capitalism, Co-management	Transition/ Direction rather unclear
Level 6: Direct Collective Bargaing Covering[39]	36	40	25 – 30	67	48

[39]Source: Carley 2002, 2, 6

Labour Relations in Poland:

In **Poland,** in particular at company level, there are numerous different trade unions which lead to a clear weakening of representation at company/plant level. Such trade unions are so contrary and irreconcilable in their *political* directions particularly at national level (in this case we should give special mention to Solidarnosc[39] and OPZZ). Apart from a weakening of representation at plant/company level there arises at the same time a reinforcing process of management resulting from various factors. Therefore the nominal strengthening of Polish trade unions at company level – namely tariff regulation – falls into a form of bureaucratisation when there are several trade unions. In the case of numerous company trade union organizations the right to take on tariff regulation is only permitted to *one* representative body of all company union organizations. Only in that case, if a *joint* representation cannot be installed, the bargaining process will proceed by comprising *all* unions involved.

In Poland the dominant level of wage bargaining is the company level, though in principle wage bargaining can take place on sectoral level too.

Apart from the country´s rapidly disappearing state-owned companies, in which "Worker Councils" are existing, there is existing according to the Labour Law a monistic representation system: Unions are forming the representation body (known as "Enterprise Commissions") – of course only in those companies, where unions are countable and visible.

Though recently many private employers view much more favourable the idea of an employee delegate or representative directly elected by the workforce to be responsible for contacts with the company´s owner or management, this idea is sharply criticised by the unions.

Labour Relations in the Czech Republic:

In the **Czech Republic** there is not such a fragmentation of trade unions[40]. This has already had a positive effect on the representative bodies in the company (Kohl et al. 2000a, 47 ff). Apart from the tariff contracts at national level between trade unions and employer associations there is the more important level on the company/plant level (collective agreements at national level and at company level stands in the ratio of 1:3).

According to the Czech law 3 people are necessary to found a trade union organization in a company to take over the function of company employee representation. In reality there are 3 to 5 union members who carry out tariff negotiations at company level. However if we look closely at the concrete participation of trade union representatives in company politics, then it becomes clear that compared

[39] In December 1999 Solidarnosc decided to move out of party-political work and to limit itself more to classical trade union tasks (Kohl et al. 2000b,12). The future will show to what extent this was realized.

[40] At present there are 30 individual trade unions united together within the Czech-Moravian Confederation of Trade Unions (CMKOS).

with participation rights of works councils in Western Europe (above all here in Germany and Austria, to a lesser degree in Italy and France) and in some CEE countries (above all Hungary and Slovenia) the rights of union representatives are by no means as well-developed.

They have the right to bargain with employers and to negotiate collective agreements for all employees at company level (and by law for non-union members). This is not the case in Germany and Austria. In the Czech Republic there is no difference between a collective agreement and a company agreement, only between company and branch collective agreements. This is similar to the situation in Poland. On 2nd May 2001 there was an amendment made to the Czech "Labour Code" which was approved by Parliament and which will give more rights to representative bodies at company level in the course of adjusting to the EU´s Acquis Communautaire.

In the Czech Republic employees are represented in the supervisory board of Public Companies (the minimum size of the company must be 50 employees, a third of the supervisory board consists then of employee representatives), whereby it must be said that the supervisory board (in comparison to the company managing board) clearly has fewer rights than in Germany.

In reality, we may say that where, in the course of privatisation and the founding of new companies, new economic structures are arising, there are hardly any representative bodies for employees at plant/company level. We will refer to this point later.

The newly introduction of a dual representing system at company level is a radical innovation for the Czech Republic: A law regarding the "facultative works council" came into effect on 1st January 2001 which states that according to revised labour legislation if no company union groups are formed, then it is possible for the employees of a company (with more than 25 employees) to elect a company representing body (so-called "Council of Employees"). However, in this case, the right of trade union representation in the company to finalize collective agreements/bargaining is not transferred to the Council of Employees. But if, after the foundation of a Council of Employees, a company´s trade union (with only three members) will be founded later on in this company, this trade union will take over the rights and duties of the existing Council of Employees. The latter will be then dismantled.

Parallel to this (in case of no union representation) in companies with more than 10 employees a "Health and Safety Representative" could be elected by the workforce, and the same rules of abolishment as to the Council of Employees will be adopted.

Future practice must show which effects such decisions will bring.

Labour Relations in the Slovak Republic:

The Slovak Republic has gone a similar way as the Czech Republic with respect to the "facultative works council". Traditionally, according to the Labour Code, there is a corresponding trade union representation in the company with the following rights:[41]

- The employer is obliged to negotiate with the trade union representing body in the company about all measures regarding working conditions and furthermore about questions of social security, questions of hygiene and the environmental conditions of the place of work,
- The employer must inform the appropriate union representing body about essential economic (also future) developments of the company, about organizational and structural changes including mass redundancies,
- The appropriate trade union representing body in the company has the right to ensure that labour legislation, collective agreements, working conditions and safety at work are complied with in as far as they are legally regulated.

From 1st of April 2002 the employees of a company (from 20 employees) have the right to elect a company representing body (called "Works Council") if company union groups are not formed. It is also possible for the company representing body to be replaced by union representation in the company founded at a later date. In this case the company representing body would only have the right of information but not of collective bargaining at company level. A representative body in companies with at least 20 employees is elected for a period of 4 years; if the company has between 5 and 19 employees a company shop steward is elected.

Similar as in the Czech Republic the tasks of the Works Councils are only comprising information and consultation rights and not wage bargaining.

But in *difference* to the conditions in the Czech Republic, in the Slovak Republic the company management has the obligation to let the staff electing a works councils in the case of a non existence of a union representation body in the company.

Another difference to the Czech Republic and to Poland is that wage bargaining in the Slovak Republic is dominant on the sectoral level and not on company level.

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[41] Trade union representation in the company is embedded in the general framework of trade union development in Slovak Republic. The confederation of trade union associations (KOZSR) has been able to keep its unity in spite of attempts from the former Meciar`s government to split up the confederation (see Dauderstaedt 1999, 6-8): Since 1990 the number of 41 KOZ member trade unions has remained unchanged whereby there are several individual trade unions in some branches. A trend towards company mergers may also be confirmed. Based on structural changes in the economy and of competing trade unions not in the KOZ the number of members decreased from 1.54 million in 1993 to about 830,000 in 1999. Approximately 60 – 80% of membership subscriptions remain in the company organisations and the rest flows into the headquarters of the respective individual trade union.

The regional offices of the KOZ (District board of the Confederation, KRK) are gaining more and more importance.

5.3 Selected open questions on the future of Labour Relations in Poland, the Czech Republic and the Slovak Republic:

There are some open, till now unsolved questions about the future of some arenas of Labour Relations in the candidate countries discussed here:

- *Pocket unions or unionisation of Works Councils in the Slovak and Czech Republic?*

In the face of the majority of companies/plants with no unions both in the Slovak Republic and the Czech Republic, the unions in both countries are afraid of, that the employers will exploit the existence of the newly Works Councils (demanded by law) to promote employer friendly unions (pocket unions), which might play against the traditional unions. In so far the rejection of the Works Councils by the tradeunions in both countries is explainable. The Polish unions see themselves confirmed by this struggle – despite or just because of the fact that in Poland some larger private companies are very much interested to launch a kind of (union free) representation body with the argument, the corporate management needs a counterpart.

But here two remarks are necessary:

- The new EU directive from March 2002 on consultation and information of the employees on plant level will strengthen the implementation process of Works Councils in Europe.
- Facing this trend and considering experiences for example of the unions in Germany with the already 120 years existing dual structure (the structural contradiction between company-related and union-related representation bodies had been solved positively in the day-by-day work by a "process of unionisation of Works Councils" (see Brigl Matthiass 1926; Braun, Eberwein, Tholen 1992, pp. 411), the unions in the Czech and in Slovak Republic should consider not to exclude the new structure (and so losing all kind of influence), but to include them by offering the newly Works Councils opportunities of qualification etc. And here an international supportive system of exchange information and experience, organized by unions in different countries and the European Works Councils, could play a decisive role.

- *Transformation Tripartism or Social Dialogue à la EU – or « the sweet poison of tripartism »*

In Poland, the Czech Republic as well as in the Slovak Republic there is a system of tripartism, which could be found in almost all CEE countries and has served as an instrument of political support for the transformation process.

But there can be found a very unequal role perception of the two social actors, the unions and the employer associations. Especially the latter ones had been developed towards an economic lobby.

Though they have a basic understanding for a social dialogue and partnership with the unions, their real authority and possibilities (institutional and human resources) to be active in this field are rather weak and limited (according to a study by the ETUC and UNICE, see Draus 2001, 27).

In this connection there is the interesting question whether and if so, which parts of this "transformation–tripartism" will find access into the process of the Social Dialogue as it is legally designated in the EU and as it is partly implemented in a practical-political way.

Our hypothesis is, that this transformation-tripartism consolidates the traditional conditions of Labour Relations. The two social partners – trade unions and emloyers´ associations – in the respective countries are relying on the competence of the state administration (mostly represented by the ministries of labour), partly dute to their own weakness. So we call the transformation-tripartims the "sweet poison of tripartism". This has only little to do with the Social Dialogue which rests on the pillars of flexibility and the principle of subsidiary as it is kept up at European level (EU) if only to an insufficient degree. This means that tripartism cannot simply be "extended" in order to be considered from 2004 as a Europeanized part of those national Labour Relations but it must be radically changed regarding its content and aims.

5.4 Bridging the gap between the different national "models" of Labour Relations:

The report of the High Level Group on Labour Relations and Change in the European Union from January 2002 is recommending the candidate countries to deepen their cooperation with current member states and their respective social partners with a view to address concrete issues of common interests.

This transnational, direct co-operation could include (p 40):

- Exchange of information and experience in various social partners` actions, including institution-building;
- Exchanging of "best practices";
- Establishing instruments of comparisons (databases, clearing houses, comparative regular surveys, etc.) as a basis for benchmarking;
- Consultation on policies related to national Labour Relations.

Foreign Direct Investment and cooperations between home and host countries of investment:

First of all, some figures on Foreign Direct investment worldwide and into CEE countries (UNCTAD 2003):

- Global FDI inflows declined in 2002 for the second consecutive year, falling by a fifth to $ 651 billion – the lowest level since 1998
- The decline in FDI in 2002 was uneven across regions and countries
- CEE again bucked the global trend by reaching a new high of $ 29 billion in FDI inflows, compared to $ 25 billion in 2001
- But there is an uneven trend: FDI is falling in 10 countries and rising in 9 (best performer in 2002 is Slovakia)
- FDI flows varied across industries, with the automotive industry doing quite well, and the electronics industry facing problems
- There is a tendency of firms, investing especially in the 2004 candidate countries, to shed activities based on unskilled labour and to expand into higher value added activities, taking advantage of the educational level of the local labour force.

In 2001 the amount of foreign direct investments in the three CEE countries reached the following level (in millions of USD) (UNTAD 2002):

Poland:	8,830
Czech Republic:	4,916
Slovak Republic:	1,425

The comparison (level of foreign direct investment per capita in US dollars, end of 2001) is showing, that the Czech Republic is the forerunner, attracting foreign cpaital as investment:

Poland	229 (by 38,6 mio residents)
Czech Republic	506 (by 10,3 mio residents)
Slovak Republic	264 (by 5,4 mio residents)

(In comparison with Hungary 244).

Host countries of Investment:

61% of all FDI in Eastern Europe come from EU countries.

With 19% (almost one fifth of the total) Germany gives most capital to CEE countries.

Poland has continued to extend its role as the most important investment location for German direct investments and with a total of $3.5 billion reached a share of 43% of all German direct investment in Eastern Europe.

In comparison to this the shares (German FDI) in the Czech Republic (19%) and in Hungary (19%) have decreased.

In the framework of Foreign Direct Investment a precondition for cooperation is the mutual recognition of different conditions in both countries, in the home country of the mother companies and the host country of investment. A survey on 30 German companies, done 1998/99, is showing very clearly, that the (German) mother companies, investing in CEE countries, do not simply expand their co-operations and business into CEE markets: "Cross-border corporate reorganisations is taking place in which cost-cutting motives are an important guideline. The conjunction of spatial proximity and low labour costs clearly foster this type of reorganization. Firms do not just take advantage from the new opportunity. Cross-border reorganization is also a response to the limits of the adjustment strategy in the 1980s, characterized by a mainly home-based production system, which serves the German quality-sensitive market and exports finished goods to Western Europe and the rest of the world" (Bluhm 2000, 15).

One example could be the BMW works in Regensburg/Bavaria (close to the Czech border), which deliverers are partly located on the Czech site of the German/Czech border. This cooperation is allowing a "mixed" calculation for the Regensburg plant and thus make this plant competitive for the corporation`s internal competition and furthermore the external BMW standing. But a precondition for this is a high quality of cooperation between the plant and its Czech deliverers – in managerial , organizational, technical *and* social terms – in other words, the different systems and understandings of Labour Relations on both sides of the border must *not* be harmonized but brought in a process of dialogue, mutual acceptance and in the end of the day cooperation.

Europeanization of Labour Relations:

One way for this could be the process of Europeanization of Labour Relations, taking already place in current and future EU member states. This process is and could furthermore creating interfaces between the different national "models" of Labour Relations, which are providing opportunities for the social actors concerned to cooperate with each other.

But, as above mentioned, the development of Labour Relations in Europe will not be homogeneous in Europe. A development is to be expected, in which the dominance of the national regulation level will be kept and variations will be allowed, whereby a complementation of the various systems of Labour Relations through European regulations as well as a change in the national systems themselves will take place.

Europeanization rather describes the formation of a new interlocking structure of political, economic and societal regulations, which compulsory, must present itself specifically in each member state.

Europeanization always consists of four dimensions:

- the creation of European regulations through negative and positive integration
- the changing of regulations in the states involved
- a changed interdependence amongst national, supranational and subnational regulation levels.

European elements of Labour Relations can be defined through the social dialogue, the European works councils, the European Public company (SE), the information and consultation body in plants/companies (2002 EU directive) and the coordination of wage policies. Therefore there is a complementary level whereby the national systems will not only continue to exist but will represent an important requirement for the functioning of a system of European Labour Relations.

Foreign Direct Investment and European Works Councils:

We will take European Works Councils as an example, to which extent Europeanization of Labour Relations can bridge the gap between the different systems and could improve the relationship between the various representation bodies, both on plant/company and supra company level.

Our approach is determined by an euro-optimistic analysis contrary to the euro-pessimistic (see the difference regarding the EWC Mueller, Hoffmann 2002, 109 – 111). Though the euro-optimistic approach is considering the institutional deficits of the EWC directive, but parallel to this admits the enlargement of the scope of action for workers´ representation on European level. Contrary to the euro-pessimistic approach (which is arguing alongside the national framework) we emphasize the new quality of the emerging European multi-level system and, coming from this, the new opportunities for employees and their representatives to shape.

The EWC directive and the experience with the national legislation obviously is promoting strategic pressure of adjustment for the national unions and therefore for the employers to act parallel.

Such a tenseful network of Labour Relations could create a bridge between the Labour Relations systems in current and future EU member states not only within a company, but beyond, on supra-company´s level too.

In principle there could be different scenarios:

a) On condition that an existing European Works Council of the (German) Euro company also covers the subsidiary companies in the CEE countries (and this is not compulsory by law till the 1st of May, 2004) there arise two possibilities:

   a1) All Western and Eastern members of a European Works Council within a Euro company are confronted with similar problems. Beyond this there is also a field of tasks which is only typical for the Eastern members. We will describe this very abstractly as a "challenge by the transformation process". One essential question is whether it is possible to make this special field of tasks accessible to the *whole* body of the European Works Council.

   a2) The organization and work of the European Works Council could contribute to introduce not only European standards of Labour Relations at plant/company level but also of management concepts within the framework of a "European Human Resource Management" in exactly these companies. The EWC could be also an institution, together with the appropriate unions, to bring the constantly mentioned danger of wage dumping and lowering of working standards to the public discussion.

b) On the condition that an existing EWC in a German mother company recruits its participants exclusively from current EU countries, the EWC could have anyhow a considerable influence on the organization of Labour Relations in the CEE company branches – if only in an indirect way by using the different institutions within the system of the German company constitution (concern works council, finance committee etc) and of company co-determination (employees´ seats in the supervisory board).

But how the reality looks like?

First of all, a growing number of top managers of large corporations with subsidiaries in candidate countries/future EU member states, according to a new study (Vitols 2003) is accepting the EWC as a helpful and useful medium to "create a cohesive company culture and a unified voice for employees, (to improve) the understanding of company goals and strategies among employees, (to design) Human Resource policies and guidelines with both respect national traditions and meet the company´s needs for integrating far-flung operations, and (to promote) cross border mobility and co-operation" (22). But in the first line, top managers would limit the EWC´s role to a information and consultation body rather than bodies with negotiation rights – probably the same attitude towards the role of EWC the national trade unions have attained (but for different reasons).

In 2002 the pure quantity of the numbers of EWC, which could be in a position to function as a bridge, was not so convincing:

In the year 2002, in total 1.865 MultinationalCompanies (MNCs) were affected by the EU directive on EWC[42]. Out of this, 547 have subsidiaries in EU applicant countries/future member states.

But: Out of 547, till now 323 (59 %) have set up an EWC, and in 84 of these EWCs (26 %) there is at least one representative/observer from the applicant countries where the company is present (Kerckhofs 2002, 65).

If you will draw some of these figures on the three countries, the following table is presented here:

	Poland	Cech R.	Slovak R.
Companies eligible for EWC	316	176	91
Companies with an EWC	206	117	57
EWC Members coming from CEE	50	26	16

Source: Kerckhofs 2002, 63, 66

In the average of the 3 CEE countries, the majority of MNCs, affected by the EU directive on EWC, have already established EWCs – but only with a minor percentage of representatives coming from sites in the CEE countries (in Poland in 24 % of the Euro companies representatives are from Polish subsidiaries; in the Czech Republic 22 %; in the Slovak Republic 28 %). Here you can find a considerable backlog.

But for the future you have to consider that from May 1, 2004 all CEE sites of companies, having an EWC, must be represented in this body reasonably, according to the directive; and furthermore, all mother companies located in the future EU member states, fulfilling the criteria of the directive to establish an EWC, are – by law – in principle open for this.

[42] Of this total 1.426 MNCs have operations in Germany. This means that there exist 1.426 German-based MNCs or subsidiaries for which EWC *could* be established. Out of these 1.426, one third are part of companies that have also operations in applicant countries (Kerkhofs 2002, 63).

5.5 The Labour Relations in EU candidate countries/future member states, do they fit in models?

Recently there are some attempts to describe the developments of Labour Relations in transformation societies (and here in CEE countries) either as a special model, apart from the before-known (West)European models or give them a special preference for the one or other already existing model.

So Thomas Steger (2002) is referring to three main models (liberal market model – USA, UK; social market model – Germany, Sweden; conflict model – Italy, Spain) and is describing the current and the forecasted developments of Labour Relations in Poland, the Czech Republic[43], Hungary and Slovenia as typical for the liberal market model.

Even more, Kohl/Platzer (2003, 47), in using the distinction by Ebbinghaus/Visser (1997) between the Northern European corporatism, the continental European model of social partnership, the Anglo-American pluralism and the polarizing model of Labour Relations in the Romance countries, propose an own CEE model of Labour Relations, which (for many reasons) is strongly dependent on the government´s support to catch up with the social and economic regulation deficits.

According to the three country reports and to the remarks in this paper we cannot agree neither with the one nor with the other model thinking.

Just before becoming member of the EU in May 2004, only 14 years after the start of the most dramatic changes in the former East Bloc societies, the Labour Relations in the CEE countries had undergone in the last years a special way of transition, which is providing *only now* the basis as a starting point for a new beginning as EU member state. That means that, by the speedy catch-up process in the last 14 years, only the preconditions for a "normal" development of Labour Relations in the CEE countries *as EU members* have been formed by now. The real adoption of the Acquis Communautaire from May 1, 2004, the political will and capability of the national elites (including trade unions and employers), the economic and social development will show us, in which direction the Labour Relations in the different "new" EU member states will go and whether they will narrowing the one or the other "model".

[43] And we can add here Slovak Republic as well, as basically Slovak Republic´s Labour Relations is following a similar track as it does in the Czech R.

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