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JOINT SOCIAL COMMITMENT

As the Key to I&C and Participation and Their Challenges

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Introdução

«(...) utilizando o bom senso, a disponibilidade para ouvir, promovendo as várias formas de envolvimento de todos nas empresas, a par da existência de uma preocupação visível e genuína dos seus responsáveis, é possível lançar as bases de uma cultura de sucesso» (José Simões, Diretor do Projeto Upper Level- Joint Social Commitment – as the Key to I&C and Participation and their Challenges)

A informação e consulta dos trabalhadores aos colaboradores, e de certa forma a participação dos trabalhadores, esta adaptada a cada uma das diferentes realidades nacionais e as ferramentas associadas a outros instrumentos, são a chave para antever situações de crise e isto tem-se evidenciado a pior forma quando o mundo se deparou com uma pandemia causada pelo novo coronavírus e as suas nefastas consequências socioeconômicas, isso durante a execução deste projeto.

Foi esta percepção que esteve na base deste projeto, e muito antes quando esteve na origem de grande parte do trabalho desenvolvido pelo promotor. Começámos a reforçar essa convicção com base na crise anterior, na crise de 2008, na crise económica, mas não com a dimensão desta crise pandémica.

Esta percepção levou ao desenvolvimento de etapas ao longo dos anos tendo sempre presente que em alguns países com médio ou baixo nível de envolvimento dos trabalhadores isso significaria um longo caminho. Desenvolver e implementar o que existe é fundamental e esta tem sido uma das principais conclusões a este respeito; é importante, pelo menos, ter uma percepção real das implicações do que se prevê, com base noutros instrumentos, e que tem sido particularmente claro: é fundamental chamar um elemento importante: o envolvimento voluntário das partes.

E se isso tem sido parte integrante do projeto, deparámo-nos com testemunhos nesse sentido, cada vez mais reforçando os objetivos, metas e ações do projeto. Isto tem sido evidenciado pelos parceiros do projeto, pelo seu visível empenho neste sentido, estando bastante cientes da necessidade de tal, da necessidade de o continuar a fazer.

Principalmente porque pensamos que este projeto pode ir muito mais longe e todos os obstáculos criados pela pandemia permitiram-nos alcançar todo o potencial da ação. De referir que mesmo nestas condições extremamente difíceis conseguimos reunir todos os parceiros e todas as partes interessadas, sublinhando a importância de uma conclusão bem-sucedida do projeto, recorrendo mesmo a meios alternativos que implicaram mais reuniões e um envolvimento ainda mais profundo para com o trabalho. O elemento presencial, o contacto presencial, é importante num projeto como o atual (e tal tem sido continuamente enfatizado pelo promotor) e o facto de tal se ter revelado impossível, poderia significar um sério impacto, embora tenhamos tentado superá-lo da melhor maneira possível.

O principal evento do projeto estava previsto para decorrer justamente nos primeiros dias quando, tanto em Portugal como na Europa, entraram em vigor as restrições e bloqueios devido à pandemia. Naquela época, a programação do evento principal contava com lista de espera de participantes.

Depois do primeiro impacto que atingiu alguns dos parceiros sociais, a capacidade do projeto (equipa do projeto, parceiros e todos os envolvidos de alguma forma) para se adaptar foi tremenda.

Por esse motivo, gostaríamos de expressar aqui a nossa gratidão para com todos que continuaram, apesar das restrições, a trabalhar, a envolver-se e a empenhar-se na ação apesar das adversidades e por nos permitirem trazer para este projeto uma prova clara de que o carácter voluntário associado a elementos-chave é essencial.

Deparamo-nos, neste projeto, com a necessidade de Informação e Consulta dos trabalhadores a diversos níveis, não só no âmbito dos CEEs, mas principalmente como uma prioridade a nível nacional e isto tem estado, cada vez mais, dentro do conhecimento dos parceiros.

Conforme destacado anteriormente, a crise decorrente da pandemia (o primeiro impacto, depois a lenta recuperação, depois uma nova onda de impacto e, para alguns, até um terceiro impacto no momento da conclusão do projeto) marcou a metodologia do projeto e o desenvolvimento da ação e das atividades. No entanto, e sem dúvida, tal alertou-nos para a séria e imperiosa necessidade de implementar as etapas apresentadas no projeto, o que temos e podemos melhorar, a nível nacional, sendo ainda mais essencial desenvolver aquelas ferramentas para a prossecução desse objetivo.

As questões centrais ...

A aplicação real do que temos, cada vez mais, através de outros mecanismos, e claramente os instrumentos jurídicos estiveram presentes neste projeto. Apesar da sua relevância, são frequentemente colocados à margem, geralmente quando já não existe uma solução, por diversos motivos, principalmente a diminuição da confiança ou tal é inviável ter uma informação e consulta real e normal e porque muitas vezes esta apenas se baseia em alguns aspetos formais.

Daí a necessidade de melhorar e fazer uma aplicação real desse trabalho, do que existe, através de uma aplicação eficaz do que existe, com melhorias nacionais ou adaptando o já existente com base no que existe e na predisposição dos parceiros sociais para o fazerem, na maior parte das os casos.

Essa predisposição é clara nos parceiros sociais, embora de forma diversa, todos aparecem aqui no livro final do projeto. Apesar das questões logísticas já levantadas que impediram alguns de o alcançar, por exemplo a ligação dessas realidades à negociação coletiva era clara em alguns casos, mas dentro do universo das PMEs, e para alguns, tem sido difícil de consegui-lo porque essa realidade, como a conhecemos, não existe de todo a nível setorial; frequentemente, apenas porque não existe tradição ou porque esta é mais voltada para questões salariais. Contudo, uma vez que a vontade dos parceiros está presente, o objetivo é lucrar com isso para chegar a um acordo projetado passos seguintes ou obter uma estrutura para permitir o passo seguinte.

No projeto não existe uma solução geral que sirva para todos, o que é bom e possível para uns pode não ser o mais adequado para outros. O que este projeto pretende trazer é a melhor solução possível para cada país e viável para os parceiros.

E a esse respeito o trabalho presencial é importante e podemos perceber que os resultados nos países onde foi possível ter uma ação mais presencial foram mais ambiciosos e, nos demais, onde não foi possível essa proximidade devido à pandemia, conduziu a menos resultados.

Em alguns casos não pudemos trabalhar com parceiros sociais que quase desapareceram, como é o caso dos empregadores turcos que se fundiram durante a execução do projeto, ou os problemas de ligação que têm sido uma realidade em alguns países bálticos. Temos a convicção de que houve um trabalho tremendo realizado por eles e que deve concretizar-se num cenário não pandémico, consolidando o que já foi conquistado.

Se o nível setorial é importante, devemos também fazer referência ao nível da empresa - também visado neste projeto - e a este respeito devemos mencionar uma maior abertura às questões abrangidas no projeto.

Em alguns países é, indubitavelmente, difícil de forma setorial, mas todas as empresas envolvidas pareciam incrivelmente abertas ao objetivo da informação e consulta, esta parecia ser muito bem aceite e recebida como uma ferramenta fundamental que pode ser implementada ou fortalecida. Isso foi perceptível por parte de várias empresas envolvidas no projeto.

Posto isto, é momento de proceder à análise dos diferentes temas e pontos abrangidos por este projeto e para isso faremos uso dos resultados e trabalhos realizados em consequência das diferentes atividades que tiveram lugar durante a execução do projeto, a saber: as reuniões preparatórias e de trabalho (em Portugal e no estrangeiro) algumas presenciais e muitas outras online; os workshops e as Reuniões Internacionais Regionais que aconteceram nos diversos países; o evento principal, bem como as ferramentas que foram criadas e utilizadas para tal, nomeadamente inquéritos (survey monkey), questionários e sondagens.

Devido às restrições impostas e referidas anteriormente, alguns dos trabalhos foram elaborados por meio de reuniões online e esta capacidade de adaptação trouxe uma nova dimensão a este projeto.

O presente trabalho teve também em consideração a legislação em vigor e a implementação real do que se prevê e as melhorias introduzidas.

▪ **Informação e Consulta dos Trabalhadores**

Tudo isto permitiu apresentar, de antemão, uma conclusão geral no sentido de que a própria legislação europeia, as diferentes Diretivas que abordam e tratam estas questões não constituem um grande problema, e são necessárias algumas sugestões em como melhorar a Diretiva 2002/14/CE sobre informação e consulta nacionais. Contudo, conforme referido anteriormente, nem as definições ou o procedimento estabelecido por este ato legislativo que estabelece um objetivo que todos os países da UE devem atingir são suficientes. No entanto, cabe a cada país elaborar suas próprias leis sobre como atingir esses objetivos, e é a esse respeito que surgem alguns problemas, não tanto em termos de conceitos, mas em termos de procedimentos.

Numa avaliação global, houve uma perceção geral de que seria importante adotar as definições dos conceitos que existem nos instrumentos mais recentes que tratam de I&C, nomeadamente a chamada Diretiva «Recast». Estas poderiam ser adotadas pelas Diretivas mais antigas, como é o caso da Diretiva 2002/14/CE, uma vez que significaria uma melhoria na medida em que se tornariam mais claros.

Conforme referido, este não é um grande problema, mas é um objetivo importante. De facto, alguns parceiros já adotaram essas definições, como sugestão para melhorar as suas legislações nacionais ou incluíram-nas no acordo comum celebrado no âmbito do presente projeto, um dos principais resultados deste projeto.

Um problema que se coloca e que tem sido apontado por muitos parceiros prende-se com o procedimento, visto que este se afigura pouco claro, muito vago ou a transposição da Diretiva para o direito interno não é clara e suscita um conjunto de questões uma vez que a interação das regras, resultantes da transposição, não são claramente articuladas com outras em I&C.

O problema, as dúvidas começam a surgir na análise casuística e, em alguns casos, a transposição é muito esparsa e um bom exemplo disso é a legislação portuguesa onde a fase de consulta quase desaparece.

Assim, nestes dois aspetos - definição e procedimento - a maioria dos parceiros sociais gostaria de ver a melhoria das definições de I&C como as previstas por outras Diretivas e, quanto ao procedimento, a transposição deve ser melhorada de forma a aperfeiçoar o que está em vigor, internamente. Mesmo nos casos em que a transposição da Diretiva estipula apenas os requisitos mínimos, são necessárias uma transposição e uma articulação claras com as matérias sujeitas à I&C. Frequentemente, apenas a informação é mencionada enquanto a consulta é negligenciada.

Outra questão importante diz respeito à **implementação** do que está estabelecido:

Implementação legal/judicial - quase todos os parceiros referem que recorrer ao tribunal não resolverá os problemas, isto porque na maioria dos casos não são vias expeditas e as penas previstas são insuficientes. Se tomarmos como exemplo a legislação portuguesa, esta pode ser melhorada de forma a adotar processos mais céleres para que a decisão seja tomada em tempo útil.

Outro ponto importante diz respeito às penas previstas, pois alguns pensam que seria um aspeto positivo aumentar o valor das penas em caso de violação do estabelecido, isto como uma sanção a aplicar nesse caso.

Estes dois aspetos importantes - agilizar os procedimentos e as sanções em caso de incumprimento - são de facto relevantes e merecem, por parte dos parceiros, uma atenção cuidadosa.

A maioria dos parceiros, a este respeito, adotou uma recomendação, mas decidiu não intervir a este respeito.

No que diz respeito à possibilidade de criar órgãos, ou utilizar os já existentes, não só para agilizar o processo e a decisão tomada, foi bem aceite pelos parceiros na sequência da experiência de outros sócios.

Assim, o enfoque deve recair no aproveitamento do diálogo existente, cuja importância tem sido destacada pelos países nórdicos que defendem que a base da regulação da relação de trabalho é o diálogo, o diálogo social, e que sustentam que mesmo quando o nível de I&C é baixo tal poderia ser reforçado com a inclusão, na negociação coletiva, de estipulações a este respeito, ou num outro acordo vinculativo.

Assim, tem sido proposto o desenvolvimento de instrumentos baseados num acordo voluntário focado nestas questões. Apesar de ser visível a sua aceitação, devemos continuar a sublinhar a necessidade de continuarmos a trabalhar, no futuro, no que respeita aos casos em que o parceiro optou por assinar uma declaração nesse sentido pois, se não fosse a situação pandémica que nos afetou todos e teve consequências terríveis em algumas estruturas, estamos certos de que seria possível alcançar um acordo conjunto em países como a Letónia e a Turquia.

Em muitos outros casos, tal foi ensaiado e adotado, por exemplo, Portugal almeja a introdução destas questões por via de acordos coletivos setoriais; noutros países, isso ocorreu por meio do desenvolvimento de acordos vinculativos, enquanto para outros países, se a Pandemia não se tivesse instalado, seria possível ir mais longe.

Voltando à implementação legal da I&C, foi aceite por todos que a eficiência/eficácia é de facto o elo mais fraco.

Como salientou um dos colegas, cada um deve aproveitar o momento e agir como persuasor e fazer uso do momento de I&C para influenciar, para tentar persuadir e não encarar aquele momento como uma «batalha».

Tendo em conta os casos recentes, decorrentes da situação de pandemia, de facto onde um processo de I&C foi estabelecido este pode desempenhar um papel importante ao contribuir para a antecipação com vista a minimizar ou mesmo superar problemas.

Ficou acordado por todos a necessidade de adoção de medidas e alterações de metodologia de trabalho, quando introduzidas (ver casos concretos a nível da empresa), seja através de convenção coletiva ou por acordo vinculativo, ou apenas utilização do processo previsto na Diretiva.

- ⇒ Ficou visível que, entre todos, o seu grande objetivo era, pelo menos, estabelecer as condições para, pelo menos, garantir que as principais regras previstas nas Diretivas, e quanto ao envolvimento dos trabalhadores, fossem aplicadas e que a tónica fosse definitivamente fixada no processo de I&C nacional, onde muitas lacunas foram detetadas. Seria benéfico poder ter, e assegurar, a transposição exata das diretivas para o direito nacional.
- ⇒ Mas para tal é também importante e necessário assegurar que existem condições, a nível nacional, para garantir a aplicação das regras, independentemente de tais regras decorrerem do previsto por lei ou resultarem de um acordo.

Durante esta procura de experiências reais e casos de sucesso que estabeleçam os meios adequados para a concretização dos objetivos traçados, foi possível citar o exemplo de um instrumento em vigor na Finlândia - O Provedor de Justiça da Cooperação. Esta solução, de facto, reuniu um verdadeiro consenso sobre a utilidade e a importância deste órgão.

O Ombudsman é uma instituição governamental chefiada por um ombudsman (funcionário público, um Provedor) na Finlândia. O responsável pelo gabinete, o Provedor de Justiça, é nomeado por 5 anos e os parceiros do mercado de trabalho podem exprimir a sua opinião antes da nomeação.

O Provedor de Justiça da Cooperação é uma instituição baseada no mesmo princípio do Provedor de Justiça Europeu a nível europeu e o conceito de Provedor de Justiça provém da Finlândia.

O objetivo deste conceito é oferecer uma autoridade independente principalmente para fins consultivos. No entanto, o Ombudsman pode, em alguns casos, também usar poderes executivos e até mesmo ordenar multas, se necessário. Isso pode acontecer nos casos em que uma empresa não cumpriu com suas obrigações, apesar da recomendação do Provedor.

É também importante referir que o Provedor de Justiça não é um mediador, isso é papel de outra instituição - O Conciliador Nacional. O Conciliador Nacional trabalha principalmente com situações de conflito relacionadas com a negociação coletiva. (Para uma explicação mais detalhada visite a página web do projeto <http://upperlevel.sima.org.pt/> - intervenção do Eng. Daniel Valtakari).

Isso, como já enfatizado, tem sido apontado como um instrumento que pode ser adaptado às diferentes realidades e pode ser uma possibilidade a ser considerada e sobre a qual trabalhar.

▪ **Direito de participação dos Trabalhadores**

De entre todos os assuntos abordados, o direito de participação dos trabalhadores tem sido, sem dúvida, um dos mais discutidos, principalmente por ser apontado como um veículo privilegiado de acesso a informação e consultas verdadeiras.

Para muitos, esta é a questão-chave para ter uma I&C real. A este respeito referimo-nos aqui o forte apoio de alguns parceiros do projeto (Nordic In, Tek (Finlândia) e PROGE (Áustria), pois trouxeram a sua experiência e lançaram muitos desafios para debater.

Apesar de estar totalmente integrado na realidade desses países e não ter comparação com algo semelhante nos outros países parceiros, tal tem sido, também, amplamente debatido com os parceiros vislumbrando a possibilidade de, através deste, ter acesso à consulta. E a consulta é, sim, o aspeto fundamental que muitas vezes não existe ou, se existe, infelizmente não ocorre no devido tempo.

Permitir a participação dos parceiros sociais, nomeadamente os representantes dos trabalhadores, é visto como parte da solução. Ao permitir que os parceiros participem do processo, dar-lhes-á acesso a uma verdadeira informação e consulta; ao participarem do processo, teriam acesso à informação e seriam autorizados a obter informações e a serem consultados permitindo-lhes, dessa forma, manifestar a sua posição.

Apesar da utilidade destes exemplos e experiências, existem muitos outros que conduzem a diferentes formas de fazer uso deste direito de participação dos trabalhadores (variando de país para país) e, conseqüentemente, têm suscitado muitas questões pertinentes, na sua maioria ligadas ao que seria mais adequado e mais eficiente tendo em conta as diferentes realidades dos parceiros envolvidos ou se fosse possível personalizá-lo de acordo com a necessidade concreta.

Tendo em conta a dimensão do projeto, com tantos países envolvidos, muitos parceiros sociais e partes interessadas, decidimos utilizar como base de trabalho a definição básica de participação dos trabalhadores prevista na Diretiva «Recast».

Este projeto envolveu sindicatos e empregadores e, apesar de enriquecer o trabalho e os resultados do projeto, pode levar a diferentes posições. No entanto, e apesar do que seria de esperar, e à parte de algumas questões que possam surgir, por parte dos empregadores não houve grande oposição a este direito de participação. Ressaltou-se que seria interessante continuar a debater este tema e trabalhar nele, especialmente estabelecendo a fronteira entre o papel desempenhado pelo empregador e pelo trabalhador.

Houve um grupo de questões que foi trazido para a discussão, a saber, no que diz respeito a:

- A definição usada.
- O facto de o representante dos trabalhadores fazer parte da decisão:

Este aspeto tem suscitado oposição e preocupação por parte dos trabalhadores, uma vez que se pode perceber que compromete os participantes diretos e, por outro lado, os efeitos que pode implicar na relação do representante dos trabalhadores com os restantes trabalhadores.

- Qual organismo que deve ter direito de acesso a este direito de participação?

Esta preocupação é mais sentida pelos países candidatos e por um grupo de Estados-Membros da UE, uma vez que é necessário considerar que, em alguns países, existem duas entidades distintas, sem qualquer ligação entre si e uma delas tem acesso a este direito de participação (comissões de trabalhadores) enquanto outros têm acesso apenas à Informação e Consulta (sindicatos).

(Para uma explicação mais detalhada e mais informações sobre o exemplo austríaco e quantas dessas questões são superadas e o modelo nórdico sobre a articulação desses direitos com a negociação coletiva, visite a página web do projeto: [http:// upperlevel.sima.org.pt/](http://upperlevel.sima.org.pt/) - Mag. Martina Schneller e Anders Andersson).

A este respeito e tendo em consideração as diferentes posições no desenvolvimento do projeto e que variam de país para país, foi decidido que cada país deve decidir, a nível nacional, qual seria o modelo mais adequado e as adaptações que podem ser feitas. Isso tendo em vista que não existe modelo melhor, existem sim, alguns modelos que se aplicam e que estão em vigor em alguns países.

A questão que se prende com qual o órgão que deve ter acesso a esse direito de participação, principalmente nos países candidatos, suscita muitas dúvidas e inquietações, por isso decidimos apresentar todas as possibilidades, concedendo-lhes a oportunidade de recolherem mais informações sobre este assunto e mais experiências e deixar, a cargo dos parceiros, a escolha sobre a qual é melhor forma de atingir o objetivo de ter direito de participação.

De facto, o que todos concordam é que o direito de participação é, sem dúvida, uma questão-chave para a aplicação da informação e da consulta.

Sobre como desenvolvê-lo e permitir a sua real aplicação, o consenso recaiu na negociação coletiva, seja a nível de empresa ou acordo coletivo setorial.

Sempre contando com a forma voluntária, uma forma mais formal através de convenção coletiva ou uma forma mais informal a ser aplicada conforme a necessidade, qual a mais indicada? Isto porque, por vezes, uma abordagem mais formal pode levar a alguns obstáculos.

O direito de participação, em geral, com todas essas observações e notas, foi considerado particularmente importante para a implementação da I&C. Muitos dos envolvidos foram claramente a favor e, no caso de existirem os dois órgãos, ambos devem ter o direito de ter acesso a I&C, uma vez que isso não deve ser exclusivo de nenhum deles. Mais I&C pode beneficiar a todos. Desta forma, o envolvimento conjunto na ação, de ambos os parceiros sociais, permitiu não só superar situações difíceis como preveni-las.

Sem dúvida, os parceiros sociais veem-no como uma ferramenta para a real aplicação da I&C e através do direito de participação podem realmente ser atualizados e transmitir regularmente a sua opinião. E isso, muitas vezes, vai além de algumas das críticas e obstáculos apontados. Eles declararam, inclusive, que:

- ✓ A antecipação pode ser alcançada desta forma.
- ✓ O direito de participação é importante como tal, uma vez que eles querem ser ouvidos e consultados regularmente. Para tanto, é importante ter um esquema implantado ou ter uma definição mais concreta do procedimento de forma a conduzir a um diálogo contínuo e ao alcance dos objetivos de I&C.
- ✓ No que diz respeito ao aspeto da confidencialidade a que estarão sujeitos os representantes, tal não é um verdadeiro obstáculo se houver boa-fé de todos, tendo em

vista o objetivo, o objetivo de desenvolver I&C e a Participação. O problema, como em muitas outras realidades, surge quando tal é usado como uma ferramenta para evitar outras propostas, mas caso isso aconteça, isso significa mau uso do direito e do princípio inerente.

- ✓ O principal obstáculo à introdução do direito de participação, que foi apontado, é se o representante participa, ou não, na decisão sempre que tem direito ao direito de participação.

A este respeito pensamos que é apropriado e necessário estabelecer a diferença entre a abordagem mais tradicional, o direito de participação conforme descrito anteriormente e que está na base de alguns modelos em uso por alguns dos países envolvidos e a chamada «nova» aproximação a esta realidade.

Esta chamada «nova» abordagem tem sido uma forma de introduzir uma forma de direito de participação, de forma a permitir ao representante dos trabalhadores o acesso a mais informação e consulta, sem os constrangimentos inerentes a um modelo mais tradicional. A este respeito, há um exemplo que gostaríamos de partilhar - o caso da TAP.

A TAP Portugal é a transportadora aérea nacional portuguesa e foi privatizada. Durante esse processo foi proposta a introdução de um direito de participação «tradicional». No entanto, tal não foi bem acolhido pelos sindicatos porque eles não queriam fazer parte da decisão, queriam estar envolvidos, mas não queriam decidir. Os sindicatos queriam aproveitar essa oportunidade, não como sublinhou, para participar na decisão tomada, mas para ter acesso a mais informação e consulta.

Como tal, foi estabelecido um acordo pelo qual os sindicatos são consultados e informados regularmente, e inclusive participam, regularmente, em algumas das reuniões do conselho, mas não participam na decisão tomada. Este acordo foi celebrado entre as partes, mas não faz parte do acordo coletivo.

Portanto, este é um exemplo do estabelecimento de um direito de participação, com exclusão da possibilidade de participação na decisão tomada. Para alguns pode ser considerado como não configurando um verdadeiro modelo de direito de participação, mas é um exemplo de como é possível criar um modelo adequado, a partir da vontade das partes, aos fins e que pode ser, de facto, transposto para outras realidades, onde a I&C são os aspetos-chave, mas onde existe uma verdadeira consulta e a opinião é dada e tida em consideração.

Isso reforça o vínculo com outro modelo que gostaríamos de compartilhar e que já existe na Finlândia - a chamada participação executiva:

- Um passo em direção à verdadeira informação e consulta - participação executiva. Isso pode ser alcançado em conselhos de administração ou nos conselhos de gestão executiva. A representação em outros níveis, abaixo desses, pode ser uma vantagem, mas não pode substituí-los em importância.

A representação dos trabalhadores a esse nível deve ser considerada um ativo e uma fonte de informações adicionais para a melhor tomada de decisão na empresa. Isso significa que a gestão deve reconhecer o potencial positivo da participação nesse nível. Em casos de conflitos potenciais, os representantes dos trabalhadores podem aconselhar a administração contra ações que possam complicar ainda mais a situação.

Na Finlândia, os trabalhadores podem ser representados ao nível do conselho de administração e nos conselhos de gestão executiva. A exigência legal é que a empresa tenha no mínimo 150 trabalhadores e que os trabalhadores solicitem a representação. Países diferentes têm limites diferentes.

Quando a participação executiva está faltando, quando a representação ao nível de conselho está faltando ou os números de trabalhadores não se qualificam para tal, então as seguintes opções devem ser consideradas:

- Os trabalhadores e a gerência devem concordar a nível local e/ou empresarial como estabelecer a participação executiva para que possam beneficiar plenamente do diálogo mútuo e da opinião dos trabalhadores.
- Os trabalhadores e a gerência também devem concordar em estabelecer uma cooperação na forma de, por exemplo, um grupo constituído por trabalhadores e representantes de trabalhadores para um diálogo contínuo e permanente.

Ambos podem ser usados em paralelo, mesmo quando a participação executiva existe por requisitos legais. A exigência legal, na Finlândia, garante a existência de tal cooperação (grupo) em qualquer caso quando o número de trabalhadores for superior a 20. A participação ao nível do conselho de administração ou do conselho de gestão executiva vem além disso. Os assuntos tratados também são um pouco diferentes dependendo do nível de participação. A participação executiva normalmente não é tão detalhada como pode ser em níveis mais baixos de participação. Por outro lado, a participação executiva garante a participação na tomada de decisões.

Benefícios da participação executiva

Na Finlândia, a participação executiva pode ser baseada em requisitos legais ou num acordo mútuo. O objetivo é, em todos os casos, ter um diálogo frutífero que beneficie tanto os empregadores como os trabalhadores, com o objetivo de aumentar o sucesso.

- Os empregadores obterão opiniões diretas por parte dos trabalhadores, já que os trabalhadores, em muitos casos, têm esse conhecimento que pode ser mais difícil de detetar para a gerência.
- Os Trabalhadores poderão participar das decisões que lhes dizem respeito. Isso fornecerá informações importantes sobre como e porque certas decisões foram tomadas, especialmente em tempos difíceis. Isso também proporcionará um canal de opinião para os trabalhadores que beneficiará a todos.
- A cooperação não restringirá a capacidade e os direitos do empregador de tomar decisões. Os trabalhadores que fazem parte do processo de participação são regidos por regras de sigilo e, no final, a gestão tem a prerrogativa de tomar as decisões que julgar corretas para o futuro da empresa e para o sucesso dos negócios.

(Para uma informação mais detalhada, visite a página web do projeto <http://upperlevel.sima.org.pt/> - apresentação do Eng. Daniel Valtakitari)

▪ **Participação Financeira dos Trabalhadores**

A Participação Financeira dos Trabalhadores é um recurso importante que tem sido cada vez mais utilizado. Mesmo hoje em dia com a crise pandémica, e contra todas as probabilidades,

esta ferramenta tem sido considerada uma ferramenta útil, embora na forma de bônus. Apesar de, de uma forma geral, ser bem aceite, a maior preocupação prende-se com o conceito, a definição de «participação financeira».

Tendo em conta o desconforto, mostrado por alguns, neste e entre os diferentes esquemas disponíveis, optou-se por focar mais nos esquemas de partilha de ganhos, visto que é o modelo mais aceite e mais fácil de introduzir.

Este esquema obteve uma boa aceitação pela maioria dos envolvidos como um instrumento que pode reforçar a I&C. Sobre este tema, particular e delicado, foi possível contar com a colaboração do Dr. George Tuthill, a quem gostaríamos de agradecer por toda a sua contribuição e que preparou um trabalho sobre **Gainsharing como resposta para aumentar a Produtividade, Recompensa e Diálogo!**

Conteúdo

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- Como será o esquema revisto?
- Requisitos para o sucesso
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Componentes de uma empresa:

As duas partes importantes nos componentes de uma empresa são os acionistas (proprietários) e os trabalhadores, que são centrais para toda a operação, embora os outros também sejam importantes. Sem o serviço inicial e contínuo prestado pelos acionistas, o fator trabalho seria menos produtivo. É fundamental que os investidores tenham uma visão de longo prazo e que a gestão não seja totalmente dominada pelo lucro, mas sim pela proteção dos direitos de todos os componentes da empresa. A sobrevivência exige lucro, mas não deve ser excessiva, resultando no declínio dos padrões das condições da força de trabalho.

Certamente, o verdadeiro objetivo dos proprietários e da administração é garantir a sobrevivência, beneficiando diretamente os trabalhadores e os interesses dos proprietários a longo prazo. Que melhor maneira do que Partilha dos Ganhos?

Definição da participação nos ganhos:

Esta pode ser mais bem descrita como um meio de recompensar os trabalhadores (incluindo a administração) por um desempenho excepcional e uma meta pré-determinada com base na partilha dos ganhos financeiros. Uma única medição pode ser escolhida ou, alternativamente,

alvos separados em áreas como qualidade, produtividade, custo e serviço ao cliente podem ser identificados. As palavras-chave na definição são desempenho excepcional e meta pré-determinada.

É claro que se pode argumentar que os Esquemas de Participação nos Lucros são todos forma de um esquema de participação nos ganhos. A participação nos ganhos difere, pois, todos os ganhos e pagamentos resultantes são autofinanciados com base na economia gerada pelo desempenho aprimorado. Num Programa de Participação nos Lucros, o trabalhador recebe bônus / ações, mas estes estão diretamente vinculados à lucratividade geral da empresa. A introdução da partilha de ganhos para todos os trabalhadores não apenas mudará a maneira como um local de trabalho é organizado, aumentado o desempenho, como também agrega valor que todos devemos aceitar como fundamental. Isso irá garantir um estilo de gestão aberto e inclusivo, que tem um impacto significativamente benéfico nos resultados financeiros da empresa, enquanto um estilo mais restrito e estreito tem um impacto negativo. Como todos os incentivos financeiros, a participação nos lucros coloca todos do mesmo lado. Não é uma comunicação “eles” e “nós”, mas um “nós” que abre grandes caminhos para o diálogo social. A administração nunca deve subestimar o papel do empenho dos trabalhadores na construção de uma organização inovadora e competitiva. As empresas que desejam tirar proveito da força de trabalho que se sente envolvida e empenhada descobrem que a mudança não só é possível, mas também financeiramente compensadora.

Deve ficar claro que a partilha de ganhos não substitui nenhuma parte do salário; é um pagamento autônomo quando as metas acordadas são cumpridas, sem qualquer alteração no programa de saúde e segurança da organização. Deve ser visto como uma iniciativa de pagamento por desempenho, enquanto a um nível estratégico usado como um sistema de motivação / recompensa chave usando as ideias e sugestões dos trabalhadores para melhorar a eficácia geral da empresa.

Objetivos da partilha de ganhos:

Embora os objetivos específicos da partilha de ganhos possam variar de empresa para empresa, os objetivos gerais do esquema devem ser: -

- a) Incentive todos os trabalhadores a trabalharem em estreita colaboração com a administração para melhorar continuamente as metas de desempenho!
- b) Fornecer um mecanismo através do qual os trabalhadores possam compartilhar as economias geradas!
- c) Motivar os trabalhadores a agirem como se fossem donos da empresa.
- d) Para criar um foco em alvos específicos
- e) Maior saída de produção com entrada igual ou menor
- f) Eliminar o desperdício (tempo, energia, materiais)
- g) Para que todos os participantes trabalhem de maneira mais inteligente do que arduamente.

Papel da Administração na introdução de um Esquema:

A administração deve aceitar que sua adesão, seu empenho visível com a mudança, é essencial. Devem comprometer-se com o princípio de que vão envolver todos na organização e devem apresentar altos níveis de consultoria e de trabalho em equipa em toda a empresa e seus representantes. Eles devem garantir que aqueles que estão na frente do carvão sempre tenham maneiras de realimentar suas ideias sobre como melhorar a operação da empresa. Talvez seja

necessária uma mudança na cultura para um estilo participativo aberto e isso pode causar alguma inquietação. Alguns podem ver isso como uma diminuição de seu controle e um voto de falta de confiança em seu estilo de gestão. É essencial transmitir-lhes que, de facto, estão gerando mais poder na organização ao criar uma plataforma de ideias.

A administração deve considerar o seguinte ao discutir a introdução de um esquema: -

- 1) A divisão de ganhos é “adequada” para a empresa?
- 2) Tempo - comunicações / reuniões / marketing
- 3) Custos financeiros - salários / consultores
- 4) Sistema de relatórios - um sistema preciso e oportuno para calcular o ganho e acompanhar o desempenho do plano.
- 5) Recursos - suficientes para o plano evoluir e ser aceite.
- 6) Requisitos para uma transição bem-sucedida para a partilha de ganhos
- 7) Informar e consultar os oficiais sindicais locais.
- 8) Convidar especialistas externos para desenvolver e vender o plano.

Vantagens potenciais:

No mundo atual de competição global, vida curta do produto e requisitos de alta qualidade, a pesquisa mostrou que a partilha de ganhos não por si só promove uma cultura de melhoria contínua, mas melhora muito o desempenho organizacional. É o produto e o conhecimento técnico dos trabalhadores mais próximos da obra cujas sugestões e conselhos garantir-lhe-ão o mecanismo de retribuição.

- Promove uma cultura de melhoria contínua.
- Melhora o desempenho organizacional.
- Os trabalhadores veem um mecanismo de “reembolso”.
- Pode ajudar a melhorar as relações entre trabalhadores /sindicatos e a administração.
- Pode auxiliar na quebra de práticas de trabalho restritivas.
- Introduce um senso de propriedade e identidade para a empresa.

Desvantagens potenciais:

Como na maioria dos esquemas de recompensa, os esquemas de participação nos ganhos podem muito bem desfrutar de um período inicial de “lua de mel” durante o qual todas as partes estão satisfeitas. O gerenciamento contínuo é fundamental e o esquema exigirá uma revisão contínua para cumprir seus objetivos.

Será necessário avisar com antecedência que a “barra de desempenho” pode / será aumentada anualmente para encorajar os trabalhadores a continuarem a encontrar maneiras de aumentar a eficiência para garantir ganhos contínuos.

- Eles são propensos a “viagens `borla”. A contribuição de um indivíduo pode não se refletir na alocação de bônus.
- Os esquemas complexos podem ser difíceis de entender para os trabalhadores.
- Os esquemas multifatoriais complexos podem ser difíceis de administrar.
- Se as metas iniciais forem definidas muito baixas, pode muito bem acontecer que surjam dificuldades ao tentar alterar o esquema.
- Mesmo quando a meta não é muito baixa, será difícil rever essa meta para cima.

Passos principais na introdução da partilha nos ganhos:

- Quem vai participar?
 - Quais as medidas de desempenho que serão usadas?
 - Contra qual linha de base o desempenho será comparado?
 - Como será o ganho determinado e distribuído?
 - Como o esquema será implementado?
 - Quando os arranjos serão revistos?
 - Informação e consulta em base constante
-
- Quem vai participar?

Esta é uma apresentação que requer diálogo e deliberação cuidadosos e intensos. O esquema será baseado numa equipa, departamental, todos os trabalhadores de uma categoria específica ou em toda a empresa? Um limite mínimo de nível de serviço é normal para novos recrutados - talvez um ano de serviço ou após completar satisfatoriamente seu período experimental. A questão de como os trabalhadores não sindicalizados devem ser tratados é fundamental, pois mais uma vez é o desafio quanto à aceitação, num local com vários sindicatos, do mesmo esquema para todos os grupos. As decisões sobre ausências, licenças especiais e licenças de maternidade devem ser consideradas e acordadas.

Idealmente, o esquema deve ser restrito aos trabalhadores num local físico. Dessa forma, os participantes podem ver uma relação direta de seus esforços com um possível pagamento do esquema.

Deve-se pensar em fazer com que os Fornecedores participem, embora com um pagamento reduzido, pois sem a matéria-prima a ser entregue no prazo e em boas condições o esquema irá naufragar. Da mesma forma, o envio dos produtos manufaturados deve ser entregue em tempo hábil e intacta. Dessa forma, se o envio for terceirizado, tendo o contratante como participante, pode ser prudente.

➤ Quais medidas de desempenho serão usadas?

Quais as medidas, críticas para a organização e que têm dados históricos precisos como modelo. Alguns alvos a serem considerados: -

- Qualidade
- Custos de mão de obra
- Produtividade do trabalho
- Desperdício
- Satisfação do cliente
- Uso de materiais
- Tempo de máquina parada
- Redução de horas extras
- Absentismo
- Retrabalho
- Sem problemas de saúde e segurança

➤ **Com qual linha de base o desempenho será comparado?**

A linha de base deve ser determinada com referência aos dados históricos de desempenho. É essencial que o plano seja simples - planos extraordinariamente complexos e técnicos levam a respostas negativas e céticas.

Não devem ser introduzidos mais de 4/5 das principais metas de desempenho (PMD). Os mais comuns parecem ser Produtividade, Qualidade, Atendimento ao Cliente e Segurança. O esquema deve ser passível de revisão com base na introdução de novas máquinas/equipamentos ou mesmo no desenvolvimento de novos processos de serviço.

Os limites iniciais expressos em termos de dinheiro devem ser revistos. Eles devem ser definidos em níveis eficientes, caso contrário, a administração estará a pagar grandes quantias por ganhos fáceis.

➤ **Como um ganho será determinado e distribuído?**

Os principais alvos de desempenho (PMDs) podem ser ponderados para fins de pagamento. Isso destaca a importância de certas medidas para a empresa.

É decidida uma divisão dos ganhos (% da poupança para os trabalhadores; % para a empresa e % para as reservas). A proporção pode ser acordada em: -

50:50

60:40

70:30

O estabelecimento de uma fórmula acordada para dividir os ganhos entre a força de trabalho é imperativo. Poderia muito bem ser partes iguais para todos os trabalhadores a tempo inteiro e um cálculo pro-rata com base nas horas trabalhadas e assiduidade para os demais trabalhadores.

Os pagamentos só devem ser feitos às pessoas empregadas na data de pagamento relevante.

A provisão para o congelamento de pagamentos de participação nos lucros deve ser tratada em caso de a empresa não ser lucrativa ou se deparar com dificuldades. Sem este aviso, a retirada ou alteração do regime pode ser extremamente problemática.

É importante considerar a introdução de um teto baseado em dinheiro para pagamentos sob o Esquema.

É claro que é necessário estabelecer se existe um ganho medindo o desempenho em relação ao objetivo.

O momento do pagamento deve ser incluído no plano. Um modelo popular é calcular o desempenho ao longo de um período de doze meses e fazer dois pagamentos anuais. Talvez no Natal e antes das férias de verão.

➤ **Como será o esquema implementado?**

O método favorável é uma equipa composta pela gestão e sindicatos que produz propostas de implementação. Ter a opinião dos trabalhadores é essencial, pois eles serão a chave para o sucesso do programa. É fundamental que todas as opções disponíveis sejam consideradas e que a opção escolhida seja a mais eficaz no esquema.

A comunicação é fundamental, assim como o compromisso da administração para garantir o sucesso do programa. Deve ficar perfeitamente claro que a introdução da partilha de ganhos não é uma simples “agenda de pagamento por mudança”.

O esquema deve ser simples e fácil de operar, reduzindo assim a carga de trabalho na administração do esquema.

É necessário um alto nível de confiança entre o empregador e os representantes dos trabalhadores / sindicatos. Uma abertura na comunicação / compartilhamento de informações / consultas que levará a uma compreensão genuína do esquema.

- Forneça recursos suficientes para o projeto.
- Considere todos os comentários após a comunicação com todos os envolvidos.
- Esclarecer os objetivos precisos do esquema para a empresa.
- Identificar benefícios potenciais para os participantes.
- Formação para todos os envolvidos.
- Desenvolver um sistema de comunicação para todos os envolvidos.
- Estabelecer um grupo de monitorização - administração/trabalhadores/ sindicatos.
- Parecer regular para todos pelo grupo de monitorização.
- Simular o funcionamento do esquema proposto.

Requisitos para o sucesso

1. Deve ser feito sob medida para a organização.
2. Explicar o conceito.
3. Acordar as regras.
4. As metas devem ser razoáveis, alcançáveis e rastreáveis.
5. Os pagamentos potenciais devem ser suficientes para garantir o apoio dos trabalhadores.
6. Comunicação regular - quadros de avisos, e-mail, reuniões, intranet, vídeos
7. Prover a possibilidade de os trabalhadores destacarem ideias de melhoria.
8. As medidas de desempenho devem ser precisas e confiáveis - criar confiança!
9. Certificar que a introdução de um esquema não aumenta as expectativas de remuneração dos trabalhadores.

Conclusão

Embora a partilha de ganhos não seja universalmente benéfica, pode ser apropriada em certas circunstâncias. Não existe um plano padrão, cada organização tem uma história, cultura e um conjunto de procedimentos únicos nos quais se baseiam suas operações e políticas. É essencial que a escolha de Participação nos Ganhos como uma opção de recompensa seja feita levando-se em consideração toda a gama de opções disponíveis. A escolha do esquema deve ser baseada nas necessidades e circunstâncias de cada empresa.

A participação nos ganhos é um sistema chave motivacional / recompensa que enfatiza o uso de ideias e sugestões dos trabalhadores para melhorar a eficácia organizacional geral. Incentiva a inovação, aprendizagem, a assunção de riscos, a formação e o trabalho em equipa, resultando em maiores níveis de produtividade. Como a comunicação contínua é fundamental para o sucesso do plano, o diálogo entre os trabalhadores, a administração e os sindicatos certamente se aprimorará e se desenvolverá.

É essencial que seja introduzida alguma forma de benefício fiscal para que o pagamento do plano não seja totalmente sujeito a imposto. Talvez uma percentagem do pagamento pudesse ser isenta de impostos.

Naturalmente, a introdução e gestão de um esquema de partilha de ganhos seria muito mais fácil numa empresa - talvez uma PME - onde o número de trabalhadores é pequeno. No entanto, isso não deve impedir o estabelecimento de um esquema por grandes organizações. A ajuda especializada está disponível para as partes interessadas.

É importante e necessário que estimulemos a discussão e promovamos o pensamento e a pesquisa sobre a Partilha dos Ganhos. Pode realizar sonhos para trabalhadores, empregadores e para a economia dos países. Partilhar esses lucros é capitalismo na sua melhor e mais verdadeira forma; lucros continuarão a ser feitos, mas aqueles que obtêm lucros - os trabalhadores – partilharão da recompensa.

Estes esquemas têm sido introduzidos cada vez mais nas multinacionais, infelizmente com a crise originada pela pandemia, tais esquemas nunca foram formalmente aplicados e a exceção são as PME.

A maioria dos parceiros demonstrou ter grande interesse em esquemas como o que temos abordado e tal tem sido amplamente evidenciado nas diferentes atividades que ocorreram durante a execução do projeto.

A nossa convicção foi reforçada pelo trabalho realizado durante o projeto e de alguma forma consolidou-se no seio da pandemia, resultando na aplicação deste modelo para enfrentar este período tão difícil onde o principal obstáculo foi que a introdução desses mecanismos não foi seguida, durante a sua implementação, de I&C.

Os parceiros sociais envolvidos demonstraram estar abertos à introdução de tais regimes, conforme referido anteriormente, mas principalmente a nível das empresas, tendo sido apresentados alguns obstáculos concretos relativamente à sua introdução setorial utilizada, principalmente pelos parceiros para, no seio da negociação coletiva, abordar questões salariais.

No entanto, e conforme referido, existem exceções e, tendo isso em mente, pensamos que devemos continuar a trabalhar nesse sentido. O potencial é enorme, para reforçar a conexão e a I&C. Na verdade, já tivemos essa convicção antes, no início do projeto e o que a pandemia mostra é que de facto, como mostram os parceiros irlandeses, a aplicação desses esquemas, apoiada no desenvolvimento do diálogo social, na Irlanda, na crise atual, evidenciam que esta é uma ferramenta importante e poderosa na implementação e promoção da I&C.

Contudo, devemos ter a certeza de que a introdução, e posterior desenvolvimento desses esquemas, deve ser mais do que apenas uma figura na folha de pagamento no final do mês ou do ano, na verdade, deve ser uma ferramenta para fortalecer a relação, via diálogo social, potencializando a I&C.

Pensamos seriamente que isto, da forma como é apresentado e após um trabalho sério e cuidadoso, será cada vez mais utilizado desde a crise decorrente da Pandemia COVID 19 e, tendo isso em mente, decidimos adicionar um capítulo sobre este tópico específico uma vez pensamos que isso terá um papel fundamental após o COVID e no período de transição.

COVID e a participação financeira

Durante o ano passado, alguns trabalhadores sofreram muito - perda de emprego, congelamento de salários ou redução do salário. O esforço para pagar a hipoteca / rendas tem causado graves problemas para as famílias e todos devemos trabalhar em parceria com o governo, sindicatos e empregadores para garantir uma recuperação económica estável. Devemos agradecer aos trabalhadores que trabalharam em casa, e que não foi uma tarefa fácil. Um grande número não apenas restringiu o espaço, mas também teve que lidar com a educação em casa, com os filhos.

Enquanto enfrentamos a tarefa de reconstruir economias locais dizimadas, o avanço da participação dos trabalhadores é essencial para a construção de uma economia que ofereça segurança financeira para todos. É com grande esperança que, por causa das vacinas, veremos “luz no fim do túnel” e todos possamos ter a esperança na retoma da vida mais normal.

No atual ambiente económico desafiador, a resiliência tem um papel vital a desempenhar na recuperação económica. A recuperação é um desafio e é dificultada por níveis recordes de governo e endividamento pessoal. Os governos continuam em busca de novas iniciativas para fazer contribuições significativas para o crescimento e recuperação económica futuros. Seria um erro se isso não incluísse o envolvimento dos trabalhadores. Não há dúvida que, no último ano, os trabalhadores que foram demitidos e os que mantiveram os seus empregos trabalhando em casa refletiram e consideraram seu papel na organização e o potencial de desenvolvimento futuro.

Que melhor forma para a introdução de um esquema de Informação e Consulta da empresa que o estabelecimento de Inovação no Local de Trabalho. Isto reunirá todas as partes - Empregador, trabalhador e Sindicatos - e será, obviamente, um fator essencial para a melhoria das relações laborais.

A inovação pode ser mais bem definida como o processo de traduzir uma ideia ou invenção numa boa prática ou serviço que, em última análise, criará valor para a organização. Deve ter um custo económico e estar relacionado às necessidades específicas da empresa. São geradas novas ideias que beneficiam não só o empregador, mas também os fornecedores e clientes. Explorar o conhecimento tácito dos trabalhadores pode alcançar resultados que beneficiam simultaneamente o empregador e os trabalhadores.

É frequentemente associado à criatividade e engenhosidade que podem levar a algo grande. No entanto, a verdadeira essência de uma boa ideia está na tenacidade, determinação e empenho daqueles que seguem a ideia até ao fim. As pessoas surgem sempre com ideias e soluções, mas apenas os inovadores as realizam.

As operações não podem ficar paradas no mundo de hoje em rápida mudança. Para sobreviver e prosperar, deverão colocar a inovação no centro dos seus negócios e buscar, continuamente, formas de fazer as coisas melhor ou de maneira diferente e talvez com economia de custos. É aceite que a inovação é essencial para o sucesso e o crescimento. É importante que as empresas e, na verdade, os países sejam inovadores tanto para o crescimento económico como para a criação de mais empregos e de melhor qualidade. Empresas de sucesso reavaliam constantemente os seus produtos e serviços, pois estão cientes de que a inovação é o mais importante para sua marca. Isso é feito por meio de consultas com trabalhadores, administração, clientes e, possivelmente, sindicatos e fornecedores.

Pode-se ver como, usando Informação e Consulta, a inovação desempenhou um papel tão crucial e rápido no desenvolvimento da vacina Covid.

Envolver e envolver os trabalhadores no local de trabalho significa estar “aberto à mudança e à parceria”. Permite que os colaboradores participem, através do programa de I&C, na mudança organizacional de forma a melhorar a qualidade de vida no trabalho e o desempenho organizacional.

Embora a razão para a introdução de um processo de I&C já tenha sido declarada - aumentando a eficiência, competitividade e inovação - um resultado positivo parece fortalecer a posição do empregador e do relacionamento com o trabalhador, muitas vezes resultando num melhor desempenho económico e uma melhor qualidade de vida profissional para todos. Baseia-se em uma cultura de consulta, abertura e confiança com os trabalhadores.

Uma abordagem totalmente inovadora surge devido à construção de uma capacidade para mudanças lideradas por parcerias e, como tal, é fundamental que os Governos e os Parceiros Sociais apoiem esta abordagem. São as pessoas, e não a tecnologia, que criam valor a partir do conhecimento. Portanto, é vital que esses esforços sejam baseados no princípio de “investir nas pessoas”, que é uma abordagem de parceria e consultoria para desenvolver e transformar locais de trabalho.

Deve-se considerar o desenvolvimento de sistemas de recompensa que estimulem a inovação, a formação, a assunção de riscos e o trabalho em equipa, resultando em níveis mais elevados de produtividade. Devemos encontrar uma maneira de aproveitar a inovação com a participação financeira dos trabalhadores, o que, sem dúvida, fará com que os trabalhadores apensem como proprietários. Não há dúvida de que as economias vão mudar e os empregadores precisam estar bem posicionados para aproveitar a recuperação quando ela vier. O ambiente de negócios mudou e as empresas precisam considerar novas abordagens para a remuneração dos trabalhadores. O sucesso de qualquer empresa depende do empenho da equipa e do aumento da eficiência e da competitividade.

É necessário encorajar meios justos e equitativos de participação financeira dos funcionários, apoiar esses objetivos e fornecer uma estrutura que possa melhorar a oferta de esquemas de ações para indivíduos e empresas. As vantagens significativas associadas aos incentivos de ações não devem ser negligenciadas.

Saber que os trabalhadores têm uma participação financeira na empresa pode beneficiar não apenas a si próprios, mas também os clientes, investidores e a economia. Admite-se que as empresas que introduziram alguma forma de participação dos trabalhadores tiveram um excelente historial de relações laborais, recorrendo novamente à I&C.

É imprescindível que as organizações estabeleçam uma estratégia de I&C simples e de fácil gestão que, sem dúvida, terá um impacto positivo na segurança profissional e financeira e nos ganhos de produtividade. É preciso lembrar que uma empresa de sucesso protege as comunidades.

▪ **Novas formas de trabalho**

Este é, de facto, um novo desafio que surgiu, e reforçado, pela atual situação pandémica e estamos a referir-nos ao desenvolvimento de novas formas de trabalho, novas formas de prestar trabalho. Quando o projeto foi apresentado, este já era um dos temas de debate que pretendíamos abordar e aprofundar uma vez que esta é uma realidade com enorme potencial

de crescimento e, agora com a pandemia e o crescimento exponencial da utilização de novas formas de trabalho, faz ainda mais sentido abordar esta realidade e estabelecer a importância da I&C dos trabalhadores nestas condições.

Se, no início deste projeto isso era uma realidade, mas não para todos os parceiros e atores sociais, agora, como todos sabemos, com a pandemia de COVID 19 tornou-se uma realidade amplamente difundida e atingiu números sem precedentes.

No entanto, e antes de começar a desenvolver uma análise profunda neste capítulo, devemos primeiro estabelecer o foco de nossa análise:

1 - Novas formas de trabalho incluindo o que comumente se entende por trabalhadores de plataforma como o Uber, call centres, entre outros similares.

2 - Novas formas de trabalho como no sentido de novas formas de organização do trabalho como o teletrabalho, o trabalho à distância.

Todas essas formas de trabalho têm mostrado, como já frisado, um aumento incrível desde o momento em que o projeto foi apresentado até aos dias atuais.

Tendo em conta que isto varia de país para país, de vez em quando, é possível verificar que nos países candidatos tal não era uma grande preocupação, uma prioridade. No início do projeto esta percepção mudou muito, especialmente no que diz respeito ao segundo tópico, que passou a ser uma preocupação de todos os parceiros.

Tal é bastante visível nos acordos que têm vindo a ser alcançados pelos parceiros, neste ponto podemos referir que se tratava já de um assunto próximo dos parceiros, aliás tal era uma preocupação nos países nórdicos (principalmente na Estónia), também em Portugal e na Irlanda e em Malta.

Estamos cientes de que em vários países o trabalho remoto tem sido imposto pelas diferentes autoridades nacionais e isso implica não só o teletrabalho como também o desenvolvimento de toda uma mudança no trabalho através dos meios informáticos que permitem o trabalho à distância.

Durante a execução do projeto, pudemos acompanhar a intensificação gradativa do uso desses meios, porém, devido à pandemia ainda em curso, não nos é possível avaliar o impacto que este tema tem neste projeto, pois é um processo ainda em andamento, sofrendo mudanças, sendo impossível ter uma visão clara de todo o cenário.

1 - Novas formas de trabalho, incluindo o que é comumente entendido como trabalhadores de plataforma

A este respeito, temos que dizer que o conceito de trabalhadores de plataforma e esta realidade bastante nova não estava dentro do campo de ação dos sindicatos (em geral os sindicatos envolvidos no projeto não estavam presentes nesta realidade) ainda que cada vez mais empresas sejam criadas dedicadas a este mercado.

Mesmo assim, estamos cientes da presença sindical e da necessidade de regulamentar esse trabalho e a introdução da negociação coletiva esteve na agenda de alguns sindicatos, e de facto neste período houve um desenvolvimento dessa realidade.

Fazendo a ligação entre esta realidade e a I&C apoiamos que esta será uma ferramenta importante a ser criada e desenvolvida apesar da necessidade de a adaptar, principalmente ao nível da comunicação.

Apenas I&C sem uma interação com os colegas de trabalho restantes não parece funcionar. Em países como os países nórdicos, tendo em consideração os seus sistemas em vigor, podemos compreender facilmente os desenvolvimentos que têm sido feitos, apesar das dificuldades relatadas.

Em países com baixos níveis de I&C este será um grande desafio e por isso será necessária uma nova reflexão em termos de associar diferentes aspetos como o estabelecimento de redes para permitir uma melhor comunicação, para melhor interagir, a proteção dos indivíduos, liberdades, entre outros.

Os parceiros também concordaram que, para o desenvolvimento de medidas reais nesta matéria, a melhor forma de atingir esse objetivo seria através da negociação coletiva. Os acordos coletivos, seja uma empresa ou um acordo setorial conforme a realidade, são sim o caminho para podermos regular melhor esta questão.

Tendo em conta o aumento do número dessas empresas nos últimos anos, e a crise pandémica veio reforçar a sua presença no mercado de trabalho. Já houve algumas ações nesse sentido, mas é preciso estar mais focado nessa realidade.

2 - Novas formas de trabalho no sentido de novas formas de organização do trabalho como o teletrabalho, o trabalho a distância

No que diz respeito às novas formas de trabalho, apesar de não estar muito longe das realidades anteriores, nomeadamente na dimensão que se atingiu após a pandemia, esta realidade tem estado no centro das atenções em países como por exemplo Portugal, onde é possível encontrar claramente duas realidades: as empresas onde isso já foi regulamentado e já se encontra em vigor e as empresas onde isso não foi regulamentado e, neste último caso, o passo para a implementação dessas novas formas de trabalho foram incentivados pela imposição devido à crise do novo Coronavírus e das medidas em vigor para controlar a pandemia.

Tivemos experiência semelhante no setor elétrico onde isso foi regulamentado por acordo coletivo e foi disseminado em grandes empresas como a Nokia, Siemens, Microsoft. A pandemia, para essas empresas, não significou mudanças significativas, uma vez que apenas melhorou a continuação do que tinham antes (teletrabalho, trabalho remoto).

Claro que depende também do setor em questão, uma vez que em alguns setores, como o de TI, dentro do setor elétrico, tudo isso já estava previsto e as empresas que atuam naquele ambiente já o faziam anteriormente e a I&C já era uma realidade, como tal isso só foi enfatizado pela pandemia.

Quanto a outros, a pandemia e a necessidade de ampliar estas novas formas de trabalho de forma a contribuir para o controle da pandemia, instou à necessidade de uma regulamentação mais ampla e abrangente que, até agora, só existia escassamente ou apenas por meio de acordos coletivos. Isso também impulsionou as empresas a definirem regulamentos internos que permitissem à I&C funcionar com reuniões regulares entre os parceiros, melhorando a comunicação dentro da empresa.

Os grandes problemas surgem quando as empresas, onde isso nunca acontecia, tiveram que começar a implementar estas novas formas de trabalho em grande escala, com empresas a encerrar a maioria dos departamentos e tendo quase todos os seus funcionários a trabalhar em casa ou a partir de casa, onde essa era a única forma possível de trabalhar.

Ligada a todos estes novos desafios, a I&C surgiu para desempenhar um papel especialmente importante, permitindo não só esclarecer e adaptar as necessidades das empresas e dos trabalhadores como também acompanhar os desenvolvimentos, contribuindo para ultrapassar algumas das dificuldades causadas por esta mudança radical.

Uma vez que não se tratou apenas de um problema, mas também de um desafio, para Portugal e para os parceiros portugueses, tal também foi amplamente sentido pelos parceiros do projeto. Foi possível atender a uma grande preocupação dos parceiros a este respeito e muitas vezes foram feitas alterações com I&C e as dificuldades continuaram a surgir sublinhando a necessidade de haver uma regulamentação geral de todos estes aspetos, uma vez que tal não existia a nível nacional.

Fortemente ligados a este assunto, temos a digitalização e a I&C, estes são questões sobre as quais alguns dos parceiros já começaram a trabalhar, através de grupos de trabalho, CDSS, mas ainda existe uma grande lacuna entre os países e os parceiros sobre isso. Isso fica ainda mais evidente quando fazemos a comparação entre os Estados membros da UE e os países candidatos e, por isso, tentamos fazer a diferença com o projeto. Apesar de sabermos que podemos contribuir de alguma forma para melhorar a situação, sabemos que há muito mais a fazer.

Sem dúvida, a I&C nas diferentes fases, nomeadamente durante a introdução e desenvolvimento da digitalização é um marco, mas esta tem de se adaptar às diferentes realidades e há necessidade de um grande trabalho a realizar pelos parceiros sociais nesse sentido.

Essa pandemia apenas acelerou essa necessidade e, uma vez implementada, precisará ser acompanhada. Este é, definitivamente, um processo sem fim. Caso contrário, pode levar à não aplicação total da I&C.

Se um dos papéis mais importantes desempenhados pela I&C é contribuir para a adaptação, não apenas a essas realidades e outras que possam surgir, há um em que a I&C pode desempenhar um papel particularmente importante - a antecipação. Se é amplamente reconhecido que I&C é importante para lidar com tempos difíceis, para contribuir para resolver problemas e minimizar efeitos, o seu papel é ainda mais importante em momentos de não conflito, contribuir para antecipar necessidades e mudanças, e preparar o caminho para enfrentar aquelas necessidades e mudanças que virão para prevenir situações mais críticas e estar preparado para mudanças inevitáveis.

Usualmente encarado como um assunto chave para enfrentar uma situação de crise, seja uma crise real ou esperada, os parceiros concordaram que a I&C deve ter um papel muito mais envolvente no sentido de ter sido referido, com frequência durante a execução do projeto, que é necessário um trabalho contínuo e regular da I&C. Se não houver essa ligação, muitos dos objetivos e conteúdos das Diretivas perderão o seu impacto e o seu efeito útil e apenas aparecerão em situações de crise. Algo que esta situação de pandemia trouxe para a discussão foi a necessidade de adaptação às necessidades inesperadas e a importância de se ter preparado isso com antecedência.

Nesse sentido, é nosso entendimento que o papel da I&C é muito mais amplo e muito mais importante e há a necessidade de continuar enfatizando e evidenciando essa importância e papel.

No que se refere ao possível papel da I&C em momentos em que a empresa não enfrenta qualquer dificuldade, a resposta unânime dos parceiros tem sido no sentido de que a I&C constitui um recurso útil. Sobre os objetivos da I&C, nestes casos, os parceiros têm opiniões e sugestões diferentes. Por exemplo, os parceiros malteses defendem que a formação em I&C para os envolvidos é essencial para que esta ferramenta seja mais presente e eficaz, especialmente se tivermos em consideração, como acontece em muitos outros países, que o tecido económico cobre principalmente as PME's. Os empregadores devem estar cientes de como aplicá-lo em toda a sua dimensão e, assim, melhorar e aumentar a eficácia das diretivas. Ficou claro que este trabalho é necessário não apenas no que diz respeito à I&C nacional, mas também à Diretiva relativa às fusões transfronteiriças.

Existe um conjunto de assuntos que foram abordados apesar de não fazerem parte dos assuntos-alvo do projeto e que podem, de facto, estar em consonância com a importância de uma I&C regular, tais como: Empregos verdes e digitalização.

Em alguns setores específicos, como o setor automóvel, o processo em curso de mudança para carros elétricos (e o mesmo para o setor de construção naval), com a tão necessária análise dos mercados ou do mercado possível e dos consumidores-alvo conduziu a uma tremenda mudança no sector e da necessidade de adaptação das empresas e métodos de trabalho. Desafio tão exigente chamou a atenção para a importância de antecipar cenários, a longo prazo, para se preparar para as mudanças. E, mais uma vez, I&C desempenha um papel importante nessas necessidades de antecipação.

A proposta dos parceiros tem sido no sentido de que seja reconhecida a importância do papel desempenhado pela I&C neste ambiente de antecipação, sublinhando a necessidade de desenvolvimento desta ferramenta, realçando a importância da formação. Conforme referido anteriormente, é reconhecida a importância da I&C que aconteça de forma regular numa situação de não conflito para o desenvolvimento de ações conjuntas.

Ficou claro que, para atingir estes objetivos, é necessária a interação entre I&C nacional e a nível transfronteiriço, nomeadamente em organismos como os CEE ou, se for o caso, no âmbito da «*velhinha*» Diretiva 2005/56/EC.

Uma vez que, e no que diz respeito às empresas multinacionais, frequentemente as decisões são tomadas fora do âmbito nacional, pelo que seja importante a articulação com outros órgãos com vista a reforçar o apoio nesse processo.

- **O envolvimento dos Trabalhadores nas fusões transfronteiriças e das sociedades de responsabilidade limitada**

Sobre este tema tivemos o prazer de contar com a colaboração do Dr. Marcus Meyer que nos deu o seu relato, baseado na sua vasta experiência sobre o desenvolvimento desta realidade.

Nos últimos anos tem sido possível acompanhar o aumento do número relativo a fusões transfronteiriças, tem-se contactado uma intensificação dos números sobre esta realidade e do número de trabalhadores afetados por estes processos.

Como os números são realmente claros no estudo, mesmo que depois da pandemia possa significar alguma estagnação, continua a ser necessário uma monitorização da evolução da situação.

Na opinião dos parceiros, o que falta são os dados sobre I&C relativos a estes processos pois seria importante recolher informação mais precisa sobre o estado da I&C. Isto porque o potencial dos atos legislativos comunitário é enorme, especialmente se tivermos em consideração que a Diretiva 2005/56/CE caducou com o fim do seu prazo de vigência. Os Estados membros tinham até ao final de 2017 para transpor esta Diretiva para o seu direito interno.

Atualmente, está em vigor a Diretiva 2019/2121 de 27 de novembro de 2019 que altera a Diretiva (UE) 2017/1132 na parte respeitante às transformações, fusões e cisões transfronteiriças.

É de destacar a preocupação do legislador comunitário em assegurar, mais concretamente, a importância de assegurar que os direitos dos trabalhadores à informação e à consulta no contexto das operações transfronteiriças sejam plenamente respeitados. A informação e a consulta dos trabalhadores no contexto das operações transfronteiriças deverão ser efetuadas nos termos do regime jurídico previsto na Diretiva 2002/14/CE. Para o efeito, os representantes dos trabalhadores previstos no direito nacional ou, se for caso disso, de acordo com as práticas nacionais, deverão incluir também quaisquer organismos relevantes criados nos termos do direito da União, como o Conselho de Empresa Europeu, criado nos termos da Diretiva 2009/38/CE, e o órgão de representação, criado nos termos da Diretiva 2001/86/CE do Conselho.

Acresce, ainda, que os Estados-Membros deverão assegurar que os representantes dos trabalhadores gozam, no exercício das suas funções, de proteção e garantias suficientes que lhes permitam realizar devidamente as funções que lhes são confiadas.

Destaca-se, para o efeito uma maior e mais intensa participação dos trabalhadores nos processos de fusão, designadamente, através da atribuição, em determinadas circunstâncias, de direitos de consulta e informação.

Nos países envolvidos, a maioria do tecido económico recai nas PME e é neste campo onde são sentidas as maiores dificuldades na implementação da I&C daí estes diplomas revestirem particular interesse e, sobre este aspeto em particular, destacamos a necessidade apresentada pelos parceiros malteses no sentido de que é necessária mais informação e formação conjunta para o desenvolvimento da I&C.

Para muitos dos países envolvidos, a relevância destes atos legislativos reside nas características dos países envolvidos, uma vez que o seu tecido económico se baseia, como já sublinhado, em PMEs e não albergam sedes de empresas multinacionais. Ao que acrescem as dificuldades sentidas no que concerne à implementação de uma I&C efetiva.

Portanto, tem havido um apelo geral ao trabalho apenas sobre estas Diretivas.

Além do mais, estamos cientes do aumento do número crescente destas operações e sentimos a necessidade de focar na I&C e Participação dos trabalhadores, a nível nacional, para que possam, com sucesso, serem desenvolvidas em sede de processos de transformações, fusões e cisões transfronteiriças.

▪ **Acordos transnacionais**

Sobre este tema, sem dúvida, surgem como relevante os acordos voluntários como uma importante ferramenta que pode fortalecer os níveis de I&C e poderem ser uma das formas mais

rápidas de implementação e melhoramento da I&C ou, inclusive, ir ainda além em alguns casos concretos. Isso é particularmente importante, uma vez que pode ser estendido a um vasto número de empresas, concedendo à I&C uma verdadeira dimensão transnacional.

Claro, que estamos cientes de que tal não é isento de dificuldades, dificuldades essas que podem surgir no caso de não cumprimento de tais acordos. Uma vez que pensamos que isso pode ser objeto de uma abordagem mais detalhada e talvez seja a base para um trabalho futuro, vamos concentrar nas possíveis vantagens decorrentes dessas ferramentas.

Apenas uma observação porque, a este respeito, decidimos referir-nos a ambas as nomenclaturas incluídas no mesmo conceito, saber os acordos-quadro - como no âmbito da UE - e os acordos transnacionais - como dentro da Europa, mas fora do espaço da UE. Ora porque o projeto envolve tanto os Estados membros da UE quanto os países candidatos e, como tal, pensamos que a melhor abordagem é referir essas realidades como dentro do mesmo conceito. E utilizá-los para promover a I&C de uma forma mais rápida e ampla.

Como vimos, em várias ocasiões, a maioria dos países envolvidos tem um baixo nível de I&C, Estados membros da UE e países candidatos, e ainda que, no que diz respeito aos Estados membros da UE, estes já tenham transposto para o direito nacional a legislação europeia em matéria de I&C e, na medida em que a maioria dos países candidatos já incluiu na sua legislação nacional as disposições sobre I&C, existem notórias dificuldades de implementação.

Pensamos que uma ação a este nível, e existem alguns exemplos disso numa dimensão transnacional, poderia ser de facto um aspeto chave para um desenvolvimento mais rápido do nível de I&C em todas as empresas de um grupo com dimensão transnacional e transversal.

Além do mais, a importância de tais acordos ganha uma importância totalmente nova no caso de existirem fornecedores e quando muitos desses acordos também se lhes aplicam o que faz com que as regras sejam aplicadas a todos os que de alguma forma estão vinculados ao grupo. Algumas dessas ferramentas cobrem a relação com os fornecedores estabelecendo mínimos que estes também devem garantir.

Muitos dos países envolvidos no projeto hospedam muitas empresas fornecedoras e por ter também essas empresas anexadas a esses acordos, parece algo incrivelmente positivo a existência de uma forma que poderia conduzir à harmonização das condições em geral e da I&C em particular.

Tendo em conta que a grande maioria das empresas abrangidas pelo projeto são PME, estas surgem desvantagem se comparadas com as empresas multinacionais com um acordo transnacional aplicável a todas. Se por um lado, também é possível perceber que as grandes empresas existentes com sede localizada em um dos países envolvidos no projeto têm demonstrado interesse nesta possibilidade, por outro lado algumas delas possuem tal instrumento, mas não cobrem a questão do envolvimento dos trabalhadores.

Se tomarmos como exemplo uma empresa - a Coindu - uma empresa portuguesa estando presente em vários países e regiões, mas mantendo a sua sede em Portugal. Esta empresa com presença mundial tem um acordo internacional, abrangendo os fornecedores, mas poder incluir procedimentos mais direcionados para a I&C seria uma grande conquista se fosse possível concretizá-la.

Uma questão que se nos coloca, ao abordar a questão dos acordos transnacionais, pelo menos os que assumem dimensão mundial, é que estes abrangem aspetos que não são postos em causa

nos Estados-Membros da UE nem mesmo nos países candidatos à adesão à UE. Embora sejam importantes para os restantes países, pensamos que para que sejam adequados nos Estados-Membros da UE e nos países candidatos, será necessário centrarmo-nos na importância de também visar estes países. A este respeito a resposta dos países candidatos envolvidos foi bastante positiva.

No que diz respeito aos países candidatos, a maior parte deles comunicou ao projeto o facto de muitos dos instrumentos criados pela UE, como os CEEs, não os envolverem e esta possibilidade seria, sem dúvida, um instrumento útil para fortalecer o nível de I&C e impediria que uma mesma empresa tivesse comportamentos diferentes dependendo de sua localização.

▪ **O papel dos comités de diálogo social**

Criados desde finais dos anos 90, por decisão da Comissão da UE, estes órgãos visam, a nível setorial, promover o diálogo entre os parceiros sociais dos setores, pretendendo-se que sejam órgãos centrais de consulta, de iniciativas conjuntas e de negociação.

Com o passar dos anos e o trabalho e esforço de todos os envolvidos, estes órgãos estão cada vez mais a desempenhar um papel importante em várias matérias, nomeadamente formação e classificação de funções, e papel para os empregos verdes e até tocando em algumas questões de negociação coletiva.

Apesar desta crescente importância e dos resultados decorrentes do seu trabalho, é um facto que nem todos os CDSS reúnem o mesmo envolvimento dos parceiros.

Uma das observações que foram feitas é que a presença de representantes dos países candidatos é escassa e foi sublinhada a importância de alargar essa possibilidade, pelo menos na qualidade de observadores. Esta sugestão foi apresentada por muitos dos parceiros.

Os parceiros do projeto reconhecem a relevância destes órgãos e acolhem com agrado tais iniciativas, mas chamam a atenção para o facto de que apesar dos desenvolvimentos alcançados e das medidas tomadas só terão sucesso se for possível articular I&C com eles. Apesar de ser possível transitar pela regulamentação nacional ou mesmo por um ato jurídico da UE, tal como uma Diretiva, tal só seria considerado no mínimo tendo em conta as diferenças existentes a este respeito a nível europeu.

Sobre este aspeto, e tendo em consideração as preocupações expressas pelos parceiros envolvidos, pensamos que a primeira é garantir uma presença mais alargada dos parceiros sociais e com isso implicar também os países candidatos, só assim assegurar-se-á que todas as medidas e resultados obtidos sejam aplicados por todos, nas mesmas condições, tendo sempre em consideração as diferenças a nível nacional.

Acreditamos fortemente que, cada vez mais, esses órgãos são uma ferramenta privilegiada para abordar assuntos importantes e um fórum de discussão por excelência e que, apesar da pandemia, esses órgãos continuaram trabalhando, duramente online, o que é notável. No entanto, isso leva a mais algumas dificuldades.

▪ **Casos de empresa**

O projeto envolveu a colaboração de várias empresas, de diferentes países, que aceitaram compartilhar suas experiências e pontos de vista sobre o tema principal do projeto, ou seja, o envolvimento dos trabalhadores- I&C e Participação e queremos compartilhar alguns desses casos.

Como uma avaliação geral, percebeu-se que todas as empresas concordam, como já referimos desde o início deste trabalho, que a I&C pode ser, ou é de facto, um mecanismo útil e desempenha um papel importante na antecipação e superação de crises e tal foi reforçado pela pandemia. Aprendemos com a crise económica geral de 2008, onde Portugal foi um dos países mais afetados e com a crise atual provocada pela pandemia COVID 19 e este foi o momento de colocar em prática quais foram as lições daí retiradas.

Sobre isto devemos definitivamente referir que existem alguns casos que merecem ser referidos como casos de antecipação e articulação de I&C com outras matérias que permitiu, em 2020, continuar a trabalhar e alcançar resultados que, em casos particulares, até ultrapassaram os obtidos em 2019.

Empresa - PSA, Mangualde - Portugal. Esta empresa que se dedica à indústria automóvel teve de encerrar, como tantas outras, em março de 2020 por falta de abastecimento. Entretanto, e aproveitando esse encerramento, após informar e consultar os representantes dos trabalhadores, foi decidido alterar as linhas de produção para aumentar a produtividade, para criar melhores locais de trabalho em termos de condições de trabalho, para trabalhar mais rápido e com menos dor e lesões. Com o envolvimento de alguns trabalhadores, este processo foi introduzido com sucesso. Como tantas outras empresas, esta teve também de se adaptar à realidade da COVID19 e às novas regras de segurança e métodos de trabalho e sobre isso os procedimentos de I&C têm sido um recurso útil que permite à empresa colocar rapidamente em ação o novo plano e aumentar imediatamente a produção e inclusive a produção de um novo modelo.

Empresa - Coindu, Arcos de Valdevez - Portugal. O principal negócio da COINDU é a produção de coberturas para assentos. Hoje, a COINDU conta com mais de 6.000 funcionários em todo o mundo e é conhecida entre as principais marcas pela qualidade de seus produtos e pela flexibilidade de seu processo de fabricação.

A empresa utiliza regularmente os mecanismos de I&C e assegura a importância de garantir o envolvimento dos trabalhadores. Trata-se de uma empresa que soube ultrapassar diversas situações críticas não só a provocada pela pandemia como também as anteriores relacionadas com as transformações ocorridas numa grande crise económica que atingiu Portugal e a economia portuguesa durante a primeira década do século XXI e como soube fazer face às mudanças contínuas e ao importante papel desempenhado pelo envolvimento dos colaboradores e pelos mecanismos de I&C. Esta empresa deu início a um processo de acordo transnacional com os fornecedores, sendo este, de facto, um bom ponto de partida para apresentar e melhorar as condições e o envolvimento dos trabalhadores.

Empresa - SILAMPOS, Oliveira de Azeméis - Portuga. A SILAMPOS é uma empresa portuguesa fundada em 1951 em Cesar, concelho de Oliveira de Azeméis, no norte de Portugal e que se dedica à produção de utensílios para o lar em geral e para a mesa e cozinha doméstica ou industrial em particular e lidera o mercado nacional, sendo uma referência no setor a nível internacional também. É uma empresa que promove a empregabilidade responsável, pautada pelo respeito aos direitos humanos e pelo desenvolvimento de condições de trabalho eticamente responsáveis, bem como pelo desenvolvimento das competências dos seus trabalhadores, formando-os e sensibilizando-os e disponibilizando todas as informações e recursos. É bastante interessante e importante a experiência da empresa sobre a importância que atribui à I&C dos trabalhadores e ao seu papel na empresa salientando a importância do desenvolvimento do diálogo social para ultrapassar situações difíceis, apontando a difícil

situação que o país, em todos os níveis, bem como o resto do mundo, está a enfrentar devido à pandemia. A empresa sublinhou a necessidade de fortalecer I&C para encontrar uma nova solução, prevenindo o desemprego e promovendo um ambiente de trabalho seguro e saudável.

Empresa - SIMOLDES, Oliveira de Azeméis - Portugal. Esta é uma empresa portuguesa, uma empresa multinacional, uma referência mundial em moldes, principalmente para a indústria automóvel, e esta é uma empresa de notável interesse porque cobre, numa só empresa, diversos sectores (também os plásticos). Devido a este ambiente verdadeiramente multissetorial, requer um envolvimento ainda mais exigente dos trabalhadores. E os mecanismos de I&C assumem um papel importante. Foi sublinhado, pela empresa, a importância de tais ferramentas e que têm sido relevantes para o desenvolvimento da empresa e do negócio. A empresa também acolheu ações como a atual, refletindo a importância do tema e a necessidade de implementá-las no campo. Com a pandemia, a I&C dos trabalhadores assume um papel ainda mais significativo no que diz respeito à preparação da empresa (negócio e trabalhadores) para os novos desafios e do plano de contingência da empresa.

Empresa - ENSTO ENSEK AS - Estónia. Esta empresa desenvolve e fabrica aparelhos elétricos inteligentes para redes e edifícios de distribuição de eletricidade. Esta é uma empresa que apoia o atual modelo de I&C em vigor, mas estando atenta, e não exclui a possibilidade de que melhorias possam ser feitas para tornar o procedimento mais eficaz.

Empresa - Pantalesco - Malta. Sediada em Msida (Malta), esta empresa familiar de três gerações de propriedade privada é, há mais de 50 anos, especializada em engenharia mecânica e elétrica. Evidenciou a relevância de garantir que o envolvimento dos trabalhadores é um caminho para o sucesso. Ficou fortemente evidenciada a relevância que existe, dentro desta empresa, dos benefícios que decorrem do diálogo e que é importante ultrapassar dificuldades para agir, para antecipar problemas, conflitos ou mesmo para melhorar situações.

Gostaríamos de dirigir a todos os envolvidos o nosso mais sincero agradecimento pelo seu empenho geral no trabalho e colaboração especialmente, e devido à pandemia, tendo em vista as mudanças e adaptações necessárias para fazer face a esta. Acreditamos sinceramente que o trabalho tem sido um sucesso e incrivelmente positivo e reunimos todas as condições para ir ainda mais além.

Principais conquistas

Focando em todos os aspetos do projeto, foi possível concluir acordos conjuntos e/ou declarações unilaterais entre os diferentes parceiros sociais envolvidos. Foi possível, inclusive, concluir acordos conjuntos entre parceiros de diferentes países, reforçando a verdadeira transnacionalidade da ação. Gostaríamos de sublinhar o facto de, tanto os parceiros sociais como os atores sociais, terem estado bastante envolvidos e abertos ao projeto e a futuras ações de apoio ao desenvolvimento nesta área.

Albânia - foi possível concluir um Acordo Conjunto Bilateral entre Biznesalbania e BSPSH.

Bulgária - foi concluída a Declaração Unilateral pela Federação sindical dos Mineiros - Podkrepa.

Estónia - foi possível concluir um acordo bilateral conjunto entre o Sindicato dos Trabalhadores Industriais e Metalúrgicos da Estónia e a Federação da Indústria de Engenharia da Estónia.

Hungria - foi possível a celebração do Acordo Conjunto Bilateral entre o Sindicato Húngaro dos Trabalhadores em Minas, Energia e Indústria e o SIMA - Sindicato das Indústrias Metalúrgicas e Afins (Portugal).

Letónia - foi possível concluir uma Declaração Unilateral pela MASOC - Associação das Indústrias de Engenharia Mecânica e Metalúrgica da Letónia.

Malta - foi possível celebrar um Acordo Conjunto Bilateral entre MEA - Associação de Empregadores de Malta e o SIMA - Sindicato das Indústrias Metalúrgicas e Afins (Portugal) e uma Declaração Unilateral pelo GWU - Sindicato Geral dos Trabalhadores.

Macedónia do Norte - foi possível concluir um Acordo Conjunto Bilateral entre a Confederação Empresarial da Macedónia (BCM) e a Organização Sindical das PME (OPACME).

Montenegro - foi possível celebrar um Acordo Conjunto Bilateral entre a UPCG - Federação Montenegrina dos Empregadores e o USSCG - Sindicato dos Sindicatos Livres de Montenegro.

Portugal - independentemente do facto de não ter sido possível a celebração de um acordo foi possível negociar a inclusão de um conjunto de regras e procedimentos na ronda de negociação coletiva.

Sérvia - foi possível concluir duas Declarações Unilaterais, uma do Sindicato Autónomo dos Trabalhadores de Metal e uma segunda pela Associação de Empregadores da Sérvia.

Todos os acordos conjuntos e declarações unilaterais podem ser consultados no Anexo.

Versão Inglesa

-

English Version

Introduction

«(...) using common sense, willingness to listen, promoting the various forms of involvement of all within companies, together with the existence of a visible and genuine concern from those responsible for them, it is possible to lay the foundations for a successful culture» (José Simões, Project's Diretor - Upper Level – Joint Social Commitment – as the Key to I&C and Participation and their Challenges)

Employees' Information and consultation, and in a certain way employees' participation, this one adapted to each one of the different national realities and the tools associated with other instruments, are the key to envisage crisis' situations and this has been evidenced in the worst way when the world faced the pandemic caused by the new coronavirus and its harmful socio-economic consequences, this during the execution of this project.

It was this perception that was at the base of this project, and much earlier when it was at the origin of much of the work developed by the promoter. We have started to reinforce that conviction based in previous crisis, the 2008 crisis, economic crisis but not in the dimension of this pandemic crisis.

This perception led to the development of steps throughout the years always being aware that in some countries with medium or low levels of Employees' involvement such would mean a long way. Developing and implementing what exist is crucial and this has been one of the main conclusions and on this respect, it is important, at least, to have a real perception of the implication of what is foreseen, based in other instruments, and that has been particularly clear, is crucial to call in an important element: the voluntary involvement of the parts.

And if this has been integrant part of the project, we have started to come across with testimonies in that sense, more and more, reinforcing the project aims, goals and action. This has been evidenced the partners of the project by their visible commitment in this sense, being quite aware of the need of such, the need of continuing doing so.

Especially because we do think that this project could go much further, and all the obstacles created by the pandemic have allowed us to reach the whole potential of the action. We must refer that even in these exceedingly difficult conditions we were able to gather all the partners and all the stakeholders involved, stressing the importance of successfully concluding the project, even making use of alternative means which meant more meetings and an even deeper engagement to the work. The face-to-face element is important in a project as the present one (and such has been continuously stressed by the promoter) and the fact that such has turned out to be impossible, can indeed imply a serious impact though we have tried to overcome it the best possible way.

The main even of the project was schedule to take place exactly in the first days when, both in Portugal and Europe, came into force the restrictions and lockout due to pandemic. At that time, the schedule main event had inclusive a waiting list of participants.

After the first impact of this that hit some of the social partners, the capacity of the project (project's team, partners and all the ones somehow involved) to adapt itself has been tremendous.

For that reason, we would like to express here our gratitude to everyone who continued, despite the restrictions, to work, to be involved and engaged in the action despite the adversities and by allowing us to bring into this project a clear proof that the voluntary element associated with key elements is essential.

We have, in this project, the need of the employees' Information and Consultation at different levels, not only within the EWC but mainly as a priority at national level and this has been, more and more, within the awareness of the partners.

As previously stressed, the crisis arising from the pandemic installment (the first impact, then the slow recovery, then a new wave of impact, and for some even a third impact on the project's closure) marked the project's methodology and the development of action and activities. Nevertheless, and no doubt, such has alerted us for the serious and imperative need to implement the steps presented in the project, what we have and could be improved, in a national basis, being even more essential to develop those tools to pursuit that aim.

The core questions ...

The real application of what we have, more and more, through other mechanisms, and clearly the legal instruments have been present in this project. Despite their relevance they are placed on the sidelines generally when there is not any longer a solution, due to several reasons, mainly the decrease of trust or such is impracticable to have a real and normal information and consultation and because often such is based only in some formal aspects.

Hence the need to improve and make a real use of that work, of what exists through an effective application of what exist, with national improvements or adaptation of what exist, based on what exists and a predisposition of the social partners to do that in most of the cases.

This predisposition is clear in the social partners, though differently, all appear here in the final book of the project. Despite the logistical issues already raised that have prevented some to accomplish that, for instance, the link of these realities with collective bargaining was clear in some cases but within the SMEs universe, and for some, has been difficult to accomplish that because that reality, as we know it, does not exist at all at sectorial level, sometimes just because there is no tradition, or it is sometimes more focused on wages questions. But once the will of the partners is there the aim is to profit that to achieve an agreement designed to what to do in the next moment or to have the framework to allow the further step.

In the project there is not a general, fits all, solution, what is good and possible for some might not be the most suitable for the others. What this project intends to bring in is the best possible solution for each country viable for the partners.

And on this respect the presential work is important and we can notice the results in the countries where it was possible to have a more in person action have been more ambitious and, in the others, such as not been so and the proximity to the pandemic led to less results. In some cases, we could not work with social partners that almost disappeared, as it is the case of the Turkish employers that merged during the execution of the project or the connection problems have been a reality in some Baltic countries. We are convinced that there has been a tremendous

work carried out by those and that should be putted into place in a non-pandemic scenario consolidating what have been achieved.

If the sectoral level is important, we should also make a reference to the company level - also targeted in this project – and on this respect we must mention a greater openness to the questions raised in the project.

In some countries it is undoubtedly difficult at sectorial way, but all the companies involved seemed incredibly open to the aim of the information and consultation, such seemed to be very well accepted and received as a key tool that can be implemented or strengthened. Such has been noticed in several of the companies involved in Project.

Once said, it is time to proceed to the analysis of the different topics and points covered by this project and for that we will make use of the results and work carried out as a result of the different activities that took place during the execution of the project, to know: the preparatory and working meetings (in Portugal and abroad) some in person and many other online; the workshops and International Regional Meetings that took place in the several countries; the main event, as well the tools that have been created and used for such, namely, surveys (survey monkey), questionnaires and polls.

Due to the restrictions imposed and referred earlier on, some of the work has been prepared by meetings online and this ability to adapt brought a new dimension into this project.

This present work has also into consideration the actual and in force legislation, the real implementation of what is foreseen, and the improvements made.

▪ **Employees' Information and Consultation**

All this allowed to present, beforehand, a general conclusion in the sense that the actual European legislation, the different Directives that approach and deal with these issues are not a major issue but there are needed some suggestions on how to improve the Directive 2002/14/EC on national information and consultation, but as refereed before, nor the definitions or the procedure established by this legislative act that sets out a goal that all EU countries must achieve are sufficient. However, it is up to the individual countries to devise their own laws on how to reach these goals, and it is in this respect that some problems arise, not so much in terms of concepts, but in terms of procedures.

In an overall assessment, there have been a general perception that it would be important to adopt the definitions of the concepts, that exist in more recent instruments that deal with I&C, to know the so-called Recast Directive, could be adopted by the older Directives, such is the case of the Directive 2002/14/EC once it would mean an improvement as the concepts are clearer.

As refereed, this is not a major issue, but such goal is important. As a matter of fact, some partners have already adopted those definitions, as a suggestion to improve their national legislations or included them in the joint agreement signed within this present project, a major outcome of this project.

A problem that emerges and that has point pointed out by many partners refers to the procedure as it appears as not clear enough, too vague or the transposition of the Directive into the national law is not clear and raises a set of questions once the interaction of the rules resulting from the transposition are not clearly articulated with others on I&C.

The problem, doubts start to arise when analyzing case by case and in some cases the transposition is very sparse and a good example of such is the Portuguese legislation where the consultation phase almost vanish.

So, on these two aspects – definition & procedure - most of the social partners would like to see the improvement of the definitions of I&C as such are foreseen by other Directives and as far the procedure the transposition should be improved in a way to improve what it is in force, internally. Even in the cases where the transposition of the Directive stipulates only the minimum requirements it is needed a clear transposition with a clear articulation with the matters subjected to I&C. Often it is only mentioned information and consultation is neglected.

Another important issue is related to the **implementation** of what is established:

Legal implementation - almost all the partners refer that appealing to the court will not solve the problems, this because in most of the cases are not expedite ways and the foreseen penalties are insufficient. If we take as an example the Portuguese legislation, it can be improved in a way to adopt more expeditious processes so that the decision is taken in a timely manner.

Another important point regards the penalties foreseen as some think that it would be a positive aspect to increase the value of the penalties in the event of violation of what is established, this as a sanction to be applied in that case.

These two important aspects – expedite procedures and sanctions in the event of non-respect – are indeed relevant and welcomed, on the partners’ side, a careful attention.

Most of the partners, on this matter, have adopted a recommendation but have decide not to intervene on this regard.

In what concerns the possibility of creating bodies, or using the existing ones, not only to speed up the process and the decision taken as to be dedicated to these issues, have welcomed the acceptance of the partners following the experience of other partners.

So, the focus should fall on profiting the existing dialogue, which importance have been stressed by the Nordic countries that support that the basis of regulation of the labor relation is the dialogue, social dialogue, and that support that even when I&C is low such could be reinforced with the inclusion in the collective bargaining of stipulations on this respect or in another binding agreement.

So, it has been proposed the development of instruments based on a voluntary agreement focused on this matter. Despite being visible the acceptance of this we must keep on stressing the need of continuing working in the future as far it concerns the cases where the partner has chosen to sign a statement in that sense and if it were not the pandemic situation, that affected

us all and had terrible consequences in some structures we are sure that it would be possible to conclude joint agreements in countries such as Latvia and Turkey.

In many other cases such has been essayed and adopted, for example Portugal essays the introduction of such via sectoral collective agreements, in some other countries such took place via the development of binding agreements while in some other countries, if the pandemic issues have not been in place, it would be possible to go further.

Coming back to the legal implementation of I&C it has been accepted by all that efficiency is indeed the weakest link.

As stressed by one of colleagues, each must profit the moment and act as a persuader and make use of I&C moment to influence, to try to persuade and not face that moment as a «battle».

Considering the recent cases, resulting from the pandemic situation, in fact where a I&C process was established it can be a key issue, it can play an important role in contributing to anticipation with a view to minimizing or even overcoming problems.

It has been agreed by all the need of adoption of measures and changes of work's methodology, when introduced (note concrete cases at company level) , this trough collective agreement but also by the binding agreement or just use of the process foreseen in the Directive.

- ⇒ It has been visible that, amongst all, their major aim was, at least set the conditions to, at least, guaranty that the main rules foreseen by the Directives, and regarding employees' involvement, are applied and that the focus would definitively lay down on the national I&C where many gaps have been detected. Being able to have and to assure the exact transposition of the Directives into the national law would be beneficial.
- ⇒ But for such it is also important and needed to assure that there are conditions, at national level, to ensure the enforcement of the rules, regardless of if such rules arise from what is foreseen by law or if such is a result of an agreement.

During this search for real experiences and success stories that establish adequate means to achieve the objectives set, it was possible to bring up the example of an instrument in force in Finland - The Cooperation Ombudsman. This solution has, indeed, gathered a true consensus on the utility and importance of this body.

The Cooperation Ombudsman is a government institution headed by an ombudsman (government official and office) in Finland. The head of the office, the Ombudsman, is nominated for 5 years at the time and the labor market partners can express their opinion before the nomination.

The Cooperation ombudsman is an institution based on the same principle as the European Ombudsman on European level and the concept of ombudsman comes originally from Finland.

The purpose of this concept is to offer an independent authority mainly for advisory purposes. However, the ombudsman can in some cases also use executive powers and even order fines if necessary. This can happen in cases where a company has not fulfilled its obligations despite advice from the Ombudsman.

It is also important to note that the Ombudsman is not a mediator, that is the role of another institution – The National Conciliator. The National Conciliator mainly works with collective bargaining related conflict situations. (For a more detailed explanation please visit the web page of the project <http://upperlevel.sima.org.pt/>).

This, as already stressed, has been pointed out as an instrument that it might be adapted to the different realities and it may be a possibility to be considered and on which to work.

▪ **Employees' Participation Right**

From all the matters approached, employee's participation right has been, it was undoubtedly one of the most discussed mainly because it is pointed out as a privileged vehicle of accessing true information and consultation.

For many this is the key question to have a real I&C. On this respect we refer here the strong support of some project's partners (Nordic In, Tek (Finland) and PROGE (Austria). This because they brought their experience and launched plenty of food for thought.

Despite of being fully integrated in those countries' reality and not having comparison with something similar in the other partner countries such has been, also, widely debated with the partners seeing the possibility of, via this, to have access to consultation. And consultation is indeed the key aspect that most of the times does not exists or if it does, unfortunately does not take place in due time.

By allowing the social partners to be involved, namely then employees' representatives, this is seen as part of the solution. Allowing the partners to be a part of the process, they would have access to information and true consultation, by taking part in the process, those would have access to information and would be allowed to get information and be consulted allowing them to also express their position.

Despite the usefulness of these examples and experiences, many others exist leading to different ways to make use of this employees' participation right (varying from country to country) and, consequently, have raised many pertinent questions mostly linked to what would be the most suitable and more efficient system having in mind the different realities of the involved partners or if it were possible to customize it according to the concrete need.

Having into account the dimension of the project, with so many countries involved, many social partners and stakeholders, we have decided to use as a working basis the basic definition of employees' participation as it is foreseen in the Recast Directive.

This project involved both trade unions and employers and such despite enriching the work and the outcomes of the project, it might lead to different positions. However, and despite what would be expected, and aside of some questions might be raised, from the employers' side there was not a great opposition towards this participation right. It has been stressed that it would be interesting to continue debating this theme and working on it, especially in establishing the boundary between the employer and the employee's role.

There was a group of questions that has been brought into the discussion, namely the in what concerns the:

- The definition used.
- The fact of the employee representative is part of the decision:

This aspect has raised opposition and concern on the part of the workers, once it might be seen to compromise the ones directly participating and on the other hand the effects that it might implicate in the relation of the employees' representative with the remaining workforce.

- Which body should be entitled to have access to this participation right?

This concern is felt more by the applicant countries and a group of EU member states once it is necessary to consider that, in some countries, there are two different bodies, with no connection between them and one has access to this participation right (workers' councils) while other has access only to Information and Consultation (trade unions).

(For a better detailed explanation and more information on the Austrian example and how many of these questions are overcome and the Nordic model on how the articulation of these rights with the collective bargaining, please visit the web page of the project: <http://upperlevel.sima.org.pt/> - Mag. Martina Schneller and Anders Andersson).

On this regard and having into consideration the different positions in the project's development and that vary from country to country it has been decided each country should decide at national level what would be the most suitable model and the adaptations that might be made. This having in mind that there are no better model, there is yes, some models that are applied and that are in force in some countries.

The issue linked to what should be the body entitled to have such participation right, mostly within the candidate countries, raise many doubts and concerns, for that reason we have decided to present all the possibilities, giving them the possibility to gather more information on this and more experiences and leave to the partners to choose what would be the best way to achieve the goal of having participation right.

In fact, what has been agreed by all is that the participation right is undoubtedly a key question for the application of information and consultation.

On how to develop this and allow its real application, the consensus fell in collective bargaining, either via a company or sectoral collective agreement.

This always relying on the voluntary way, a more formal via the collective agreement or a more informal way to be applied according to the need since sometimes a more formal approach might lead to some obstacles.

Overall Participation right, with all these remarks and notes, has been considered as being particularly important for the implementation of I&C. Many of the ones involved have been in clearly in favor and in the event of existing both bodies, they both must be entitled to have access to I&C once this should not be exclusive to any of them. More I&C can benefit all. In this

way the joint involvement in the action of both social partners allowed not only to overcome difficult situations as to prevent them.

Undoubtedly, the social partners see it as tool for the real application of I&C and through the participation right they can really be updated and transmit their opinion regularly. And this, often, goes beyond some of the criticism and obstacles pointed out. They have stated, inclusive, that:

- ✓ Anticipation can be achieved by this way.
- ✓ Participation right is important as such once they want to be heard, to be consulted, on a regular basis. For such it is important to have a scheme in place or to have a more concrete definition of the procedure so that it will lead to a continuous dialogue and achieving the goals of I&C.
- ✓ In what concerns the aspect of confidentiality to which representatives will be subject, such is not a real obstacle if there is good faith amongst all, having in mind the purpose, the aim to develop I&C and Participation. The problem, as in many other realities, emerges when and if such is used as a tool to obviate other proposals, but in the event of it might happen such means misuse of the right and the inherent principle.
- ✓ The main obstacle to the introduction of participation right, that has been pointed out, is whether the representative takes part in the decision or not whenever entitled of the participation right.

On this regard we do think it is appropriate and needed to establish the difference between the more traditional approach, the participation right as described before and that are the basis of some models in use by some of the involved countries and the so called «new» approach to this reality.

This so called «new» approach has been a way to introduce a form of participation right, to allow the employees representative to have access to more information and consultation, without the constraints inherent in a more traditional model. On this respect there is an example we would like to share – the case of TAP.

TAP Portugal is the Portuguese national air carrier and has been privatized and during such process it has been proposed to introduce a «traditional» participation right. However, such has not been welcomed by the trade unions' side because they did not want to be part of the decision, they wanted to be involved but not to decide. Trade unions wanted to take that opportunity not, as stressed, to take part in the decision taken but to have access to more information and consultation.

As such it has been settled an agreement upon trade unions are consulted and informed on a regular basis, and inclusive take part, regularly, in some of the board meetings but they do not take part in the decision taken. This agreement has been concluded between the parts, but it is not part of the collective agreement.

So, this is an example of a settlement of a participation right with the exclusion of the possibility of taking part in the decision taken. For some it might be considered as not configuring a true model of participation right, but it is an example on how it is possible to create a model suitable,

based on the free will of the parts, to the aims and that can be, in fact, transposed into other realities, where I&C are the key aspects but where there is true consultation, and the opinion is given and taken into consideration.

This enhances the link with another model that we would like to share and that it is in place in Finland – the so-called Executive participation:

This represents a step towards true information and consultation - the executive participation. This can be achieved on company boards or in the executive management teams. Representation on other levels, below these, can be an asset but cannot replace these in importance.

Employee representation on board level and in executive management teams should be considered an asset and a source of additional information for the best possible decision making in the company. This means that the management should recognize the positive potential in the participation at this level. In cases of potential conflicts, the employee representatives can advise the management against action that might complicate the situation further.

In Finland employees can be represented at board level and in the executive management teams. The legal requirement is that the company has at least 150 employees and that the employees request the representation. Different countries have different thresholds.

When Executive participation is missing, when board level representation is missing or the employee numbers do not qualify for such, then the following options should be considered:

- The employees and management should agree on local and or company level how to establish executive participation to fully benefit from the mutual dialogue and feedback from the employees.
- The employees and management should also agree to establish a cooperation in the form of for example a group consisting of employer and employee representatives for a continuous and ongoing dialogue.

Both can be used in parallel and even when executive participation exists by legal requirements. The legal requirement in Finland ensures the existence of such cooperation(group) in any case when employee numbers exceed 20. The executive board level or executive management team representation comes in addition to this. The matters dealt with are also somewhat different depending on the participation level. The executive participation is normally not as detailed as it can be on lower levels of participation. On the other hand, executive participation ensures participation in the decision making.

Benefits from executive participation

In Finland, the executive participation can be based either on legal requirements or on a mutual agreement. The purpose is in all cases to have a fruitful dialogue that benefits employers as well as employees with the purpose of increased success.

- Employers will have a direct feedback with the best arguments from the employees as employees in many cases have such knowledge that may be harder to spot for the management.

- Employees will be able to participate in the decisions concerning them. This will provide important insight in how and why certain decisions have been made, especially in hard times. This will also provide a feedback channel towards the employees that will benefit everyone.
- The cooperation will not restrict the ability and rights of the employer to make decisions. The employees that are part of the participation process are bound by confidentiality rules and at the end the management has the prerogative to make the decisions they deem to be right for the future of the company and for successful business.

(For a more detailed more information please visit the web page of the project <http://upperlevel.sima.org.pt/> presentation of Eng. Daniel Valtakatari's presentation)

▪ **Employees' Financial Participation**

Employees' Financial Participation is an important resource that has been more and more used. Even nowadays with the Pandemic crisis, and against all odds, this tool has been considered as a useful tool, tough in the form of bonus. Despite, in general, well accepted, the major concern regards the concept, the definition of «financial participation».

Having in mind the unseamed, shown by some, on this and amongst the different schemes available it has been decided to focus more of the gain sharing schemes as such is the most accepted model and the one that it is easier to introduce.

This scheme has gathered a good acceptance by most of the involved ones as an instrument that can reinforce I&C. On this particular and sensitive theme, it has been possible to count on the collaboration of Dr. George Tuthill, to whom we would like to thank for all his contribution and who have prepared a work on **Gainsharing, as an answer to increase Productivity, Reward and Dialogue!**

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Components of a Company:

The two important parties in the components of a company are the shareholders (owners) and employees who are central to the whole operation, though the others are also important. Without the initial and continuing service which the shareholders provide the labour factor would be less productive. It is essential that the investors take a long-term view and management must not be dominated totally by profit but in the protection of the rights of all components of the company. Survival demands profit but it must not be excessive resulting in the decline in standards of the conditions of the labour force.

Surely the true objective of owners and management is to ensure survival thus directly benefiting employees and long-term owner interests. What better way than Gainsharing.

Definition of Gainsharing:

It can best be described as a means of rewarding employees (including management) for exceptional performance and a pre-determined target based on sharing financial gains. A single measurement may be chosen or alternatively separate targets in areas such as quality, productivity, cost, and customer service may be identified. The key words in the definition are **exceptional performance** and **pre-determined target**.

It can, of course, be argued that Profit Sharing Schemes are all form of a gainsharing scheme. Gainsharing does differ as all gains and resulting pay outs are self-funded based on savings generated by improved performance. In a Profit-Sharing Scheme employee receive bonuses/shares but these are tied directly to the overall profitability of the company. The introduction of gainsharing for **all** employees will not only change the way in which a workplace is organised and heightens performance, but it adds value which we all must accept is critical. It will ensure an open and inclusive style of management which has a significantly beneficial impact on a company's bottom line, while a more restrictive, narrow style has a negative impact. Like all financial incentives, gainsharing puts everyone on the same side. It is not a "them" and "us" communication but an "us" which makes great inroads to social dialogue. Management should never underestimate the role of employee engagement in building an innovative and competitive organisation. Companies that are willing to take advantage of the workforce that feels involved and engaged find that change is not only possible but financially rewarding.

It must be clearly understood that gainsharing is not a substitute for any part of salary; it is a standalone payment when agreed targets are met without any alteration to the health and safety programme of the organisation. It should, on a tactical level, be viewed as a pay-for-performance initiative while on a strategic level used as a key motivational/reward system using employees' ideas and suggestions for improving overall company effectiveness.

Objectives of Gainsharing:

While the specific objectives of gainsharing may vary from company to company, the overall objectives of the scheme should be: -

- a) Encourage all employees to work closely with management to continually improve performance targets!

- b) Provide a mechanism through which employees can share in the savings generated!
- c) To motivate employees to act as if they owned the company.
- d) To create a focus on specific targets
- e) Greater production output with equal or indeed less input
- f) Eliminate waste (time, energy, materials)
- g) To have all participants work **smarter** than **harder**.

Role of Management in the introduction of a Scheme:

Management must accept that their buy-in, their visible commitment to change, is essential. They must commit to the principle that they are going to involve everyone in the organisation and must introduce high levels of consultation and of team working throughout the company and its representatives. They must ensure that those at the coal face always have ways of feeding back their ideas on how to improve the company's operation. Perhaps a change in culture to an open participatory style may be required and this may well cause some unrest. Some may see it as a diminution of their control and a vote of no confidence in their management style. It is essential to get across to them that they are in fact generating more power in the organisation by creating a platform for ideas.

Management must consider the following when discussing the introduction of a scheme: -

- 1) Is gainsharing a "fit" for the company?
- 2) Time – communications/meetings/marketing
- 3) Financial costs – salaries/advisors
- 4) Reporting system – an accurate, timely system to calculate the gain and track the performance of the plan.
- 5) Resources – sufficient for plan to evolve and be accepted.
- 6) Requirements for a successful transition to gainsharing
- 7) Inform and consult local Union Officials.
- 8) Invite outside experts to develop and sell the plan.

Potential Advantages:

In today's world of global competition, short product lives and high-quality requirements, research has shown that gainsharing not alone promotes a continuous improvement culture but greatly improves organisational performance. It is the product and technical knowledge of those workers closest to the work whose suggestions and advice will ensure the payback mechanism to them.

- Promotes a continuous improvement culture.
- Improves organisational performance.
- Employees see a "payback" mechanism.
- Can help to improve relationships between employees/trade unions and management.
- May assist in breaking down restrictive work practices.
- Introduces a sense of ownership and identity to the company.

Potential Disadvantages:

As in most reward schemes, gainsharing schemes may well enjoy an initial “honeymoon” period during which all parties are satisfied. Ongoing management is critical, and the scheme will require continuous review to meet its objectives.

It will be necessary to give advance notice that the “performance bar” may/will be raised annually to encourage employees to continue to find ways to increase efficiency to ensure on-going gains.

- They are prone to “free-riding”. An individual’s contribution may not be reflected in the bonus allocation.
- Complex schemes can be difficult for employees to understand.
- Complex multi-factor schemes can be difficult to administer.
- Should the initial targets be set too low it may well be that difficulties will arise when attempting to amend the scheme.
- Even where the target is not too low it will be difficult to reviews that target upwards.

Key Steps in Introducing Gainsharing:

- Who will participate?
- What performance measures will be used?
- Against what baseline will performance be compared?
- How will gain be determined and distributed?
- How will scheme be implemented?
- When will arrangements be reviewed?
- Information and consultation in constant base.

➤ Who will Participate?

This is a brief that requires thoughtful and intense dialogue and deliberation. Will the scheme be team-based, departmental, all employees in a particular category or company -wide? A minimum service level threshold is normal for new recruits – perhaps one year’s service or after satisfactorily completing their probationary period. The question of how non-unionised employees be treated is fundamental as again is the challenge as to the acceptance in a multi-union site of the same scheme to all groups. Decisions on absence, special leave and maternity leave must be considered and agreed.

Ideally, the scheme should be restricted to employees in one physical location. That way, participants can see a direct relation of their efforts to a possible pay out from the scheme.

Thought should be given to having Suppliers participate, albeit in a reduced pay out, as without the raw material being delivered on time and in good order the scheme will founder. Similarly, the despatch of the manufactured goods must be delivered in a timely and intact manner. As

such should the despatch be outsourced having the contractor as a participant might just prove prudent.

➤ **What Performance Measures will be Used?**

Which measures are critical to the organisation and have they accurate historical data as a model? Some targets to consider: -

- Quality
- Labour costs
- Labour productivity
- Waste
- Customer satisfaction
- Material usage
- Machine down-time
- Overtime reduction
- Absenteeism
- Re-work
- No health & safety issues

➤ **Against which baseline will performance be Compared?**

The baseline should be determined with reference to historical performance data. It is essential that the plan is simple – extraordinarily complex and technical plans lead to negative and sceptical response.

Not more than 4/5 Key Performance Targets (KPTs) should be introduced. The most common appear to be Productivity, Quality, Customer Care and Safety. The scheme should be capable of review based on the introduction of new machinery/equipment or indeed the development of new services processes.

The initial thresholds expressed in money terms should be reviewed. They should be set at efficient levels otherwise management will be paying large amounts for easy gains.

➤ **How will a gain be Determined and Distributed?**

Key Performance Targets (KPTs) may be weighted for payment purposes. This highlights the importance of certain measures to the company.

A split of savings is decided (% of savings to Employees; % to company and % to reserves). The ratio may be agreed at: -

50:50

60:40

70:30

Establishment of an agreed formula to divide the gains among the workforce is imperative. It could well be equal shares for all full-time employees and a pro-rata calculation based on hours worked and attendance for the remaining employees.

Payments should only be made to those people in employment on the relevant payment date.

Provision for the freezing of Gainsharing payments should be addressed if the Company is not profitable or runs into difficulties. Without this warning the withdrawal or amendment of the scheme could be extremely problematic.

Consider introducing a cash-based ceiling for payments under the Scheme.

There is, of course, a need to establish whether a gain exists by measuring performance versus target.

The timing of the payment should be included in the plan. A popular model is to calculate performance over a twelve-month period and make two annual payments. Perhaps Christmas and prior to summer holidays.

➤ **How will Scheme be Implemented?**

The favourable method is a joint management/union team which produces proposals for implementation. Having input from employees is essential as they will be key to the success of the scheme. It is key that all available options are considered and that the chosen option is the most effective in the scheme.

Communication is key as is the commitment of senior management to ensure the success of the scheme. It must be made perfectly clear that the introduction of gainsharing is not a simple “**pay for change agenda**”.

The scheme should be simple and easy to operate thereby reducing the workload in administering the scheme.

There is a need for a high level of trust between employer and workers/trade union representatives. An openness in communication / information /consultation sharing that will lead to a genuine understanding of the scheme.

- Resource the project sufficiently
- Consider all feedback following communication with all involved.
- Clarify the precise scheme objectives for the company.
- Identify potential benefits for participants.
- Training for all involved
- Develop a communication system for all involved.
- Establish a monitoring group – management/employees/union.
- Regular feedback for all by the monitoring group
- Simulate the operation of the proposed scheme.

Requirements for Success

1. Should be tailor-made for organisation.
2. Explain the concept.
3. Agree rules.
4. Targets should be reasonable, achievable, and trackable.
5. Potential pay-outs must be sufficient to ensure support from employees.
6. Regular communication – notice boards, email, meetings, intranet, videos
7. Provision for employees to highlight improvement ideas.
8. Performance measures must be accurate and reliable – build confidence.
9. Ensure that the introduction of a scheme will not raise employees pay expectations.

Conclusion

While Gainsharing is not universally beneficial, it may be appropriate in certain circumstances. There is no such thing as a standard plan, each organisation has a unique history, culture and set of procedures upon which its operating and policies are based. It is essential that the choice of Gainsharing as a reward option is taken having considered the full range of choices available. The choice of scheme must be based on the needs and circumstances of each enterprise.

Gainsharing is a key motivational/reward system which emphasizes using employee ideas and suggestions for improving overall organizational effectiveness. It encourages innovation, learning, risk-taking, training and teamwork, resulting in higher productivity levels. As ongoing communication is fundamental to the success of the plan, dialogue between employees, management and unions is certain to improve and develop.

It is essential that some form of tax concession be introduced in order that the pay-out from the plan is not totally liable to tax. Perhaps a per centage of the payment could be tax exempt.

Naturally, the introduction and management of a Gainsharing scheme would be far easier in a company – perhaps SME – where the number of employees is on the small side. However, this should not curb the establishment of a scheme by large organisations. Expert help is available to interested parties.

It is important and necessary that we stimulate discussion and promote thinking and research about Gainsharing. It can make dreams come true for workers, employers and for the economy of countries. Sharing such profits is capitalism in its best and truest form; profits will continue to be made but those who make the profits – the workers – share in the reward.

These schemes have been increasingly introduced within the multinationals, unfortunately with the crisis originated by the pandemic such schemes never have been formally applied and the exception are the SMEs.

Most of the partners have demonstrated to be highly interested in schemes as the one we have been addressing and such has been widely evidence in the different activities that took place during the execution of the project.

Our conviction was reinforced by the work carried out during the project and has been somehow consolidated within the pandemic, resulting in the application of this model to face this tremendous difficult period where the main obstacle has been that the introduction of these mechanisms has not been followed, during the implementation of such, of I&C.

The social partners involved have shown to be opened to the introduction of such schemes, as previously mentioned, but mainly at company level and some concrete obstacles to its' sectorial introduction has been raised once the partners, mainly seek the collective bargaining to approach wage matters.

However, and as referred, there are exceptions and having such in mind we do think that we should continue work. The potential is huge, to reinforce the connection and the I&C. In fact, we have had such conviction earlier, in the beginning of the project and what the pandemic shows is that in fact, as shown by the Irish partners, the application of these schemes, supported by the development of the social dialogue, in Ireland, in the actual crisis, evidence that this is an important and powerful tool in the implementation and promotion of I&C.

But we must make sure that the introduction and further development of these schemes must be more than just a figure in the payroll in the end of the month or year, in fact it should be a tool to strength the relation, via social dialogue enhancing the exchange of I&C.

We seriously think that this, as it is presented, and after a serious and careful work will be more and more used since the crisis arising from the COVID 19 Pandemic and having such in mind we have decided to add a chapter on this specific topic once we do think that this will play a fundamental role post COVID and in the transition period.

COVID and Financial Participation

Over the past year some employees have suffered greatly – loss of job, pay freeze or reduced pay. Endeavouring to pay mortgage/rent has caused severe problems for families and we must all work in partnership with Government, Trade Unions and Employers to ensure a stable economic recovery. We must acknowledge those employees who worked from home which was not an easy task. Quite a number had not only restricted space but had also to deal with home schooling with their children.

As we face the task of rebuilding decimated local economies advancing employee participation is essential to building an economy that offers financial security for all. It is with great hope that, because of the vaccines, we will see “light at the end of the tunnel” and we can all look forward to resuming a more normal life.

In the current challenging economic environment resilience has a vital role to play in economic recovery. Recovery is a challenge and is hindered by record levels of Government and personal indebtedness. Governments continue in their search for new initiatives to make significant contributions to future economic growth and recovery. It would be a mistake if this did not include the involvement of employees. There is no doubt but over the past year those employees who were laid-off, and those who retained their jobs while working from home, gave thought and consideration as to their role in the organisation and the potential for future development.

What better way for the introduction in the Organisation's Information and Consultation Scheme than the establishment of Workplace Innovation (WPI). This will bring together all parties – Employer, Employee and Trade Unions – and will, of course, be an essential factor for improvement of industrial relations.

Innovation may best be defined as the process of translating an idea or invention into good practise or service that will ultimately create value for the organisation. It must be at an economical cost and relate to the specific needs of the company. New ideas are generated which not only benefit the employer but also the suppliers and customers. Tapping into the tacit knowledge of employees can achieve “win-win” outcomes that simultaneously benefit both employer and employees.

It is frequently associated with creativity and ingenuity which may lead to something great. However, the true essence of a good idea lies in the tenacity, determination, and commitment of those who follow the idea through. People come up with ideas and solutions all the time but only innovators realise them. Failures and delays do occur and more than likely compromise. The idea must be based with the end user in mind.

Operations cannot stand still in today's rapidly changing world. To survive and thrive they must place innovation at the heart of their business and continually look at ways to do things better or differently and perhaps at cost savings. It is accepted that innovation is essential for success and growth. It is important for companies, and indeed countries, to be innovative both for economic growth and for industry to create more and better-quality jobs. Successful businesses constantly re-evaluate their products and services as they are aware that innovation is most important to their brand. This is done by means of consultation with employees, management, customers and possibly trade unions and supplier.

One can see how, using Information and Consultation, innovation played such a crucial and swift role in the development of the Covid vaccine.

Workplace Innovation (WPI) is a vital means of unlocking talent and know how. Involving and engaging employees in the workplace means being “open to change and partnership”. It enables employees to participate, through the programme of Information and Consultation, in organisational change in such a way as to improve the quality of their working life and organisational performance.

While the reason for introducing WPI has already been stated – enhancing efficiency, competitiveness, and innovation – one positive result seems to strengthen the position of employer and employee relationship often resulting in enhanced economic performance and a better quality of working life for all. It is built on a culture of consultation, openness, and trust with employees.

A fully innovative approach comes about because of building a capacity for partnership-led change and as such it is fundamental that Governments and Social Partners support this approach. It is people and not technology who create value from knowledge. Therefore, it is vital that these efforts be based on the principle of “investing in people”, that is a partnership and consultative approach to developing and transforming workplaces.

Consideration must be given to developing reward systems that encourage innovation, learning, risk-taking and teamwork, resulting in higher productivity levels. We must find a way to harness innovation with employee financial participation which will, no doubt, result in employees thinking like owners. There is no doubt that economies will turn around and employers need to be well positioned to take advantage of the upturn when it does come. The business environment has changed, and companies need to consider new approaches to employee remuneration. The success of any company is dependent on staff commitment and enhancing efficiencies and competitiveness.

There is a need to encourage fair and equitable means of employee financial participation, support these goals and provide a framework that could enhance the provision of share schemes for individuals and companies alike. The significant advantages associated with share incentives should not be overlooked.

The knowledge that employees have a financial stake in their company can not only benefit themselves but customers, investors, and the economy. It is accepted that companies who had introduced some form of employee participation had an excellent record of industrial relations, again using the Information and Consultation platform.

It is imperative that organisations establish a simple and manageable Information and Consultation strategy which, no doubt, will have a positive impact on job and financial security and productivity gains. One must remember that a successful enterprise protects communities.

▪ **New work forms**

This is, in fact, a new challenge that has emerged, and reinforced, by the actual pandemic situation and we are referring to the development of new work forms, new ways of render work. When the project has been presented, this was already one of the themes of debate that we intended to approach and deepen once this is a reality this was a reality with enormous growth potential and, now with the pandemic and the exponential growth in the use of new forms of work it makes even more sense to address this reality and establish the importance of information and consultation of workers in these conditions.

If in the beginning of this project this was a reality but not for all the partners and social stakeholders, now, as we all know, with COVID 19 pandemic this turned out a widely diffused reality and it has reached unprecedented numbers.

However, and before start developing a deep analysis on this chapter, we must first establish the focus of our analysis:

- 1 - New forms of work including what is commonly understood as platform workers such as Uber, call centers and many others such these ones.
- 2 – New work forms as in the sense of new forms of work organization such as telework, work on distance.

All these work forms have shown, as already stressed an incredible increase since the moment the project has been presented until presently.

Having mind that this varies from country to country, now and then, it is possible to verify that in the applicant countries this was not a major concern, a priority, in the beginning of the project this perception changed a lot specially on what concerns the second topic, and it became a concern to all the partners.

Such is quite visible in the agreements that have been reached by the partners, on this we can point out that this was already a matter close to the partners , in fact such was a concern in Nordic countries (Estonia mainly), also Portugal and Ireland, and in Malta.

We are aware that in several countries remote work has been imposed by the different national authorities and this implies not only telework as the development of a whole change in the work through the informatic means that allow working at distance.

During the execution of the project, we could follow the gradual intensification of the use of these means, however, and due to the pandemic still in course actively, it is not possible for us assess the impact this topic has in this project, because it is a process still underway, suffering changes, and impossible have a clear picture of the whole scenario.

1 - New forms of work including what is commonly understood as platform workers

On this regard, we have to say that the concept of platform workers and this quite new reality was not within the action range of the trade unions (in general trade union involved in the project were not present in this reality) even though more and more companies are being created dedicated to it.

Even so, we are aware of the trade union presence and of the need to regulate this work and the introduction of collective bargaining was on the agenda of some trade unions, and in fact during this period there has been a development of this reality.

Making the link between this reality and I&C we do support that will be an important tool to be created and developed despite the need to adapt it, especially in terms of communication.

Just I&C without an interaction with the remaining co-workers does not seems to work. In countries such as the Nordic countries, having into consideration their systems in force we can easily understand the developments that have been made, despite the difficulties reported.

In countries with low levels of I&C this will be a major challenge and such it will be needed a new reflection in terms of associating different aspects such as the establishment of networks to allow a better communication, to better interact, the protection of the individuals' freedoms, among others.

The partners have also agreed that for the development of real measures on this the best way to achieve such goal would be through collective bargaining. Collective agreements, either a company or a sectorial agreement depending on the reality, is indeed the path to be able to better regulate this issue.

Having into consideration the increasing number of such companies over the past years , and the pandemic crisis came to reinforce their presence in the labor market. There have been already some actions in that sense, but it is necessary to be more focused on this realty.

2 – New work forms as in the sense of new forms of work organization such as telework, work on distance.

In what concerns new forms of work, despite not being too far from the previous realities , especially on the dimension that have been reached after the pandemic, this reality has been in the center of attention in countries such as for instance Portugal, where it was possible to clearly see two realities: companies where this was already regulated and in place and the companies where this was not regulated and in this last case the step into these new work forms have been urged by the imposition due to the Corona Virus crisis and the measures in place to control the pandemic.

We had similar experience on the electrical sector where this has been regulated by collective agreement and was disseminated in big companies such as Nokia, Siemens, Microsoft. To these companies' pandemic did not meant significant changes once it only enhanced the continuation of what they had before (telework, remote work).

Of course, that it also depends on the sector in question, once in some sectors, such as the IT within the electric sector, all this was already foreseen and the companies working in that environment have been doing so previously and I&C was already a reality that only has been stressed by the pandemic.

As for others the pandemic and the need to extend these new works form to contribute to control the pandemic, urged the need for further and more extensive regulation that, until so far, only existed scarcely or only by collective agreements. This also pushed companies to define internal regulations allowing I&C work with regular meetings between partners, improving communication inside of the company.

The big problems arise when companies where such never happen and had to start implementing this on a large scale with companies closing most of departments and having almost all their employees working from home, where this was the only possible way to work.

Linked to all these new challenges I&C emerged to play an especially important role allowing not only to clarify and adapt the needs of the companies and the employees as well to follow up the developments, contributing to overcome some of the difficulties caused by this radical change.

As this was not only a problem, a challenge for Portugal and the Portuguese partners, this has been also widely felt by the partners and stakeholders of the project. It was possible to assist to a major concern of the partners on this respect and often changes have been made with I&C and the difficulties continued to emerge underling the need to have a general regulation of all these aspects once such did not exist at national level.

Strongly linked to this issue we have the digitalization and I&C, and these are matters that some of the partners have already started to work on it, via working groups, SSDC but there is still a huge gap amongst the countries and the partners on this. Such is even more evident when establish the comparison between EU member states and candidate countries and therefore we have tried to make a difference with the project. Despite knowing that we were able to contribute somehow to improve the situation we are aware that there is much more to do.

Undoubtedly, I&C in the different stages, namely during the introduction and development of digitalization is a milestone but this must adapt to the different realities and there is the need for a huge work to be carried out by the social partners in that sense.

This pandemic just speeds up this need and once implemented it will be needed to be accompanied. This is, definitively, a never-ending process. If not, it may lead to a complete non application of I&C.

If one of the most important roles played by I&C is to contribute to the adaptation not only to these realities and others that may arise there is one where I&C can play a particularly important role – anticipation. If it is widely recognized that I&C is important to deal with difficult times, to contribute to solve problems and minimize effects, its' role is even more important in non-conflict moments, contribute to anticipate needs and changes and to prepare the way to face those needs and changes that will come to prevent more critical situations and to be prepared for inevitable changes.

Usually seen as having a key issue when facing crisis' situation, either an actual crisis or an expected one, the partners agreed that I&C should have a much more involvement role in the sense of has been referred often during the execution of the project that it is needed a continuous, a regular, work of I&C. If there is not that connection, much of aims and contents of the Directives will lose their impact and their useful effect and just appear for crisis situations. One thing that this pandemic situation has brought into the discussion is the need of adaptation to the unexpected needs and the importance of having prepared that beforehand.

In that sense it is our understanding that I&C' role is much wider and much more important and there is the need to keep on stressing and evidencing this importance and role.

In what concerns the possible role of I&C in times where the company does not deal with any difficulty, the unanimous answer from the partners has been in the sense that I&C constitutes a useful resource. On the aims of I&C, on these cases, the partners have different opinions and suggestions. For instance, the Maltese partners support that training on I&C as for the involved ones is essential so that this tool can be more present and effective, especially if we take into consideration, as it happens in many other countries, the economic tissue mostly covers SMEs. Employers must be aware on how to apply it in all its dimension and like this will improve and enhance the efficiency of the Directives. This has been clear that this work is need not only as it concerns the national I&C as for the cross-border mergers' Directive.

There is a range of matters that have been approached despite not being part of the targeted matters of the project and that can be, indeed, be in line with the importance of regular I&C, such as: Green jobs and digitalization.

In some specific sectors such the auto sector, the ongoing process for switching to electric cars (and the same for the shipbuilding sector), with the so needed analysis of the markets or the possible market and the specific target consumers have led a tremendous change in the sector and the need to adapt companies and working methods. Such demanding challenge drew attention to the importance of anticipate scenarios, in a long run, to prepare for the changes. And once again, I&C do play an important role in this anticipation needs.

The proposal of the partners has been in the sense that it is recognized the importance of the role played by I&C in this anticipation environment underlining the need for development of this tool, enhancing the importance of training. As previously referred, it is recognized the importance of I&C to happen on a regular basis within a non-conflict situation towards the development of joint actions.

It has been clear that to achieve these goals there is the need for the interaction between national I&C and I&C in a cross-border level, namely within bodies such as the EWCs or if it is the case, within the scope of the Directive 2005/56/EC.

Once that, and in what concerns the multinational companies, often most of the decisions are taken outside of the national field, the articulation with other bodies with a view to strengthening the support within such process.

- **The employees' involvement in cross-border mergers and limited liability companies**

On this topic, we had the pleasure of counting on the collaboration of Dr. Marcus Meyer who gave us his report, based on his vast experience on the development of this reality.

In recent years, it has been possible to monitor the increase in the number of cross-border mergers, and there has been an intensification of numbers about this reality and the number of employees affected by these processes.

As the numbers are clear in the study, even if after the pandemic it could mean some stagnation, monitoring the evolution of the situation is still necessary.

In the opinion of the partners, what is missing is data on I&C related to these processes as it would be important to collect more accurate information on the state of I&C. This is because the potential of the different European legislative acts is enormous, especially if we consider that Directive 2005/56/EC is no longer in force once it is expired. Member States had until the end of 2017 to transpose this Directive into their domestic law.

Currently, Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions is in force.

It is worth highlighting the concern of the European legislator to ensure, more concretely, the importance of ensuring that workers' rights to information and consultation in the context of cross-border operations are fully respected. Information and consultation of workers in the context of cross-border operations should be carried out in accordance with the legal regime provided for in Directive 2002/14/EC. To that end, workers' representatives provided for under national law or, where appropriate, in accordance with national practice, should also include any relevant bodies created under Union law, such as the European Works Council, established under of Directive 2009/38/EC, and the representative body, created under the terms of Council Directive 2001/86/EC.

In addition, Member States should ensure that workers' representatives enjoy, in the exercise of their functions, sufficient protection and guarantees to enable them to properly carry out the tasks entrusted to them.

For this purpose, a greater and more intense participation of workers in the merger processes stands out, namely, through the attribution, in certain circumstances, of I&C rights.

In the countries involved, most of economic tissue is based on SMEs and it is in this field where the greatest difficulties in the implementation of I&C are felt, that is why these diplomas are of particular interest and, in this aspect, we highlight the need presented by the Maltese partners in the sense of that more information and joint training are needed for the development of I&C.

For many of the countries involved, the relevance of these legislative acts lies in the characteristics of the countries involved, since their economic tissue is based, as already mentioned, on SMEs and does not host the headquarters of multinational companies. To which are added the difficulties felt regarding the implementation of an effective I&C.

Therefore, there has been a general appeal to work on these Directives only.

In addition, we are aware of the increasing number of these operations and feel the need to focus on I&C and employees' participation, at national level, so that they can be successfully developed through processes of cross-border transformations, mergers, and divisions .

- **Framework / Transnational agreements**

On this topic undoubtedly emerges as relevant the voluntary agreements as an important tool that can strength the levels I&C and this may be one of fastest way to implement and improve I&C or go even deeper and even further in some concrete cases. This is particularly important once this can be extended to a vast number of companies conceding I&C a true transnational dimension.

Of course, that we are aware that this is not without difficulties that might arise in the event of not respecting such agreements. Once we do think that this might be object of a more detailed approach and perhaps be the basis for a future work, we will focus on the possible advantages arising from these tools.

Just a remark because, on this, we have decided to refer to both nomenclatures as in the same concept, to know the Framework agreements – as within the scope of EU – and Transnational agreements – as within Europe but outside the space of the UE. This because the project involves both EU member states and applicant countries and as such, we think the best approach is to refer these realities as within the same concept. And use it to promote I&C in a faster and wider way.

As we have noticed, on several occasions, most of the countries involved have a low level of I&C, EU member states and candidate countries, and even though, in what concerns the EU member states, they have already transposed into the national law the European legislation on I&C and, as far the candidate countries most of them have already included in their national legislation the dispositions on I&C, there are notorious difficulties of implementation.

We think that an action at this level and there are some examples of that in a transnational dimension could be in fact a key aspect for a quicker development of the level of I&C in all the companies of a group with a transnational dimension and in a transversal way.

Also, the importance of having such agreements gain a whole new importance in the event of existing suppliers and when many of these agreements are also applied to them which makes the rules to be applied to whole the ones somehow linked to the group. Some of these tools cover the relation with suppliers establishing minimums that those must guaranty too.

Many of the countries involved in the project host many supplier companies and by having also those companies attached to those agreements it is seem like incredibly positive thing in a way that such could led to the harmonization of the condition in general and on I&C.

Considering that the great majority of companies covered by the project are SMEs these emerge in disadvantage if compared with the multinational companies with a transnational agreement to be applied to all. On the one hand, it is also possible to notice that the existing big companies with the headquarters located in one of the involved countries in the project have demonstrate interested in this possibility, on the other hand some of them have such instrument but it does not cover the issue of employees' involvement.

If we take as an example a company – Coindu – a Portuguese company being present in several countries and regions, while keeping its head office in Portugal. This company with presence worldwide has an International agreement also covering the suppliers that better regulate the relation with customers and suppliers, enabling them to affirm themselves more and more as a business partner and the possibility to include employees I&C would be a great achievement if it would be possible to achieve.

One question that we have come up when approaching the issue of the transnational agreements, at least the ones assuming a worldwide dimension, is that they are covering aspects that are not called into question in within the EU member states nor even EU applicant countries. While of being import for the remaining countries we do think that for them to be adequate within the EU member states and candidate countries it will be needed to focus on the importance of also target these countries.

As for the applicant countries involved their response to this has been quite positive.

In what concerns the applicant countries most of them have reported to the project the fact that many of the instruments created by the EU, such as the EWCs, do not involve them and this possibility would, for sure, be a useful tool to strength the level of I&C and would prevent that the same company to have different behaviors depending on its location.

- **The role of the Social dialogue committees**

Established since the late 90's, after an EU Commission decision, these bodies aim, within a sectoral scope, to promote the dialogue between the social partners in the sectors at European level, intending to be central bodies for consultation, joint initiatives and negotiation.

With the years and the work and efforts of all the ones involved these bodies are more and more playing an important role on several matters, namely training and jobs classification, and role for the green jobs and even touching some collective bargaining matters.

Despite this growing importance and the outcomes resulting from their work it is a fact that not all the SSDC gather the same involvement of the partners.

One of the remarks that have been presented to the work is that the presence of representatives from the applicant countries is scarce and it has been stressed the importance of enlarging that possibility, at least as an observer. This suggestion has been present by many of the partners.

The project's partners recognize the relevance of these bodies and welcome such initiatives, but they call the attention to the fact that despite the developments achieved and the measures taken they only be succeed if it is possible to articulate I&C with such. Despite being possible to go through the national regulations or even through an EU legal act such a Directive, such would be only considered as minimum this having in mind the existing differences on this respect at European level.

On this aspect, and having into consideration, the concerns expressed by the involved partners and stakeholders, we do think that the first thing is to assure a wider presence of the social partners and with this also meaning involving the candidate countries, only like that will assure that all the measures and achievements obtained will be applied by all, within the same conditions always taking into consideration the differences at national level.

We strongly think that more and more these bodies are a privileged tool to approach important matters and a discussion forum by excellence and that despite the pandemic these bodies kept on working, tough online, which is remarkable. However, such lead to some more difficulties.

▪ **Company cases**

The project involved the collaboration of several companies, from different countries, that accepted to share their experience and points of view on the main topic of the project, i.e., employees' involvement – I&C and Participation and we want to share some of those cases.

As an overall assessment it has been noticed that all the companies agree, as we have been referring since the beginning of this work, that I&C can be, or it is in fact, a useful mechanism and play an important role in anticipating and overcoming crisis' situation and such was reinforced by the pandemic. We have had learnt from the general economic crisis in 2008, where Portugal has been one of the most affected countries and with the present crisis caused by the COVID 19 pandemic it was the time to put into practice what were the lessons withdrawn from then.

On this we definitively we must point out that there are some cases that deserve to be referred as cases of anticipation and articulation of I&C with other matters which has allowed to, in 2020, to keep on working and achieved results that, cases, even exceed the ones obtained in 2019.

Company – PSA, Mangualde – Portugal. This company dedicated to the car industry had to close, as many others, in March 2020 due to the lack of supply. In the meantime, and profiting that

closure, after informing and consulting the workers representatives', has been decided to change the productions' lines to increase productivity, to create even better job conditions in terms of working conditions, to work faster with less pain and injuries. With the involvement of some workers this process has been successfully introduced. As many other companies this one had also to be adapted to the COVID reality and the new safety rules and working methods and on this the I&C procedures have been a useful resource allowing the company to rapidly put into action the new plan and immediately increase production and inclusive the production of a new model.

Company – Coindu, Arcos de Valdevez – Portugal. COINDU's core business is the production of seat covers. Today, COINDU has over 6.000 employees worldwide and is known amongst the major brands for the quality of its products and the flexibility of its manufacturing process.

The company uses the information and consultation mechanisms on a regular basis and assures the importance of assuring the employees' involvement. This a company that was able to overcome different critical situations not only the one caused by the pandemic as well previous ones related to the changes occurred in a major economic crisis that hit Portugal and the Portuguese economy during the first decade of the 21st century and how it was able to tackle the continuous changes and the important role played by the employees' involvement and the I&C mechanisms. This company started a process of transnational agreement with the suppliers, and this is indeed a good starting point to introduce and to improve the conditions and the involvement of the employees.

Company – SILAMPOS, Oliveira de Azeméis – Portuga. SILAMPOS is a Portuguese company that was founded in 1951 in Cesar, in the municipality of Oliveira de Azeméis, in the north of Portugal and it is dedicated to the production utensils for the home in general and for the domestic or industrial table and kitchen and leads the national market and being a reference in the sector at an international level. This is a company that promotes responsible employability, guided by respect for human rights and the development of ethically responsible working conditions as well as the development of the skills of its employees, training and sensitizing them and making available all the information and resources. It is quite interesting and important the company's experience on the importance it gives to the employees' information and consultation and their role in the company stressing the importance of developing social dialogue to overcome difficult situation, pointing out the difficult situation the country, at all the levels, as well the rest of the world, is facing due to the pandemic. The company stressed the need to strengths this to find new solution, preventing unemployment and promoting a secure and health work environment.

Company – SIMOLDES, Oliveira de Azeméis - Portugal. This is a Portuguese company, a multinational company, a world reference in molds, mainly for the car industry, and this is a remarkably interesting company because it covers, in just one company, different sectors (also the plastics). Due to this truly multisectoral environment it requires even more demanding employees' involvement. And the Information and Consultation mechanisms assume an important role. It has been stressed by the company underlines the importance of such tools and that has been relevant to the development of the company and business. The company also welcomed actions as the present one, reflecting the importance of the theme and the need to implement them in the field. With the pandemic, the information and consultation of the

employees plays an even more significant role in what concerns the preparation of the company (business and employees) to the new challenges and of the contingency plan of the company.

Company - ENSTO ENSEK AS – Estonia. This company develops and manufactures smart electrical appliances for electricity distribution networks and buildings. This is a company that support the actual I&C model in place though being aware, and not excluding such possibility that improvements might be done to make the procedure more effective.

Company – Pantalesco – Malta. Headquartered in Msida (Malta), Panta is a three-generation strong, privately owned family business. For over 50 years it is specialized in mechanical and electrical engineering. It has evidenced the relevance of guarantying the employees' involvement is a path to the success. It has been strongly evidenced the relevance that exists, within this company, and the benefits that arise from the dialogue and that it is important to overcome difficulties to act to anticipate problems, conflicts or even to improve situations.

We would like to address to all the ones involved our most sincere appreciation for their overall engagement to the work and collaboration, specially and due to the pandemic, having in mind the changes and adaptation needed to tackle this. We genuinely think that the work has been a success and incredibly positive and we have gathered all the conditions to go even further.

Main Achievements

Focusing on all the aspects of the project, it has been possible to conclude both joint agreements and/or Unilateral statements between the different social partners involved. It was possible, inclusive to conclude joint agreements between partners from different countries enhancing the true transnationality of the action. We would like to underline the fact that both the social partners as social stakeholders have been quite involved and open to the project and to for future actions for help the development in the field.

Albania – it was possible to conclude a **Bilateral Joint Agreement** between Biznesalbania and BSPSH.

Bulgaria – It has been concluded a **Unilateral Statement** by Syndical Miners Federation – Podkrepa.

Estonia – it has been possible to conclude a **Bilateral Joint Agreement** between Estonian Union of Industrial and Metal Workers Trade Union and Federation of Estonian Engineering Industry.

Hungary – it has been possible to conclude a **Bilateral Joint Agreement** between Hungarian Trade Union of Mine, Energy, and Industry Workers and SIMA – Sindicato das Indústrias Metalúrgicas e Afins (Portugal).

Latvia – it was possible to conclude a **Unilateral Statement** by MASOC – Association of Mechanical Engineering and Metalworking Industries of Latvia.

Malta – it has been possible to conclude a **Bilateral Joint Agreement** between MEA – Malta Employers' Association and SIMA – Sindicato das Indústrias Metalúrgicas e Afins (Portugal) and a **Unilateral Statement** by GWU – General Workers' Union.

North Macedonia - it has been possible to conclude a **Bilateral Joint Agreement** between Business Confederation of Macedonia (BCM) and Trade Union Organization of SME (OPACME).

Montenegro - it has been possible to conclude a **Bilateral Joint Agreement** between UPCG – Montenegrin Employers' Federation and USSCG – Union of Free Trade Union of Montenegro.

Portugal – regardless, the fact that was not possible to conclude an agreement it has been possible to negotiate the inclusion of a set of rules and procedures in the collective bargaining round.

Serbia - it has been possible to conclude two **Unilateral Statements**, one by Autonomous Metal Workers' Union and a second one by Serbian Association of Employers.

All the Joint agreements and Unilateral Statements can be consulted in Annex.

Anexo / Annex

ALBANIA

ACORDO CONJUNTO BSPSH/Buzniess (Albanês)/(Inglês)



JOINT AGREEMENT BSPSH/Buzniess (Albanian)/(English)

Nr Prot 19/09



Bashkimi i Sindikatave te Pavarura te Shqiperise dhe BiznesAlbania (Bashkimi i Biznesit Shqiptar, nën projektin «Niveli i Sipërm - Angazhimi i Përbashkët Social - si Çelësi i I&C dhe Pjesëmarrjes dhe Sfidat e tyre»,

Duke pasur parasysh rëndësinë e rolit që luajnë mekanizmat e punonjësve të Informacionit dhe Konsultimit në nivelin Kombëtar;

Duke marrë në konsideratë të drejtat ekzistuese të I&C të punonjësve, të parashikuara nga ligji kombëtar dhe që synojnë të sigurojnë më mirë efikasitetin e të drejtave të punonjësve në informacion dhe konsultim,

Duke pasur parasysh nevojën për të përmirësuar përkufizimet ekzistuese aktuale të Informacionit dhe Konsultimit të Punonjësve për të përmbushur më mirë nevojat e të dy punonjësve dhe kompanive,

Duke pasur parasysh potencialin pozitiv të pjesëmarrjes së punonjësve në menaxhimin ekzekutiv si një burim informacioni shtesë dhe konsultimi për vendimmarrjen më të mirë të mundshme në kompani dhe si për krijimin e një bashkëpunimi për një dialog të vazhdueshëm.

Duke pasur parasysh nevojën për të punuar drejt këtij qëllimi dhe të përdorim kontratat kolektive si një mënyrë të rëndësishme për të arritur këtë qëllim,

Partnerët bien dakord për sa vijon:

- Të drejtat e informimit dhe konsultimit

Përkufizimet

Partnerët bien dakord mbi nevojën për të pasur një përkufizim më të saktë të koncepteve në mënyrë që të jetë në përputhje me ligjin Evropian, por gjithashtu ata bien dakord që një mekanizëm i tillë, në mënyrë që të zbatohet më mirë, duhet të përfshijë:

- Informacion: nënkupton transmetimin e të dhënave nga punëdhënësi tek përfaqësuesit e punëmarrësve në mënyrë që t'u mundësojë atyre që të njohin veten me temën dhe për ta shqyrtuar atë; informacioni do të jepet në atë kohë, në atë mënyrë dhe me përmbajtje të tillë që është e përshtatshme për t'u dhënë mundësi përfaqësuesve të punonjësve të ndërmarrin një vlerësim të thelluar të ndikimit të mundshëm dhe, kur është e përshtatshme, të përgatiten për

dhënë në lidhje me masat e propozuara me të cilat ka të bëjë konsultimi, pa paragjykuar përgjegjësitë e menaxherit, dhe brenda një kohe të arsyeshme, i cili mund të merret parasysh brenda ndërmarrjes në shkallë të Komunitetit ose grupit të ndërmarrjeve në shkallë Komunitare;

Përfaqësuesit e sindikatës, në nivelin e ndërmarrjes (administruesi i dyqanit) ose zyrtari i sindikatës, ka të drejtën e informimit dhe konsultimit, përveç çështjeve të përfshira në negociatat kolektive, për çështjet vijuese:

Informacioni dhe konsultimi do të mbulojnë:

- (a) informacion mbi zhvillimin e fundit dhe të mundshëm të veprimtarive të ndërmarrjes ose institucionit dhe situatës ekonomike;
- (b) informacion dhe konsultim për situatën, strukturën dhe zhvillimin e mundshëm të punësimit brenda ndërmarrjes ose institucionit dhe për çdo masë parashikuese të parashikuar, veçanërisht kur ekziston një kërcënim për punësimin;
- (c) informacion dhe konsultim mbi vendimet që mund të çojnë në ndryshime thelbësore në organizimin e punës ose në marrëdhëniet kontraktuale;
- (d) informacion dhe konsultim për nevojat e ndërmarrjes në lidhje me trajnimin me qëllim përcaktimin e nevojave për trajnim të punëtorëve të ndërmarrjes;
- (e) informacion dhe konsultim për nevojën e ndërmarrjes në përdorimin e formave të reja të punës, siç është puna në platformë.

Informacioni do të jepet në atë kohë, në atë mënyrë dhe me përmbajtje të përshtatshme që të mundësojë, në veçanti, përfaqësuesit e punonjësve të kryejnë një studim adekuat dhe, kur është e nevojshme, të përgatiten për konsultim.

Konsultimi do të zhvillohet:

- (a) duke siguruar që koha, metoda dhe përmbajtja e tyre janë të përshtatshme;
- (b) në nivelin përkatës të menaxhimit dhe përfaqësimit, në varësi të temës që diskutohet;
- (c) në bazë të informacionit të dhënë nga punëdhënësi dhe të mendimit që përfaqësuesit e punonjësve kanë të drejtë të formulojnë;
- (d) në një mënyrë të tillë që t'u mundësojë përfaqësuesve të punonjësve të takohen me punëdhënësin dhe të marrin një përgjigje, dhe arsyet për atë përgjigje, për çdo mendim që ata mund të formulojnë;
- (e) me synimin për të arritur një marrëveshje mbi vendimet.

Procedura:

Përfaqësuesi i sindikatës i kërkon me shkrim, përkatësisht, organit të menaxhimit të shoqërisë ose institucionit elementet e informacionit në lidhje me çështjet që mbulohen nga e drejta e informacionit.

Informacioni sigurohet me shkrim, brenda tetë ditëve, ose 15 ditë nëse kompleksiteti i tij e justifikon atë.

Në rast konsultimi, punëdhënësi kërkon me shkrim mendimin e përfaqësuesit (sve) të sindikatës, i cili duhet të lëshohet brenda 10 ditëve nga marrja e kërkesës, ose brenda një periudhe më të gjatë që jepet duke pasur parasysh shkallën ose kompleksitetin e çështje.

Nëse përfaqësuesi i sindikatës kërkon informacione përkatëse për çështjen e konsultimit, periudha e përmendur në paragrafin e mësipërm fillon nga sigurimi i informacionit, me shkrim ose në një takim në të cilin ndodh kjo.

Kur përfshihet vendimi i punëdhënësit për të ushtruar menaxhim dhe kompetenca organizative që dalin nga kontrata e punës, informacioni dhe procedura e konsultimit duhet të kryhen nga të dy palët në mënyrë që të arrihet, kur është e mundur, konsensusi.

Krijimi i një organi, në nivel sektorial, i përqendruar në Informimin dhe Konsultimet e Punonjësve, që synojnë të monitorojnë dhe kontrollojnë përputhjen e procesit me legjislacionin, për të mbledhur kritikë, sugjerime dhe pretendime nga të dy punonjësit, përfaqësuesit e punonjësve dhe kompanitë dhe për të vepruar, në mënyrë të paanshme, si ndërmjetës përballë konflikteve, duke ofruar këshilla ligjore për të gjetur zgjidhje për konfliktet.

Ky organ synon të veprojë si një organ mbikëqyrës dhe si një burim i parë në rast të nevojës për të sfiduar konfidencialitetin e informacionit ose refuzimin e sigurimit të tij ose konsultimeve. Duhet të jetë një procedurë urgjente e natyrës për të siguruar efektin e dobishëm të vendimit. Ky organ do të kryejë funksionin e zgjidhjes së konflikteve ekzistuese ose të ardhshme.

- E drejta e pjesëmarrjes së punonjësve

Partnerët bien dakord për rëndësinë e së drejtës së pjesëmarrjes së përfaqësuesve të punëtorëve në zgjidhjen e konflikteve ose shmangien e konflikteve. Për më tepër, kur punonjësve u ofrohet mundësia për të marrë pjesë në vendimarrje do të çojë në rezultate më të mira në biznes, menaxhim dhe burime njerëzore.

Partnerët bien dakord se është e rëndësishme të vendoset një bashkëpunim për një dialog të vazhdueshëm dhe të vazhdueshëm dhe duke pasur këtë si bazë ata bien dakord për krijimin e një ekipi ekzekutiv të menaxhimit brenda nivelit të negociatave kolektive (në nivel kompanie dhe / ose sektori).

Kjo do të lejojë që të sigurojë një kanal reagimi ndaj punonjësve që do të përfitojë të gjithë.

Kjo nuk do të kufizojë aftësinë dhe të drejtat e punëdhënësit për të marrë vendime.

Punonjësit që janë pjesë e procesit të pjesëmarrjes janë të detyruar nga konfidencialiteti.

Duke pasur këtë mendim, partnerët bien dakord që punonjësit kanë të drejtë të marrin pjesë në procedurën e marrjes së vendimit. Për një qëllim të tillë partnerët bien dakord për krijimin e një ekipi menaxherial ekzekutiv.

Ky ekip ka të drejtë të marrë pjesë, çdo tre muaj, në takimin e menaxhmentit të një kompanie.

Për një qëllim të tillë, ekipi i menaxhimit ekzekutiv ka të drejtë të:

- a) Informacioni dhe konsultimi paraprak për çështjet që do të trajtohen në takim, përkatësisht për formulimin e planeve ose projekteve të ristrukturimit;
- b) Paraqisni sugjerime, ankesa ose kritika tek Organet organe kompetente të kompanisë
- c) Takohet me organet përgjegjëse për punën përgatitore të ristrukturimit;

Ekipi i menaxhimit ekzekutiv do të tregohet nga përfaqësuesit e sindikatave / punonjësve dhe do të përfaqësojë një të tretën e organit të menaxhimit të kompanisë.

Procedura dhe emërimi i përfaqësuesve të punonjësve duhet të bëhet përmes negociatave kolektive.

• Pjesëmarrja Financiare e Punonjësve

Partnerët e shohin prezantimin e Pjesëmarrjes Financiare të Punonjësve si një mënyrë e rëndësishme për të arritur qëllimet e përfshirjes së punonjësve dhe një mjet i dobishëm për përmirësimin dhe zhvillimin e angazhimit të partnerëve socialë dhe dialogut social në nivelin e ndërmarrjes.

Duke pasur parasysh situatën e tanishme pandemike në të cilën po jeton bota, partnerët bien dakord që prezantimi i një të tillë është një mënyrë për të rishpërndarë më mirë pasurinë ndërmjet punonjësve dhe kompanive dhe një mënyrë për të përmirësuar angazhimin duke pasur si qëllim tejkalimin e vështirësive dhe për të promovuar zhvillimin të kompanive dhe për të ruajtur fuqinë punëtore dhe punësimin.

Partnerët tregojnë se prezantimi i skemave të ËFP, të tilla si «Bonus» (skemat e ndarjes së fitimit) si një mënyrë për të arritur këtë qëllim.

Kjo është veçanërisht e rëndësishme brenda ndërmarrjeve të NVM-ve, ku punonjësit dhe kompanitë duhet të punojnë së bashku për përfitimet e tyre.

Për një qëllim të tillë partnerët bien dakord që mënyra më e mirë për të debatuar dhe prezantuar këtë është brenda negociatave kolektive pasi kjo të mund të ndikohet nga kushtet individuale të secilës kompani dhe / ose degë.

- Forma të reja pune

Duke pasur parasysh nevojën për të garantuar barazinë e të gjithë punëtorëve jostandardë dhe punëtorëve në kompanitë e platformave,

Partnerët bien dakord për përdorimin e formave të reja të punës, siç është puna në platformë, nëse kryhet në përputhje të plotë me instrumentet ndërkombëtare dhe evropiane për njeriun, sindikatën, të drejtat sociale dhe sigurinë dhe shëndetin në punë.

Punonjësit e mbuluar nga formularët e rinj të punës duhet të kenë akses në informacion dhe konsultë, mbi një bazë të rregullt dhe brenda asaj që përcaktohet për punëtorët që punojnë personalisht në vendin e tyre të punës. Nëse është rasti, dhe për të respektuar masat e sigurisë në vend për shkak të COVID 19, të tilla mund të ndodhin duke përdorur mjetet dixhitale të disponueshme, përkatesisht platformat dixhitale.

- Skenarët e pritjes

Partnerët bien dakord që informacioni dhe mekanizmat e konsultimit të punonjësve luajnë një rol të rëndësishëm në parashikimin e skenarëve dhe në gjetjen e zgjidhjeve për sfidat përpara duke punuar në të paraprakisht.

Për një qëllim të tillë, partnerët gjithashtu bien dakord që trajnimi, në një mënyrë për të parashikuar nevojat e ardhshme) të luajnë një rol të rëndësishëm, siç janë nevojat për trajnim, rikualifikimi, aftësitë e azhurnimit.

- Situata pandemike - COVID 19

Bota po përballet me një krizë të rëndë sanitare të paparë për shkak të COVID-19. Partnerët bien dakord mbi nevojën për të marrë masa për të siguruar individë dhe ekonomi. Me qëllim të tillë në mendje, partnerët bien dakord për rëndësinë e privilegjimit të një dialogu social cilësor si mënyrë për të siguruar vazhdimësinë e operacioneve dhe për të mbajtur vendin e punës. Masa e nevojshme duhet të merret brenda fushës së negociatave kolektive.

Për një qëllim të tillë partnerët bien dakord për rolin e rëndësishëm që kanë luajtur mekanizmat e informacionit dhe konsultimit të punonjësve.

Partnerët socialë duhet të luajnë një rol të rëndësishëm në masat që do të merren jo vetëm për të parandaluar pasojat sociale dhe ekonomike, si dhe për të nxitur rimëkëmbjen e kompanive, sigurimin e punësimit dhe krijimin e vendeve të sigurta të punës me kushtet e nevojshme të sigurisë, krijimin e një sigurie dhe mjedis i shëndetshëm.

Duke pasur parasysh këtë, partnerët bien dakord për rritjen e rolit të informacionit dhe konsultimit të punonjësve jo vetëm për të gjetur zgjidhje për problemet e ngritura nga situata pandemike pasi është një mjet shumë i rëndësishëm për të parashikuar masat / nevojat dhe për të përgatitur punën në të ardhmen . Situata aktuale në të cilën po jetojmë ka treguar se ajo nuk ka

qenë e përgatitur mirë dhe ishte e nevojshme të përballesh me situatën aktuale për të marrë vetëdije për të tilla. Nëse mekanizmat do të ishin në funksion dhe do të funksiononin, nuk do të duhej të prisnim që të mos ishte rasti.

Bërë në Tirane

Date: 9 Dhjetor 2020

Gezim Kalaja


President



Luan Bregasi


President





Nr prot 19/09

dH 09/12/2020

The Union of Independent trade Unions of Albania and BiznesAlbania (Union of Albanian Business), under the project «*Upper Level – Joint Social Commitment – as the Key to I&C and Participation and Their Challenges*»,

Having into consideration the importance of the role played by the employees' mechanisms of Information and Consultation at National level;

Having into consideration the existing rights of employees' I&C, foreseen by the national law and aiming to better assure the efficiency of the employees' rights on information and consultation,

Having into consideration the need to improve the actual existing definitions of Employees' Information and Consultation to better comply with the needs of both employees and companies,

Having into consideration the positive potential of employee participation in the executive management as a source of additional information and consultation for the best possible decision making in company and as in establishing a cooperation for a continuous and ongoing dialogue,

Having into consideration the need to work towards that aim and use the collective bargaining as an important way to achieve this goal,

The partners agree on the following:

- **Information and Consultation rights**

Definitions

The partners agree on the need to have a more precise definition of the concepts so that it complies with the European law but also because they agree that such mechanism, in order to better be applied, should include:

- Information: means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings;

- Consultation: means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings;

Trade union representatives, at company level (shop steward) or the trade union official, has the right to information and consultation, besides the matters included by collective bargaining, on the following matters:

Information and consultation shall cover:

- (a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;
- (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
- (c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations;
- (d) information and consultation on the needs of the company with regard to training with a view to determining the training needs of the company's workers;
- (e) information and consultation on the need of the company in making use of new work forms, such as platform work.

Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.

Consultation shall take place:

- (a) while ensuring that the timing, method and content thereof are appropriate;
- (b) at the relevant level of management and representation, depending on the subject under discussion;
- (c) on the basis of information supplied by the employer and of the opinion which the employees' representatives are entitled to formulate;
- (d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;
- (e) with a view to reaching an agreement on decisions.

Procedure:

The trade union representative requests in writing, respectively, to the management body of the company or establishment the information elements regarding the matters covered by the right to information.

The information is provided in writing, within eight days, or 15 days if its complexity justifies it.

In the case of consultation, the employer requests in writing the opinion of the trade union representative (s), which must be issued within 10 days of receipt of the request, or within a longer period that is granted given the extent or complexity of the matter.

If the trade union representative asks for pertinent information on the matter of the consultation, the period referred to in the preceding paragraph starts from the provision of the information, in writing or at a meeting in which this occurs.

When the employer's decision to exercise management and organizational powers arising from the employment contract is involved, the information and consultation procedure must be conducted by both parties in order to reach, whenever possible, consensus.

The creation of a body, at sectoral level, focused on Employees' Information and Consultation, aiming to monitor and check the process compliance with the legislation, to collect critics, suggestions and claims from both employees, employees' representatives and companies and to act, impartially, as a mediator in the face of conflicts, offering legal advice in order to find solutions for conflicts.

This body aims to act as a supervisory body and as a first resource in the event of the need to challenge the confidentiality of information or the refusal to provide it or consultations. It should be an urgent nature procedure in order to secure the useful effect of the decision. This body will perform the function of settling existing or future conflicts.

- **Employees' Participation Right**

The partners agree on the importance of the workers representatives' participation right in solving conflicts or avoiding conflicts. In addition when employees are offered the possibility to participate in the decision making will lead to better results in business, management and human resources.

The partners agree that it is important to establish a cooperation for a continuous and ongoing dialogue and having this as a basis they agree on the creation of an executive management team within the collective bargaining level (at company and/or sectoral level).

This will allow to provide a feedback channel towards the employees that will benefit everyone.

This will not restrict the ability and rights of the employer to make decisions.

The employees that are part of the participation process are bound by confidentiality.

Having this mind, the partners agree that employees have the right to participate in the decision taking procedure. For such purpose the partners agree on the creation of an executive management team.

This team has the right to participate, every three months, in a company's management's meeting.

For such purpose the executive management team has the right to:

a) Prior information and consultation on issues to be approached in the meeting, namely on the formulation of restructuring plans or projects;

b) Present suggestions, complaints or criticisms to Organs competent bodies of the company

c) Meet with the bodies in charge of preparatory restructuring work;

The executive management team will be pointed out by the trade unions/employees' representatives and will represent one third of the company's management body do the company.

Procedure and nomination of the Employees' representatives should be made via collective bargaining.

- **Employees' Financial Participation**

Partners see the introduction of Employees' Financial Participation as an important way to achieve the goals of employees' involvement and a useful tool for improving and developing the engagement of social partners and social dialogue at company level.

Having in mind the present pandemic situation the world is living, the partners agree that the introduction of such is a way to better redistribute wealth amongst employees and companies and a way to improve the engagement having as a goal overcoming the difficulties and to promote the development of the companies and to maintain the workforce and employment.

The partners point out that introduction of WFP schemes, such as the «Bonus» (profit sharing schemes) as a way to achieve this goal.

This is particularly relevant within the SME's companies, where employees and companies should work together for their own benefit.

For such purpose the partners agree that the best way to debate and to introduce this is within collective bargaining once this can be influenced by the individual conditions of each company and /or branch.

- **New work forms**

Having into consideration the need to guarantee the equality of all non-standard workers and workers in platform companies,

Partners agree on the use of new work forms, such as platform work, if it is carried out in full compliance with international and European instruments on human, trade union, social rights and occupational safety and health.

Employees covered by the new work forms must have access to information and consultation, on a regular basis and within what is established for the workers working in person in their workplace. If it is the case, and to comply with the safety measures in place due to COVID 19, such can take place using the digital tools available, namely digital platforms.

- **Anticipation scenarios**

Partners agree that employees' information and consultation mechanisms play an important role in anticipating scenarios and in finding out solutions for the challenges ahead by working on it in advance.

For such purpose the partners also agree that training, in a way to anticipate future needs) play an important role, such as training needs, reskilling, upgrading skills.

- **Pandemic situation – COVID 19**

The world is facing a severe an unprecedented sanitary crisis due to COVID-19. The partners agree on the need to take measures to secure individuals and economies. With such goal in mind the partners agree on the importance of privileging a quality social dialogue as the way to secure continuity of the operations and keep the employment. Necessary measure should be taken within the scope of the collective bargaining.


For such purpose the partners agree on the important role played by the employees' information and consultation mechanisms.


Social partners must play an important role in the measures to be taken not only in order to prevent social and economic consequences, as well to promote the recovery of the companies, securing employment and creating safe workplaces with the necessary safety conditions, creating a secure and healthy environment.

Having this in mind the partners agree on enhancing the role of employees' information and consultation not only to find solutions for the problems raised by the pandemic situation as it is a very important tool to anticipate measures/needs and to prepare the work in the future. The actual situation we are living in has shown that it has not been well prepare and it was necessary to face the actual situation to gain awareness of such. If the mechanisms were in place and functioning it was not need to wait to see that it was not the case.

Done at Tirana

Date: 09 December 2020

Gezim Kalaja

President



Luan Bregasi

President



BULGARIA

DECLARAÇÃO UNILATERAL SMF Podkrepa (Búlgaro)/(Inglês)



UNILATERAL DECLARATION SMF Podkrepa (Bulgarian)/(English)

Синдикална миньорска федерация Подкрепа (България) по проект *«Горно ниво - Съвместната социална ангажираност - ключ към информирането, консултирането и участието (на работниците в процеса на вземане на решения) и предизвикателствата, свързани това»,*

Имайки предвид значението на ролята, която играят механизмите за информиране и консултиране на служителите на национално ниво;

Имайки предвид съществуващите права на информиране и консултиране на служителите, предвидени от националното законодателство и целящи по-добро осигуряване на ефективността на правата на служителите за информиране и консултиране,

Имайки предвид необходимостта от подобряване на съществуващите дефиниции за информиране и консултиране на служителите, за да се отговори по-добре на нуждите както на служителите, така и на компаниите,

Имайки предвид положителния потенциал на участието на служителите в управлението като източник на допълнително информиране и консултиране за възможно най-добро вземане на решения в компанията и за установяване на сътрудничество за непрекъснат и постоянен диалог,

Имайки предвид необходимостта да се работи за постигането на тази цел и да се използва колективното договаряне като важен начин за постигането ѝ,

Като партньор се съгласява със следното:

- **Права на информиране и консултиране**

Дефиниции

Партньорите са единодушни относно необходимостта да има по-точно определение на понятията, така че да са в съответствие с европейското законодателство, и са съгласни, че такъв механизъм, за да бъде по-добре приложен, трябва да включва:

- **Информиране:** означава предаване на данни от работодателя на представителите на служителите, за да им даде възможност да се запознаят с въпроса и да го разгледат; информацията се предоставя във време, форма и с такова съдържание, които са подходящи, за да се даде възможност на представителите на служителите да извършат задълбочена оценка на възможното въздействие и, когато е уместно, да се подготвят за консултации с компетентния орган на предприятието или групата от предприятия на Общностно ниво;
- **Консултиране:** означава установяване на диалог и обмен на мнения между представителите на служителите и централното ръководство или всяко по-подходящо ниво на управление, във време, форма и с такова съдържание, което дава възможност на представителите на служителите да изразят мнение въз основа на предоставената информация за предложените мерки, с които е свързано консултирането, без да се засягат отговорностите на ръководството и в разумен срок, който може да бъде взет под внимание в рамките на предприятието или групата от предприятия на Общностно ниво;

Представителите на синдикатите на фирмено ниво или синдикалните служители имат право на информиране и консултиране, освен по въпросите, включени в колективното договаряне, и по следните въпроси:

Информирането и консултирането трябва да обхващат:

- (а) информиране за предстоящото и вероятното развитие на предприятията или дейностите на дружествата и икономическото състояние;
- (б) информиране и консултиране относно ситуацията, структурата и вероятното развитие на заетостта в предприятието или дружеството и относно всички предвидени изпреварващи мерки, особено когато има опасност за заетостта;
- (в) информиране и консултиране относно решения, които могат да доведат до съществени промени в организацията на работа или в договорните отношения;
- (г) информиране и консултиране относно нуждите на компанията по отношение на обучението с оглед определяне на нуждите от обучение на работниците във фирмата;
- (д) информиране и консултиране относно необходимостта компанията да използва нови работни форми, като например работата в платформа.

Информацията трябва да се предоставя във време, форма и с такова съдържание, които са подходящи, за да се даде възможност, по-специално, на представителите на служителите да извършат адекватно проучване и, когато е необходимо, да се подготвят за консултации.

Консултирането трябва да се провежда:

- (а) като се гарантира, че времето, методът и съдържанието са подходящи;
- (б) на съответното ниво на управление и представителство, в зависимост от дискутираната тема;
- (в) въз основа на информация, предоставена от работодателя, и на база становището, което представителите на работниците и служителите имат право да формулират;
- (г) по такъв начин, че да даде възможност на представителите на работниците и служителите да се срещнат с работодателя и да получат отговор, както и (да научат) причините за този отговор, на всяко становище, което те могат да формулират;
- (д) с оглед постигане на споразумение за решенията.

Процедура:

Синдикалният представител изисква писмено, съответно, от управителния орган на компанията или на дружеството информационните елементи по въпросите, обхванати от правото на информиране.

Информацията се предоставя в писмена форма в рамките на осем дни или 15 дни, ако сложността ѝ я изисква.

В случай на консултиране, работодателят изисква писмено становището на синдикалния представител (представители), което трябва да бъде изготвено в рамките на 10 дни от получаване на искането или в рамките на по-дълъг срок, който е предвиден, въз основа на степента или сложността въпроса.

Ако синдикалният представител поиска уместна информация по въпроса за консултирането, срокът, посочен в предходния параграф, започва да тече от момента на предоставяне на информацията, писмено или по време на среща, на която това се случва.

Когато решението на работодателя да упражнява управленски и организационни правомощия, произтичащи от трудовия договор, е включено, процедурата за информиране и консултиране трябва да бъде провеждана от двете страни, за да се постигне, когато е възможно, консенсус.

Създаването на орган, на отраслово ниво, фокусиран върху информирането и консултирането на служителите, целящ да наблюдава и проверява съответствието на процеса със законодателството, да събира критики, предложения и искания, както от служители, представители на служителите, така и от компаниите, и да действа, безпристрастно, като посредник в случай на конфликти, предлагащ правен съвет, за да се намерят решения на (тези) конфликти.

Този орган има за цел да действа като надзорен орган и като първи ресурс в случай на необходимост да се оспори поверителността на информацията или отказът за нейното предоставяне или консултиране. Това трябва да бъде спешна по характер процедура, за да се гарантира полезният резултат от решението. Този орган ще изпълнява функции за уреждане на съществуващи или бъдещи конфликти.

• **Право на участие на служителите**

Партньорите се съгласяват относно важността на правото на участие на представителите на работниците в разрешаването на конфликти или избягването на конфликти. Освен това, когато на служителите се предлага възможността да участват във вземането на решения, това ще доведе до по-добри резултати в бизнеса, управлението и човешките ресурси.

Партньорите се съгласяват, че е важно да се установи сътрудничество за непрекъснат и постоянен диалог, и като се основават на това, те се договарят за създаването на изпълнителен управленски екип в рамките на колективното договаряне (на ниво компания и/или отрасъл).

Това ще позволи да се осигури канал за обратна връзка към служителите, полезен за всички.

Това няма да ограничи възможностите и правата на работодателя да взема решения.

Служителите, които са част от процеса на участие, са обвързани с конфиденциалност.

a) Prior information and consultation on issues to be approached in the meeting, namely on the formulation of restructuring plans or projects;

b) Present suggestions, complaints or criticisms to Organs competent bodies of the company

c) Meet with the bodies in charge of preparatory restructuring work;

The executive management team will be pointed out by the trade unions/employees' representatives and will represent one third of the company's management body do the company.

Procedure and nomination of the Employees' representatives should be made via collective bargaining.

- **Employees' Financial Participation**

Partners see the introduction of Employees' Financial Participation as an important way to achieve the goals of employees' involvement and a useful tool for improving and developing the engagement of social partners and social dialogue at company level.

Having in mind the present pandemic situation the world is living, the partners agree that the introduction of such is a way to better redistribute wealth amongst employees and companies and a way to improve the engagement having as a goal overcoming the difficulties and to promote the development of the companies and to maintain the workforce and employment.

The partners point out that introduction of WFP schemes, such as the «Bonus» (profit sharing schemes) as a way to achieve this goal.

This is particularly relevant within the SME's companies, where employees and companies should work together for their own benefit.

For such purpose the partners agree that the best way to debate and to introduce this is within collective bargaining once this can be influenced by the individual conditions of each company and /or branch.

- **New work forms**

Having into consideration the need to guarantee the equality of all non-standard workers and workers in platform companies,

Partners agree on the use of new work forms, such as platform work, if it is carried out in full compliance with international and European instruments on human, trade union, social rights and occupational safety and health.

Employees covered by the new work forms must have access to information and consultation, on a regular basis and within what is established for the workers working in person in their workplace. If it is the case, and to comply with the safety measures in place due to COVID 19, such can take place using the digital tools available, namely digital platforms.

- **Anticipation scenarios**

Partners agree that employees' information and consultation mechanisms play an important role in anticipating scenarios and in finding out solutions for the challenges ahead by working on it in advance.

Партньорите се споразумяват за използването на нови форми на труд, като например работата в платформа, ако тя се извършва в пълно съответствие с международните и европейски инструменти за човешки, синдикални, социални права и здравословни и безопасни условия на труд.

Служителите, обхванати от новите форми на труд, трябва да имат достъп до информиране и консултиране, редовно и в рамките на установеното за работниците на тяхното индивидуално работно място. Ако има такива случаи, и за да се спазят действащите мерки за безопасност в условия на COVID 19, такива могат да се използват с помощта на наличните дигитални инструменти, а именно дигитални платформи.

• Сценарии за предвиждане

Партньорите се съгласяват, че механизмите за информиране и консултиране на служителите играят важна роля при сценариите за предвиждане и при намирането на решения за бъдещите предизвикателства, като се работи по тях предварително.

За тази цел партньорите също се съгласяват, че обучението, като начин да се предвидят бъдещите нужди, играе важна роля, като например нужди от обучение, преквалификация, надграждане на умения.

• Пандемична ситуация - COVID 19

Светът е изправен пред тежка и безпрецедентна санитарна криза поради COVID-19. Партньорите са единодушни относно необходимостта да се вземат мерки за осигуряване на хората и икономикте. С тази цел партньорите се съгласяват с важността на това да се привилегирова качествения социален диалог като начин за осигуряване на приемственост на дейностите и запазване на заетостта. Необходими мерки трябва да бъдат взети в рамките на колективното договаряне.

За тази цел партньорите изразяват съгласие относно важната роля, която играят механизмите за информиране и консултиране на служителите.

Социалните партньори трябва да играят важна роля в мерките, които трябва да се предприемат не само за предотвратяване на социални и икономически последици, но и за насърчване на възстановяването на компаниите, осигуряване на заетост и създаване на безопасни работни места с необходимите условия за безопасност, създаване на сигурна и здравословна среда.

Имайки предвид това, партньорите се споразумяват за повишаване на ролята на информирането и консултирането на служителите не само за намиране на решения на проблемите, повдигнати от пандемичната ситуация, тъй като това е много важен инструмент за предвиждане на мерки/нужди и за подготовка на работата в бъдеще. Действителната ситуация, в която живеем, показва, че не сме били добре подготвени и е необходимо да се изправим пред реалността, за да осъзнаем това. Ако механизмите бяха подходящи и функциониращи, нямаше да е необходимо да изчакваме, за да видим, че това не е така.

Съставено в **София, България**

Дата: **4 декември 2020 г.**

A handwritten signature in blue ink, appearing to read 'V. Topalov', is written over a faint circular stamp.

Владимир Топалов, председател

Syndical Miners Federation Podkrepa (Bulgaria) under the project *«Upper Level – Joint Social Commitment – as the Key to I&C and Participation and Their Challenges»*,

Having into consideration the importance of the role played by the employees' mechanisms of Information and Consultation at National level;

Having into consideration the existing rights of employees' I&C, foreseen by the national law and aiming to better assure the efficiency of the employees' rights on information and consultation,

Having into consideration the need to improve the actual existing definitions of Employees' Information and Consultation to better comply with the needs of both employees and companies,

Having into consideration the positive potential of employee participation in the executive management as a source of additional information and consultation for the best possible decision making in company and as in establishing a cooperation for a continuous and ongoing dialogue,

Having into consideration the need to work towards that aim and use the collective bargaining as an important way to achieve this goal,

The partners agree on the following:

- **Information and Consultation rights**

Definitions

The partners agree on the need to have a more precise definition of the concepts so that it complies with the European law but also because they agree that such mechanism, in order to better be applied, should include:

- Information: means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings;
- Consultation: means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings;

Trade union representatives, at company level (shop steward) or the trade union officials, have the right to information and consultation, besides the matters included by collective bargaining, on the following matters:

Information and consultation shall cover:

- (a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;
- (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
- (c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations;
- (d) information and consultation on the needs of the company with regard to training with a view to determining the training needs of the company's workers;
- (e) information and consultation on the need of the company in making use of new work forms, such as platform work.

Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.

Consultation shall take place:

- (a) while ensuring that the timing, method and content thereof are appropriate;
- (b) at the relevant level of management and representation, depending on the subject under discussion;
- (c) on the basis of information supplied by the employer and of the opinion which the employees' representatives are entitled to formulate;
- (d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;
- (e) with a view to reaching an agreement on decisions.

Procedure:

The trade union representative requests in writing, respectively, to the management body of the company or establishment the information elements regarding the matters covered by the right to information.

The information is provided in writing, within eight days, or 15 days, if its complexity justifies it.

In the case of consultation, the employer requests in writing the opinion of the trade union representative(s), which must be issued within 10 days of receipt of the request, or within a longer period that is granted, given the extent or complexity of the matter.

If the trade union representative asks for pertinent information on the matter of the consultation, the period referred to in the preceding paragraph starts from the provision of the information, in writing or at a meeting in which this occurs.

- **Employees' Financial Participation**

Partners see the introduction of Employees' Financial Participation as an important way to achieve the goals of employees' involvement and a useful tool for improving and developing the engagement of social partners and social dialogue at company level.

Having in mind the present pandemic situation the world is facing, the partners agree that the introduction of such is a way to better redistribute wealth amongst employees and companies and a way to improve the engagement having as a goal overcoming the difficulties and to promote the development of the companies and to maintain the workforce and employment.

The partners point out that introduction of WFP schemes, such as the «Bonus» (profit sharing schemes) as a way to achieve this goal.

This is particularly relevant within the SMEs companies, where employees and companies should work together for their own benefit.

For such purpose the partners agree that the best way to debate and to introduce this is within collective bargaining once this can be influenced by the individual conditions of each company and /or branch.

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Having into consideration the need to guarantee the equality of all non-standard workers and workers in platform companies,

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Employees covered by the new work forms must have access to information and consultation, on a regular basis and within what is established for the workers working in person in their workplace. If it is the case, and to comply with the safety measures in place due to COVID 19, such can take place using the digital tools available, namely digital platforms.

- **Anticipation scenarios**

Partners agree that employees' information and consultation mechanisms play an important role in anticipating scenarios and in finding out solutions for the challenges ahead by working on it in advance.

For such purpose the partners also agree that training, in a way to anticipate future needs, play an important role, such as training needs, reskilling, upgrading skills.

- **Pandemic situation – COVID 19**

The world is facing a severe and unprecedented sanitary crisis due to COVID-19. The partners agree on the need to take measures to secure individuals and economies. With such goal in mind the partners agree on the importance of privileging a quality social dialogue as the way to secure continuity of the operations and keep the employment. Necessary measures should be taken within the scope of the collective bargaining.

For such purpose the partners agree on the important role played by the employees' information and consultation mechanisms.

Social partners must play an important role in the measures to be taken not only in order to prevent social and economic consequences, but as well to promote the recovery of the companies, securing employment and creating safe workplaces with the necessary safety conditions, creating a secure and healthy environment.

Having this in mind the partners agree on enhancing the role of employees' information and consultation not only to find solutions for the problems raised by the pandemic situation as it is a very important tool to anticipate measures/needs and to prepare the work in the future. The actual situation we are living in has shown that we have not been well prepared and it was necessary to face the actual situation to gain awareness of it. If the mechanisms were appropriate and functioning, it would not have been necessary to wait in order to see that this was not the case.

Done at **Sofia, Bulgaria**

Date: **4 December 2020**

Vladimir Topalov, President



ESTONIA

ACORDO CONJUNTO IMTAL/ EML (Inglês)



JOINT AGREEMENT IMTAL/ EML (Estonian)

Estonian Union of Industrial and Metal Workers' Trade Unions
and Federation of Estonian Engineering Industry

**«Upper Level - Joint Social Commitment – as the Key to I&C and Participation
and Their Challenges».**

having regard to the importance of the role of information and consultation mechanisms
for employees at national level,

Having regard to the Employees' Representatives Act and the Trade Unions Act, and
seeking to better ensure the effectiveness of employees' information and consultation
rights,

Considering the need to improve the actual concepts of information and consultation of
workers in order to better meet the needs of both workers and enterprises,

Considering the positive potential of employee participation in the executive management
as a source of additional information and advice for making the best possible decisions in
the company and for developing cooperation for continuous dialogue;

and having regard to the need to work towards that goal and to use collective bargaining to
achieve that goal

The partners agree as follows

Information and consultation rights.

The partners agree on the need for a more precise definition in order to comply with
European law, recognizing that for the mechanism to work better, it must include:



• Information - the transmission of data by the employer to the employees' representatives so that they can get acquainted with the subject and study it; the information shall be provided at such a time, in such a manner and with such content as to enable the employees' representatives to carry out a thorough impact assessment and, where appropriate, to prepare consultations with the competent body of the Community-scale undertaking or Community-scale group of undertakings.

• "Consultation" means the establishment of a dialogue and exchange of views between employees' representatives and central management or any other relevant management in such a way and with such content as to enable employees' representatives to express their views on proposed consultation measures within a reasonable time, without prejudice to management responsibilities, which may be taken into account by the Community-scale undertaking or Community-scale group of undertakings.

II. An employee representative at company level or a trade union representative shall be entitled to matters covered by collective bargaining in addition to information and consultation on the following matters:

- (a) on the basis of the annual report, information on recent and probable developments in the activities and economic situation of the undertaking or body;
- (b) information and consultation on the employment situation, structure and likely development of the undertaking or establishment and the preventive measures envisaged, in particular where there is a risk to employment;
- (c) informing and consulting on decisions which may lead to significant changes in the organization of work or employment relationships;
- (d) information and consultation on the training needs of the company in order to identify the training needs of the company's employees - not in accordance with the Trustee Act, may be left in coordination with the employer

(e) information and consultation on the company's need for new forms of work, the employer is not obliged, except for decisions which lead to a change in the employees' employment relationship (covered by points (b) and (c))

III. The information shall be given at a time, in a manner and with a content which enables, in particular, the employees' representatives to carry out an appropriate survey and, if necessary, to prepare for a consultation.

IV Conduct of the consultation:

- (a) the timetable and methodology agreed by the partners;
- (b) at the appropriate level of management and representation, depending on the subject under discussion;
- (c) on the basis of public information and opinions provided by the employer;
- (d) a meeting with the employer must be ensured in a way that ensures their answers and the reasons for their answers to any opinion they give;
- (e) reaching agreement on the issues to be discussed.

V Procedure:

- (a) The trade union representative shall request in writing to the management body of the undertaking or body the elements of information relating to the matters covered by the right of information.
 - (b) The information shall be provided in writing within 15 days
 - (c) In the event of consultation, the employer shall request in writing the opinion of the trade union representative (s), which shall be issued within 15 days of receipt of the request or within a longer period given the scale or complexity of the request.
- If the trade union representative requests relevant information on the consultation, the period referred to in the previous subparagraph shall begin in writing or at the meeting at which it takes place



In the event of an employer's decision to exercise the managerial and organizational powers arising from the employment contract, both parties must carry out information and consultation procedure in order to reach a consensus where possible.

VI Employee participation rights.

The partners agree on the importance of the right of employee representatives to participate in conflict resolution or conflict prevention in order to achieve better results in business, management and human resources

The Partners agree to establish a permanent executive management composed of representatives of the Parties to maintain ongoing dialogue, develop cooperation, involve employees in the decision-making process and provide a channel for feedback to employees on negotiations related to this Agreement.

Executive management shall be established at a pre-agreed consultation event, provided that:

- it does not limit the employer's decision-making power;
- the employees involved have a right to confidentiality;
- its members have the right to attend a meeting of the company's management every three months;
- Members are provided with prior information and consultation on the issues to be discussed at the meeting, in particular on restructuring plans or projects.

its members have the right to submit suggestions, complaints or criticisms to the competent management bodies of the company and to meet with the staff responsible for the preparatory restructuring work.

- Trade union / employee representatives draw the management's attention to a team representing one third of the company's management body.
- The procedure and appointment of employees' representatives should take place through collective bargaining.

VII Employee financial participation:

- The partners consider the introduction of employee financial participation to be an important way of achieving the objectives of employee involvement and a useful tool for improving and developing the involvement and social dialogue of the social partners at company level.
- In view of the current pandemic situation in the world, the partners agree that the introduction of such a way to better redistribute wealth between workers and companies and a way to improve inclusion, with a view to overcoming difficulties and promoting development, to maintain and maintain employment in enterprises.

Partners emphasize that the introduction of WFP schemes, such as Bonus (profit-sharing schemes), is a way to achieve this goal.

This is especially important in companies where employees and companies should work together for their own benefit.

To this end, the partners agree that the best way to discuss and present it is through collective bargaining, where it can be influenced by the individual conditions of each company and / or branch.

To this end, the partners agree on the important role of employee consultation and consultation mechanisms.

The social partners have an important role to play, not only in preventing social and economic consequences, but also in promoting the recovery of businesses, securing employment and creating safe jobs with the necessary safety conditions, in a safe and healthy environment.




With this in mind, the partners agree to increase the role of information and consultation of workers, not only to find solutions to pandemic problems, as this is a very important tool for anticipating actions / needs and preparing for future work.

The real situation in which we live has shown that it has not been well prepared, and in order to become aware of it, it was necessary to face the real situation. Once the mechanisms were in place and working, there was no need to expect this to be the case.

The project has been prepared:

Date: 09.12.2020

.....
Aleksandr Drannikov



Estonian Union of Industrial and Metal Workers' Trade Unions (IMTAL)



Triin Ploompuu,



Federation of Estonian Engineering Industry (EML)



A. RULKOV



Estonian Union of Industrial and Metal Workers' Trade Unions

and Estonian Machinery Industry Association, project

«Upper Level - Joint Social Commitment – as the Key to I&C and Participation and Their Challenges».

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The project has been prepared:

Date: 09.12.2020

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Estonian Union of Industrial and Metal Workers' Trade Unions

IMTAL

.....

EML

Estonian Machinery Industry Association

Signatures + official stamp of organizations

HUNGRIA

HUNGARY

DECLARAÇÃO UNILATERAL BDSH (Inglês)



UNILATERAL DECLARATION BDSH (English)



Sindicato das Indústrias Metalúrgicas e Afins (SIMA) and the Hungarian Trade Union of Mine-, Energy- and Industry Workers (BDSZ) under the project «Upper Level – Joint Social Commitment – as the Key to I&C and Participation and Their Challenges»,

Having into consideration the importance of the role played by the employees' mechanisms of Information and Consultation at National level;

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Definitons

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- Consultation: means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings;

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- (c) on the basis of information supplied by the employer and of the opinion which the employees' representatives are entitled to formulate;
- (d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;
- (e) with a view to reaching an agreement on decisions.



Procedure:

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The creation of a body, at sectoral level, focused on Employees' Information and Consultation, aiming to monitor and check the process compliance with the legislation, to collect critics, suggestions and claims from both employees, employees' representatives and companies and to act, impartially, as a mediator in the face of conflicts, offering legal advice in order to find solutions for conflicts.

This body aims to act as a supervisory body and as a first resource in the event of the need to challenge the confidentiality of information or the refusal to provide it or consultations. It should be an urgent nature procedure in order to secure the useful effect of the decision. This body will perform the function of settling existing or future conflicts.

- **Employees' Participation Right**

The partners agree on the importance of the workers representatives' participation right in solving conflicts or avoiding conflicts. In addition when employees are offered the possibility to participate in the decision making will lead to better results in business, management and human resources.

The partners agree that it is important to establish a cooperation for a continuous and ongoing dialogue and having this as a basis they agree on the creation of an executive management team within the collective bargaining level (at company and/or sectoral level).



This will allow to provide a feedback channel towards the employees that will benefit everyone.

This will not restrict the ability and rights of the employer to make decisions.

The employees that are part of the participation process are bound by confidentiality. Having this mind, the partners agree that employees have the right to participate in the decision taking procedure. For such purpose the partners agree on the creation of an executive management team.

This team has the right to participate, every three months, in a company's management's meeting.

For such purpose the executive management team has the right to:

- a) Prior information and consultation on issues to be approached in the meeting, namely on the formulation of restructuring plans or projects;
- b) Present suggestions, complaints or criticisms to Organs competent bodies of the company
- c) Meet with the bodies in charge of preparatory restructuring work;

The executive management team will be pointed out by the trade unions/employees' representatives and will represent one third of the company's management body do the company.

Procedure and nomination of the Employees' representatives should be made via collective bargaining.

- **Employees' Financial Participation**

Partners see the introduction of Employees' Financial Participation as an important way to achieve the goals of employees' involvement and a useful tool for improving and developing the engagement of social partners and social dialogue at company level.

Having in mind the present pandemic situation the world is living, the partners agree that the introduction of such is a way to better redistribute wealth amongst employees and companies and a way to improve the engagement having as a goal overcoming the difficulties and to promote the development of the companies and to maintain the workforce and employment.

The partners point out that introduction of WFP schemes, such as the «Bonus» (profit sharing schemes) as a way to achieve this goal.

This is particularly relevant within the SME's companies, where employees and companies should work together for their own benefit.

For such purpose the partners agree that the best way to debate and to introduce this is within collective bargaining once this can be influenced by the individual conditions of each company and /or branch.



- **New work forms**

Having into consideration the need to guarantee the equality of all non-standard workers and workers in platform companies,

Partners agree on the use of new work forms, such as platform work, if it is carried out in full compliance with international and European instruments on human, trade union, social rights and occupational safety and health.

Employees covered by the new work forms must have access to information and consultation, on a regular basis and within what is established for the workers working in person in their workplace. If it is the case, and to comply with the safety measures in place due to COVID 19, such can take place using the digital tools available, namely digital platforms.

- **Anticipation scenarios**

Partners agree that employees' information and consultation mechanisms play an important role in anticipating scenarios and in finding out solutions for the challenges ahead by working on it in advance.

For such purpose the partners also agree that training, in a way to anticipate future needs) play an important role, such as training needs, reskilling, upgrading skills.

- **Pandemic situation – COVID 19**

The world is facing a severe and unprecedented sanitary crisis due to COVID-19. The partners agree on the need to take measures to secure individuals and economies. With such goal in mind the partners agree on the importance of privileging a quality social dialogue as the way to secure continuity of the operations and keep the employment. Necessary measure should be taken within the scope of the collective bargaining.

For such purpose the partners agree on the important role played by the employees' information and consultation mechanisms.

Social partners must play an important role in the measures to be taken not only in order to prevent social and economic consequences, as well to promote the recovery of the companies, securing employment and creating safe workplaces with the necessary safety conditions, creating a secure and healthy environment.



Hungarian Trade Union of Mine-, Energy- and Industry Workers

President

Having this in mind the partners agree on enhancing the role of employees' information and consultation not only to find solutions for the problems raised by the pandemic situation as it is a very important tool to anticipate measures/needs and to prepare the work in the future. The actual situation we are living in has shown that it has not been well prepared and it was necessary to face the actual situation to gain awareness of such. If the mechanisms were in place and functioning it was not need to wait to see that it was not the case.

Budapest, 02. 12. 2020.



Rabi Ferenc

H-1068 Budapest, Városligeti fasor 46-48. • Tel.: (36-1) 413-1977 • Fax: (36-1) 351-7756
E-mail: rabif@banyasz.hu • Web: www.banyasz.hu

LETÓNIA /LATVIA

DECLARAÇÃO UNILATERAL MASOC (Inglês)



UNILATERAL DECLARATION MASOC (English)

Association of mechanical engineering and metalworking industries of Latvia under the project «*Upper Level – Joint Social Commitment – as the Key to I&C and Participation and Their Challenges*»,

Having into consideration the importance of the role played by the employees' mechanisms of Information and Consultation at National level;

Having into consideration the existing rights of employees' I&C, foreseen by the national law and aiming to better assure the efficiency of the employees' rights on information and consultation,

Having into consideration the need to improve the actual existing definitions of Employees' Information and Consultation to better comply with the needs of both employees and companies,

Having into consideration the positive potential of employee participation in the executive management as a source of additional information and consultation for the best possible decision making in company and as in establishing a cooperation for a continuous and ongoing dialogue,

Having into consideration the need to work towards that aim and use the collective bargaining as an important way to achieve this goal,

The partners agree on the following:

- **Information and Consultation rights**

Definitons

The partners agree on the need to have a more precise definition of the concepts so that it complies with the European law but also because they agree that such mechanism, in order to better be applied, should include:

- Information: means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings;
- Consultation: means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings;

Trade union representatives, at company level (shop steward) or the trade union official, has the right to information and consultation, besides the matters included by collective bargaining, on the following matters:

Information and consultation shall cover:

- (a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;
- (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;

(c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations;

(d) information and consultation on the needs of the company with regard to training with a view to determining the training needs of the company's workers;

(e) information and consultation on the need of the company in making use of new work forms, such as platform work.

Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.

Consultation shall take place:

(a) while ensuring that the timing, method and content thereof are appropriate;

(b) at the relevant level of management and representation, depending on the subject under discussion;

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This is particularly relevant within the SME's companies, where employees and companies should work together for their own benefit.

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- **New work forms**

Having into consideration the need to guarantee the equality of all non-standard workers and workers in platform companies,

Partners agree on the use of new work forms, such as platform work, if it is carried out in full compliance with international and European instruments on human, trade union, social rights and occupational safety and health.

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Having this in mind the partners agree on enhancing the role of employees' information and consultation not only to find solutions for the problems raised by the pandemic situation as it is a very important tool to anticipate measures/needs and to prepare the work in the future. The actual situation we are living in has shown that it has not been well prepare and it was necessary to face the actual situation to gain awareness of such. If the mechanisms were in place and functioning it was not need to wait to see that it was not the case.

Done Riga

Date: 15.01.2021.

Member of the board



Kristine Vanaga

MACEDÓNIA DO NORTE/NORTH MACEDONIA

ACORDO CONJUNTO BCM-TURSME (Inglês)



JOINT AGREEMENT BCM-TURSME (English)

Business Confederation of Macedonia and Trade union Organisation of SME, under the project *«Upper Level – Joint Social Commitment – as the Key to I&C and Participation and Their Challenges»*,

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Having into consideration the existing rights of employees' I&C, foreseen by the national law and aiming to better assure the efficiency of the employees' rights on information and consultation,

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Done at Skopje

Date:04.12.2020

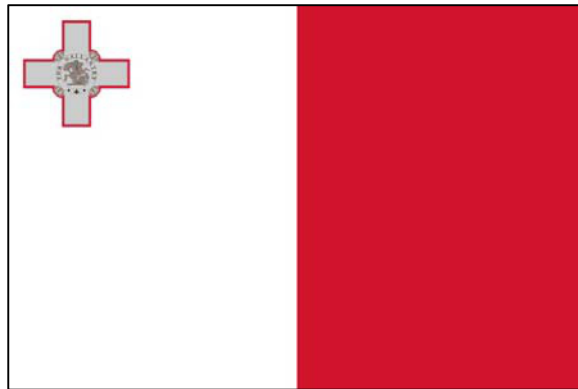
Business Confederation of Macedonia

Trade union Organisation of SME



MALTA

ACORDO BILATERAL MEA/SIMA (Inglês)



JOINT AGREEMENT MEA/SIMA (English)



Sindicato das Indústrias Metalúrgicas e Afins (SIMA) and the Malta Employers' Association (MEA) under the project «Upper Level – Joint Social Commitment – as the Key to I&C and Participation and Their Challenges»,

Taking into consideration the importance of the role played by the employees' mechanisms of Information and Consultation at National level;

Taking into consideration the existing rights of employees' I&C, foreseen by the national law and aiming to better assure the efficiency of the employees' rights on information and consultation,

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Information and Consultation rights

Definitions

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Done at Valletta, Malta

Date: 25.02.2021

JOSEPH FARRUGIA

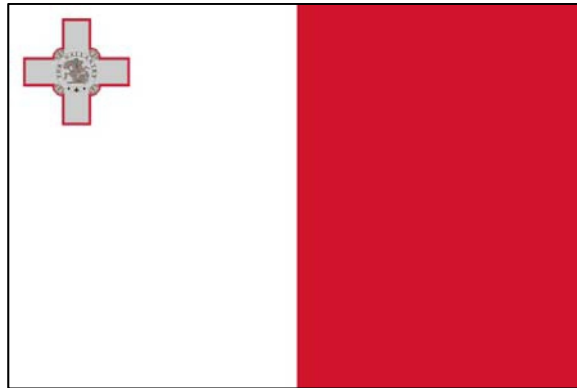

DIRECTOR MALTA EMPLOYERS' ASSOCIATION

JOSE SIMÕES


SIMA's GENERAL SECRETARY

MALTA

DECLARAÇÃO UNILATERAL GWU (Inglês)



UNILATERAL DECLARATION GWU (English)



CREDIBLE | COMPETENT | CONSISTENT

The General Workers' Union, under the project «*Upper Level – Joint Social Commitment – as the Key to I&C and Participation and Their Challenges*»,

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Workers' Memorial Building
South Street, Valletta
VLT 1103 Malta

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E info@gwu.org.mt

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Information and consultation shall cover:

- (a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;
- (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
- (c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations;
- (d) information and consultation on the needs of the company with regard to training with a view to determining the training needs of the company's workers;
- (e) information and consultation on the need of the company in making use of new work forms, such as platform work.

Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.

Consultation shall take place:

- (a) while ensuring that the timing, method and content thereof are appropriate;
- (b) at the relevant level of management and representation, depending on the subject under discussion;
- (c) on the basis of information supplied by the employer and of the opinion which the employees' representatives are entitled to formulate;
- (d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;
- (e) with a view to reaching an agreement on decisions.

Procedure:

The trade union representative requests in writing, respectively, to the management body of the company or establishment the information elements regarding the matters covered by the right to information.

The information is provided in writing, within eight days, or 15 days if its complexity justifies it.

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In the case of consultation, the employer requests in writing the opinion of the trade union representative (s), which must be issued within 10 days of receipt of the request, or within a longer period that is granted given the extent or complexity of the matter.

If the trade union representative asks for pertinent information on the matter of the consultation, the period referred to in the preceding paragraph starts from the provision of the information, in writing or at a meeting in which this occurs.

When the employer's decision to exercise management and organizational powers arising from the employment contract is involved, the information and consultation procedure must be conducted by both parties in order to reach, whenever possible, consensus.

The creation of a body, at sectoral level, focused on Employees' Information and Consultation, aiming to monitor and check the process compliance with the legislation, to collect critics, suggestions and claims from both employees, employees' representatives and companies and to act, impartially, as a mediator in the face of conflicts, offering legal advice in order to find solutions for conflicts.

This body aims to act as a supervisory body and as a first resource in the event of the need to challenge the confidentiality of information or the refusal to provide it or consultations. It should be an urgent nature procedure in order to secure the useful effect of the decision. This body will perform the function of settling existing or future conflicts.

- **Employees' Participation Right**

The partners agree on the importance of the workers representatives' participation right in solving conflicts or avoiding conflicts. In addition when employees are offered the possibility to participate in the decision making will lead to better results in business, management and human resources.

The partners agree that it is important to establish a cooperation for a continuous and ongoing dialogue and having this as a basis they agree on the creation of an executive management team within the collective bargaining level (at company and/or sectoral level).

This will allow to provide a feedback channel towards the employees that will benefit everyone.

This will not restrict the ability and rights of the employer to make decisions.

The employees that are part of the participation process are bound by confidentiality.

Having this mind, the partners agree that employees have the right to participate in the decision taking procedure. For such purpose the partners agree on the creation of an executive management team.

This team has the right to participate, every three months, in a company's management's meeting.

For such purpose the executive management team has the right to:

- a) Prior information and consultation on issues to be approached in the meeting, namely on the formulation of restructuring plans or projects;
- b) Present suggestions, complaints or criticisms to Organs competent bodies of the company
- c) Meet with the bodies in charge of preparatory restructuring work;



The executive management team will be pointed out by the trade unions/employees' representatives and will represent one third of the company's management body do the company.

Procedure and nomination of the Employees' representatives should be made via collective bargaining.

- **Employees' Financial Participation**

Partners see the introduction of Employees' Financial Participation as an important way to achieve the goals of employees' involvement and a useful tool for improving and developing the engagement of social partners and social dialogue at company level.

Having in mind the present pandemic situation the world is living, the partners agree that the introduction of such is a way to better redistribute wealth amongst employees and companies and a way to improve the engagement having as a goal overcoming the difficulties and to promote the development of the companies and to maintain the workforce and employment.

The partners point out that introduction of WFP schemes, such as the «Bonus» (profit sharing schemes) as a way to achieve this goal.

This is particularly relevant within the SME's companies, where employees and companies should work together for their own benefit.

For such purpose the partners agree that the best way to debate and to introduce this is within collective bargaining once this can be influenced by the individual conditions of each company and /or branch.

- **New work forms**

Having into consideration the need to guarantee the equality of all non-standard workers and workers in platform companies,

Partners agree on the use of new work forms, such as platform work, if it is carried out in full compliance with international and European instruments on human, trade union, social rights and occupational safety and health.

Employees covered by the new work forms must have access to information and consultation, on a regular basis and within what is established for the workers working in person in their workplace. If it is the case, and to comply with the safety measures in place due to COVID 19, such can take place using the digital tools available, namely digital platforms.

- **Anticipation scenarios**

Partners agree that employees' information and consultation mechanisms play an important role in anticipating scenarios and in finding out solutions for the challenges ahead by working on it in advance.

For such purpose the partners also agree that training, in a way to anticipate future needs) play an important role, such as training needs, reskilling, upgrading skills.

- **Pandemic situation – COVID 19**

The world is facing a severe an unprecedented sanitary crisis due to COVID-19. The partners agree on the need to take measures to secure individuals and economies. With such goal in



mind the partners agree on the importance of privileging a quality social dialogue as the way to secure continuity of the operations and keep the employment. Necessary measure should be taken within the scope of the collective bargaining.

For such purpose the partners agree on the important role played by the employees' information and consultation mechanisms.

Social partners must play an important role in the measures to be taken not only in order to prevent social and economic consequences, as well to promote the recovery of the companies, securing employment and creating safe workplaces with the necessary safety conditions, creating a secure and healthy environment.

Having this in mind the partners agree on enhancing the role of employees' information and consultation not only to find solutions for the problems raised by the pandemic situation as it is a very important tool to anticipate measures/needs and to prepare the work in the future. The actual situation we are living in has shown that it has not been well prepare and it was necessary to face the actual situation to gain awareness of such. If the mechanisms were in place and functioning it was not need to wait to see that it was not the case.

Done at Workers' Memorial Building, Valletta

Date: 22nd March 2021



Mr Josef Bugeja
Secretary General
General Workers' Union

General Workers' Union

MONTENEGRO

ACORDO CONJUNTO UPCG-USSCG – (Inglês)/(Montenegrino)



JOINT AGREEMENT UPCG-USSCG – (English)/(Montenegrin)



Montenegrin Employers Federation

No: 65/21
Podgorica, 02 February 2021



Union of Free Trade Unions of Montenegro

No: 40
Podgorica, 1 February 2021

Montenegrin Employers Federation and Union of Free Trade Unions, under the project **«Upper Level - Joint Social Commitment - as the Key to I&C and Participation and Their Challenges»**,

Having into consideration the importance of the role played by the employees' mechanisms of Information and Consultation at National level;

Having into consideration the existing rights of employees' I&C, foreseen by the national law and aiming to better assure the efficiency of the employees' rights on information and consultation,

Having into consideration the need to improve the actual existing definitions of Employees' Information and Consultation to better comply with the needs of both employees and companies,

Having into consideration the positive potential of employee participation in the executive management as a source of additional information and consultation for the best possible decision making in company and as in establishing a cooperation for a continuous and ongoing dialogue,

Having into consideration the need to work towards that aim and use the collective bargaining as an important way to achieve this goal,

The partners agree on the following:

- **Information and Consultation rights**
Definitons

The partners agree on the need to have a more precise definition of the concepts so that it complies with the European law but also because they agree that such mechanism, in order to better be applied, should include:

- Information: means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings;

- Consultation: means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings;

Trade union representatives, at company level (shop steward) or the trade union official, has the right to information and consultation, besides the matters included by collective bargaining, on the following matters:

Information and consultation shall cover:

- (a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;
- (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
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Done at Podgorica, Montenegro

Date: January 19th, 2021.

Suzana Radulović
Secretary General



Srđa Keković
Secretary General



Unija poslodavaca Crne Gore
Br: 65/21
Podgorica, 2.februar 2021

Unija slobodnih sindikata
Crne Gore
Br: 40
Podgorica, 1.februar 2021

Unija poslodavaca Crne Gore i Unija slobodnih sindikata Crne Gore, u projektu *«Viši nivo zajedničke socijalne posvećenosti – kao ključ informisanja & konsultovanja, učešće i njihovi izazovi»*,

Uzimajući u obzir važnost uloge koju igraju mehanizmi informisanja i konsultovanja zaposlenih na nacionalnom nivou;

Uzimajući u obzir važeća prava zaposlenih na informisanje i konsultovanje, predviđena nacionalnim zakonom koji ima za cilj da obezbedi efikasnost prava zaposlenih na informisanje i konsultovanje,

Uzimajući u obzir potrebu da se poboljšaju važeće definicije informisanja i konsultovanja zaposlenih kako bi se prilagodile potrebama kako zaposlenih tako i kompanija,

Uzimajući u obzir potencijal učešća zaposlenih u izvršnom upravljanju kao izvoru dodatnih informacija i konsultacija radi donošenja najboljih mogućih odluka u kompaniji i radi uspostavljanja saradnje za kontinuirani dijalog,

Uzimajući u obzir potrebu da se radi ka tom cilju i da se koristi kolektivno pregovaranje kao važan način postizanja cilja ,

Partner se slaže o sljedećem:

- **Pravo na informisanje i konsultovanje**

Definicije

Partneri se slažu o potrebi da se dođe do preciznije definicije koncepta kako bi se ona prilagodila evropskom zakonu, ali i zbog toga što se oni slažu da kako bi se takav mehanizam bolje primjenio, potrebno je da uključí:

- Informisanje: označava prijenos podataka od poslodavca do predstavnika zaposlenih kako bi se oni upoznali sa datom temom i ispitali je; informacije treba da budu pružene u pravo vreme, na takav način i sa takvim sadržajem da omogućavaju predstavnicima zaposlenih da urade detaljnu procenu mogućeg uticaja i, gde je to prikladno, da se pripreme za konsultacije sa nadležnim organom preduzeća ili grupom preduzeća;
- Konsultacije: označava uspostavljanje dijaloga i razmjenu mišljenja predstavnika zaposlenih i centralnog menadžmenta ili nekog drugog adekvatnog nivoa menadžmenta, u pravo vreme, na takav način i sa takvim sadržajem, što omogućava predstavnicima zaposlenih da izraze svoje mišljenje na osnovu ponuđenih informacija o predloženim mjerama na koje se konsultacija odnosi, bez negativnih posledica po obaveze menadžmenta, i u razumnom roku, što se može uzeti u obzir u okviru preduzeća ili grupe preduzeća;

Pored pitanja pokrivenih kolektivnim pregovaranjem, predstavnici sindikata na nivou kompanije (poverenik) ili sindikalni zvaničnik imaju pravo na informisanje i konsultovanje o sljedećim temama :

Informisanje i konsultovanje pokriva:

- (a) informisanje o najnovijem i mogućem razvoju ili aktivnostima preduzeća i ekonomskoj situaciji ;
- (b) informisanje i konsultovanje o situaciji, strukturi i mogućem razvoju zapošljavanja u okviru preduzeća i o pripremnim merama, naročito kada postoji prijetnja po zapošljavanje;
- (c) informisanje i konsultovanje o odlukama za koje postoji vjerovatnoća da mogu dovesti do značajnih promjena u organizaciji rada ili u ugovornim odnosima;
- (d) informisanje i konsultovanje o potrebama kompanije u vezi sa obukom radnika u kompaniji;
- (e) informisanje i konsultovanje o potrebi kompanije da koristi nove oblike rada, kao što je rad na platformi.

Informacije se pružaju u pravo vrijeme, na takav način i sa takvim sadržajem da omogućavaju predstavnicima zaposlenih da sprovedu adekvatnu studiju i tamo, gde je to neophodno, da se pripreme za konsultacije.

Konsultacije se odvijaju:

- (a) tako da vreme, način i sadržaj budu prikladni;
- (b) na relevantnom nivou menadžmenta i zastupanja, u zavisnosti od teme koja je predmet diskusije;
- (c) na osnovu dobijenih informacija od poslodavca i mišljenja koje predstavnici zaposlenih treba da formulišu;
- (d) na takav način da obezbeđuju predstavnicima zaposlenih da se sastanu sa poslodavcem i dobiju odgovor, i razloge za taj odgovor, na bilo koje mišljenje koje bi oni mogli da formulišu;
- (e) sa ciljem postizanja sporazuma o odluci.

Procedura:

Predstavnik sindikata zahteva pisanim putem, prvo od menadžmenta kompanije, informacije koje se tiču pitanja obuhvaćenih pravom na informisanje.

Informacija se dobija u pisanoj formi, u roku od osam dana, ili 15 dana ako kompleksnost situacije to opravdava.

U slučaju konsultacija, poslodavac zahteva mišljenje predstavnika sindikata napismeno, što mora biti poslato u roku od 10 dana od prijema zahtjeva, ili u dužem roku koji je odobren imajući u vidu kompleksnost teme.

Ako predstavnik sindikata traži relevantne informacije o temi konsultacija, period koji je spomenut u prethodnom paragrafu počinje od trenutka dobijanja informacije u pisanoj formi ili na sastanku na kome se odvija konsultacija.

Kada se radi o odluci poslodavca da primjeni ovlašćenja menadžmenta i organizacije iz ugovora o radu, proceduru informisanja i konsultovanja moraju sprovesti obe strane kako bi postigle konsenzus, kad god je to moguće.

Potrebno je napraviti tijelo, na sektorskom nivou, koje će se baviti informisanjem i konsultovanjem zaposlenih sa ciljem da kontroliše i provjerava proces poštovanja zakonodavstva, prikuplja kritike, prijedloge i žalbe kako od zaposlenih, predstavnika zaposlenih tako i od kompanija i da dela nepristrasno, kao posrednik, u slučaju konflikta, nudeći pravni savjet da bi se pronašlo rešenje.

Ovo tijelo ima za cilj da dela kao nadzorno tijelo i prva pomoć u slučaju potrebe da se poverljivost informacije dovede u pitanje ili odbijanja da se pruži informacija ili konsultacije.

Ovo bi trebalo da bude hitna procedura koja bi obezbjedila koristan efekat odluke. Ovo tijelo ima zadatak da riješi postojeće ili buduće sukobe.

Pravo učesća zaposlenih

Partneri se slažu o važnosti prava na učješće predstavnika radnika u rešavanju sukoba ili izbegavanju sukoba. Takođe, kada se zaposlenima ponudi mogućnost da učestvuju u donošenju odluka, to dovodi do boljih rezultata u poslu, menadžmentu i ljudskim resursima.

Partneri se slažu da je važno uspostaviti saradnju za kontinuirani dijalog, a kada ovo imaju kao bazu, oni se dogovaraju o stvaranju tima za izvršni menadžment na nivou kolektivnog pregovaranja (na nivou kompanije/ili sektora).

Na ovaj način će se obezbjediti kanal za davanje povratne informacije zaposlenima, što će svima koristiti.

Ovo neće ograničiti mogućnost i prava poslodavca da donosi odluke.

Zaposleni koji su deo procesa učesća imaju obavezu poštovanja poverljivosti.

Imajući ovo u vidu, partneri se slažu da zaposleni imaju pravo da učestvuju u procjesu donošenja odluka. U tu svrhu partner se dogovara o formiranju tima izvršnog menadžmenta.

Ovaj tim ima pravo da učestvuje, na svaka tri mjeseca, na sastanku menadžmenta.

U tu svrhu tim izvršnog menadžmenta ima pravo da:

- a) predstavi informacije i konsultacije o pitanjima kojima će se baviti na sastanku, naime u vezi sa planovima za restrukturiranje ili projektima;
- b) predstavi prijedloge, žalbe ili kritike upućene organima, nadležnim tijelima kompanije
- c) se sastane sa tijelima zaduženim za pripremni rad u restrukturiranju;

Tim izvršnog menadžmenta biće imenovan/izabran (zavisi od sistema koji sindikat koristi) od strane predstavnika sindikata/zaposlenih i predstavljaje jednu trećinu menadžmenta u kompaniji.

Procedura nominovanja predstavnika zaposlenih će se izvršiti putem kolektivnog pregovaranja.

Finansijsko učješće zaposlenih

Partneri vide finansijsko učješće zaposlenih kao važan metod postizanja ciljeva učješća zaposlenih i bitan alat za poboljšanje i razvoj učješća socijalnih partnera i socijalnog dijaloga na nivou kompanije.

Imajući u vidu trenutnu pandemiju u kojoj je svijet, partneri se slažu da je uvođenje ovog učješća način da se bolje raspodjeli bogatstvo među zaposlenima i kompanijama i način da se poboljša učješće imajući za cilj da se prevaziđu razlike, da se promoviše razvoj kompanija, da se zadrži radna snaga i održi nivo zapošljavanja.

Partneri ukazuju da je uvođenje šema WFP, kao što je «Bonus» (šema djeljenja profita) način da se postigne cilj.

Ovo je naročito relevantno u okviru malih i srednjih prijeduzeća, gde zaposleni i kompanije treba zajedno da rade u obostranu korist.

U tu svrhu partneri se slažu da je najbolje voditi debate i uvesti ovo pitanje u okviru kolektivnog pregovaranja jer na taj način to pitanje može biti pod uticajem uslova u svakoj kompaniji i/ili grani.

Novi oblici rada

Imajući u vidu potrebu da se garantuje jednakost svih radnika na nestandardnim poslovima i radnika na platformama,

Partneri se slažu o upotrebi novih oblika rada, kao što je rad na platformama, ako se on sprovodi uz puno poštovanje svih međunarodnih i evropskih instrumenata o ljudskim, sindikalnim, socijalnim pravima i pravima na BZR.

Zaposleni, pokriveni novim oblicima rada, moraju imati pristup redovnom informisanju i konsultovanju, isto kao i radnici koji su fizički prisutni na svom radnom mjestu. Ako je ovo slučaj, i kako bi se ispoštovale bezbjednosne mjere usled KOVIDA-19, to se može desiti korišćenjem dostupnih digitalnih alata, naime digitalnih platformi.

Očekivani scenariji

Partneri se slažu da mehanizmi informisanja i konsultovanja igraju važnu ulogu u očkivanju scenarija i pronalaženju rešenja za izazove tako što će unaprijed raditi na njima.

U tu svrhu partneri se takođe slažu da obuka igra važnu ulogu, uz anticipiranje budućih potreba, kao što su potrebe za obukom, prekvalifikacijom i dokvalifikacijom.

Pandemija – KOVID-19

Svijet se suočava sa nezapamćenom sanitarnom krizom zbog KOVIDA-19. Partneri se slažu o potrebi da se prijeduzmu mjere koje osiguravaju bezbjednost pojedinca i privrede. Sa takvim ciljem na umu partneri se slažu o važnosti privilegovanja kvaliteta socijalnog dijaloga, kao načina da se obezbjedi kontinuitet rada i održi zaposlenost. Neophodne mjere treba donjeti u okviru kolektivnog pregovaranja.

U tu svrhu partneri se slažu o važnoj ulozi koju igraju mehanizmi informisanja i konsultovanja zaposlenih.

Socijalni partneri moraju da igraju važnu ulogu u mjerama koje treba donjeti, ne samo da bi se sprečile socijalne i ekonomske posljedice, već i da bi se promovisao oporavak kompanija, obezbjeđivanjem zapošljavanja i stvaranjem bezbjednih radnih mesta gde su uslovi rada takođe bezbjedni, i stvaranjem bezbjedne i zdrave sredine.

Imajući ovo u vidu, partneri se slažu o poboljšanju uloge informisanja i konsultovanja, ne samo da bi se pronašla rešenja za probleme nastale usled pandemije jer je to jako važan alat za naslućivanje mjera/potrijebe, već i da bi se pripremili za rad u budućnosti. Situacija u kojoj živimo je pokazala da nijesmo pripremljeni i da je bilo potrebno da se suočimo sa aktuelnom situacijom kako bismo postali svesni mana sistema. Da je postojao funkcionalni mehanizam, ne bismo ni saznali da nešto ne valja.

Mjesto: *Podgorica, Crna Gora*

Vrijeme: *19. januar 2021.*

Suzana Radulović
Generalni sekretar UPCG

Srđa Keković
Generalni sekretar USSCG

PORTUGAL

**Proposta negocial do SIMA no âmbito da negociação do contrato colectivo da FENAME
(Metalurgia) e ANIMEE (Sector Eléctrico) (Português/Inglês)**



**SIMA - Collective Bargaining Proposal to Employers' Associations - FENAME (Metal sector)
and ANIMEE (Electrical Sector) (Portuguese/English)**



Proposta - SIMA

Informação e consulta de delegado sindical e/ou dirigente sindical

1 – Por Informação entende-se a transmissão de dados por parte do empregador ao delegado e/ou dirigente sindical, a fim de que estes possam tomar conhecimento do assunto tratado e analisá-lo.

2 – Por Consulta entende-se o estabelecimento de um diálogo e a troca de opiniões entre o delegado e/ou dirigente sindical e a direção central ou qualquer outro nível de direção mais apropriado, em momento, de forma e com conteúdo suscetíveis de permitir que os representantes dos trabalhadores formulem uma opinião, com base nas informações facultadas sobre as medidas propostas a que a consulta se refere.

3 – O delegado ou dirigente sindical tem direito a informação e consulta sobre as seguintes matérias, além de outras que venham referidas na lei ou possam vir a ser acordadas:

- a) Evolução recente e provável, evolução futura da atividade da empresa ou do estabelecimento e da sua situação económica;
- b) Situação, estrutura e provável evolução do emprego na empresa ou no estabelecimento e eventuais medidas antecipatórias, nomeadamente em caso de ameaça para o emprego;
- c) Decisão suscetível de desencadear mudança substancial na organização do trabalho ou nos contratos de trabalho.

4 - A informação é prestada sempre que seja solicitada pelo delegado ou dirigente sindical na empresa, que a deve solicitar por escrito, recorrendo a meio idóneo para o efeito.

5 - A informação é prestada, por escrito, no prazo de oito dias, ou de 15 dias se a sua complexidade o justificar.

§ Sempre que estejam em causa medidas de carácter urgente, a informação deve ter lugar em momento, de forma e com conteúdo suscetíveis de permitir, nomeadamente, que os delegados/dirigentes sindicais procedam a um exame apropriado e prepararem, se for caso disso, as consultas e possam emitir parecer fundamentado.

6 - No caso de consulta, o empregador solicita, por escrito, o parecer do delegado ou dirigente sindical, que deve ser emitido no prazo de 10 dias a contar da receção do pedido, ou em prazo inferior sempre que estiver em causa medidas de carácter urgente.

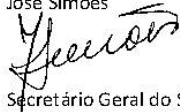
§ Caso o delegado ou dirigente sindical peça informação pertinente sobre a matéria da consulta, o prazo referido no número anterior conta-se a partir da prestação da informação, por escrito ou em reunião em que tal ocorra.

7 - A consulta efetua-se:

- a) Ao nível adequado de direção e de representação, em função da matéria tratada,
- b) Com base em informações fornecidas pelo empregador e no parecer que os delegados sindicais e/ou dirigentes sindicais têm o direito de formular,
- c) De modo a permitir que aqueles se reúnam com o empregador e obtenham uma resposta fundamentada ao parecer que tenham formulado.
- d) O delegado ou dirigente sindical pode ser assistido por peritos por si escolhidos, se tal for necessário para o cumprimento das suas funções.

8 - O procedimento de informação e consulta deve ser conduzido por ambas as partes no sentido de alcançar, sempre que possível, o consenso.

Jose Simões



Secretário Geral do SIMA



SIMA's Proposal

Information and consultation of union delegate and / or union leader

1 - Information refers to the transmission by the employer to the union delegate and / or union leader of data in order to enable them to acquaint themselves with the subject matter and to examine it.

2 - Consultation means the exchange of views and establishment of dialogue between the union delegate and / or union leader and the central management or any other appropriate level of management, at the moment to allow them to formulate an opinion, based on the information provided on the proposed measures to which the consultation refers.

3 - The union delegate or union leader has the right to information and consultation on the following matters, in addition to others that may be referred by the law or may be agreed upon:

- a) the recent and probable development, future evolution of company's activities and economic situation;
- b) on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
- c) on decisions likely to lead to substantial changes in work organisation or in contractual relations.

4 - Information is provided whenever requested by the union delegate or union leader in the company, who must request it in writing, using the appropriate means for that purpose.

5 - The information is provided, in writing, within eight days, or 15 days if its complexity justifies it.

§ Whenever urgent measures are involved, the information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, union delegates and / or union leaders to conduct an adequate study and, where necessary, prepare for consultation.

6 - In the case of consultation, the employer requests, in writing, the opinion of the union delegate or union leader, which must be issued within 10 days of receiving the request, or in a shorter period whenever urgent measures are involved.

§ If the union delegate or union leader asks for pertinent information on the matter of the consultation, the period referred to in the previous number counts from the provision of the information, in writing or in a meeting in which this occurs.

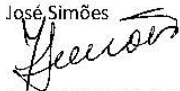
7 - The consultation takes place:

- a) at the relevant level of management and representation, depending on the subject under discussion;

- b) on the basis of information supplied by the employer and of the opinion which the union delegate and / or union leader are entitled to formulate;
- c) in such a way as to enable those to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;
- d) The union delegate or union leader may be assisted by experts chosen by him, if necessary for the performance of his duties.

8 - The information and consultation procedure must happen with a view to reaching an agreement on decisions.

José Simões



Secretário-geral do SIMA

SÉRVIA/SERBIA

DECLARAÇÃO UNILATERAL SERBIA AUTONOMOUS UNION (Sérvio)/(Inglês)



UNILATERAL DECLARATION SERBIA AUTONOMOUS UNION (Serbish/English)



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Samostalni sindikat metalaca Srbije, u projektu «Viši nivo zajedničke socijalne posvećenosti – kao ključ informisanja & konsultovanja, učešće i njihovi izazovi»,

Uzimajući u obzir važnost uloge koju igraju mehanizmi informisanja i konsultovanja zaposlenih na nacionalnom nivou;

Uzimajući u obzir važeća prava zaposlenih na informisanje i konsultovanje, predviđena nacionalnim zakonom koji ima za cilj da obezbedi efikasnost prava zaposlenih na informisanje i konsultovanje,

Uzimajući u obzir potrebu da se poboljšaju važeće definicije informisanja i konsultovanja zaposlenih kako bi se prilagodile potrebama kako zaposlenih tako i kompanija,

Uzimajući u obzir potencijal učešća zaposlenih u izvršnom upravljanju kao izvoru dodatnih informacija i konsultacija radi donošenja najboljih mogućih odluka u kompaniji i radi uspostavljanja saradnje za kontinuirani dijalog,

Uzimajući u obzir potrebu da se radi ka tom cilju i da se koristi kolektivno pregovaranje kao važan način postizanja cilja ,

Partner se slaže o sledećem:

- **Pravo na informisanje i konsultovanje**

Definicije

Partner se slaže o potrebi da se dođe do preciznije definicije koncepta kako bi se ona prilagodila evropskom zakonu, ali i zbog toga što se oni slažu da kako bi se takav mehanizam bolje primenio, potrebno je da uključiti:

- Informisanje: označava prenos podataka od poslodavca do predstavnika zaposlenih kako bi se oni upoznali sa datom temom i ispitali je; informacije treba da budu pružene u pravo vreme, na takav način i sa takvim sadržajem da omogućavaju predstavnicima zaposlenih da urade detaljnu procenu mogućeg uticaja i, gde je to prikladno, da se pripreme za konsultacije sa nadležnim organom preduzeća ili grupom preduzeća;



- **Консултације:** означава успостављање дијалога и размену мишљења представника запослених и централног менаџмента или nekог другог адекватног нивоа менаџмента, у право време, на такав начин и са таквим садржајем, што омогућава представницима запослених да изразе своје мишљење на основу понуђених информација о предложеном меру на које се консултација односи, без негативних последица по обавезе менаџмента, и у разумном року, што се може узети у обзир у оквиру предузећа или групе предузећа;

Поред питања покривених колективним преговарањем, представници синдиката на нивоу компаније (повереник) или синдикални званичник имају право на информисање и консултовање о следећим темата :

Информисање и консултовање покрива:

- (a) информисање о најновијем и могућем развоју или активностима предузећа и економској ситуацији ;
- (b) информисање и консултовање о ситуацији, структури и могућем развоју запошљавања у оквиру предузећа и о припремним мерима, нарочито када постоји претња по запошљавање;
- (c) информисање и консултовање о одлукима за које постоји вероватноћа да могу довести до значајних промена у организацији рада или у уговорним односима;
- (d) информисање и консултовање о потребима компаније у вези са обуком радника у компанији;
- (e) информисање и консултовање о потреби компаније да користи нове облике рада, као што је рад на платформи.

Информације се пружају у право време, на такав начин и са таквим садржајем да омогућавају представницима запослених да спроведу адекватну студију и тамо, где је то неопходно, да се припреме за консултације.

Консултације се одвијају:

- (a) тако да време, начин и садржај буду прикладни;
- (b) на релевантном нивоу менаџмента и заступања, у зависности од теме која је предмет дискусије;
- (c) на основу добијених информација од послодавца и мишљења које представници запослених треба да формулишу;
- (d) на такав начин да обезбеђују представницима запослених да се састану са послодавцем и добију одговор, и разлоге за тај одговор, на било које мишљење које би они могли да формулишу;



(e) sa ciljem postizanja sporazuma o odluci.

Procedura:

Predstavnik sindikata zahteva pisanim putem, prvo od menadžmenta kompanije, informacije koje se tiču pitanja obuhvaćenih pravom na informisanje.

Informacija se dobija u pisanoj formi, u roku od osam dana, ili 15 dana ako kompleksnost situacije to opravdava.

U slučaju konsultacija, poslodavac zahteva mišljenje predstavnika sindikata napismeno, što mora biti poslato u roku od 10 dana od prijema zahteva, ili u dužem roku koji je odobren imajući u vidu kompleksnost teme.

Ako predstavnik sindikata traži relevantne informacije o temi konsultacija, period koji je spomenut u prethodnom paragrafu počinje od trenutka dobijanja informacije u pisanoj formi ili na sastanku na kome se odvija konsultacija.

Kada se radi o odluci poslodavca da primeni ovlašćenja menadžmenta i organizacije iz ugovora o radu, proceduru informisanja i konsultovanja moraju sprovesti obe strane kako bi postigle konsenzus, kad god je to moguće.

Potrebno je napraviti telo, na sektorskom nivou, koje će se baviti informisanjem i konsultovanjem zaposlenih sa ciljem da kontroliše i proverava proces poštovanja zakonodavstva, prikuplja kritike, predloge i žalbe kako od zaposlenih, predstavnika zaposlenih tako i od kompanija i da dela nepristrasno, kao posrednik, u slučaju konflikta, nudeći pravni savet da bi se pronašlo rešenje.

Ovo telo ima za cilj da dela kao nadzorno telo i prva pomoć u slučaju potrebe da se poverljivost informacije dovede u pitanje ili odbijanja da se pruži informacija ili konsultacije. Ovo bi trebalo da bude hitna procedura koja bi obezbedila koristan efekat odluke. Ovo telo ima zadatak da reši postojeće ili buduće sukobe.

Pravo učešća zaposlenih

Partner se slaže o važnosti prava na učešće predstavnika radnika u rešavanju sukoba ili izbegavanju sukoba. Takođe, kada se zaposlenima



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ponudi mogućnost da učestvuju u donošenju odluka, to dovodi do boljih rezultata u poslu, menadžmentu i ljudskim resursima.

Partner se slaže da je važno uspostaviti saradnju za kontinuirani dijalog, a kada ovo imaju kao bazu, oni se dogovaraju o stvaranju tima za izvršni menadžment na nivou kolektivnog pregovaranja (na nivou kompanije/ili sektora).

Na ovaj način će se obezbediti kanal za davanje povratne informacije zaposlenima, što će svima koristiti.

Ovo neće ograničiti mogućnost i prava poslodavca da donosi odluke.

Zaposleni koji su deo procesa učešća imaju obavezu poštovanja poverljivosti.

Imajući ovo u vidu, partner se slaže da zaposleni imaju pravo da učestvuju u procesu donošenja odluka. U tu svrhu partner se dogovara o formiranju tima izvršnog menadžmenta.

Ovaj tim ima pravo da učestvuje, na svaka tri meseca, na sastanku menadžmenta.

U tu svrhu tim izvršnog menadžmenta ima pravo da:

- a) predstavi informacije i konsultacije o pitanjima kojima će se baviti na sastanku, naime u vezi sa planovima za restrukturiranje ili projektima;
- b) predstavi predloge, žalbe ili kritike upućene organima, nadležnim telima kompanije
- c) se sastane sa telima zaduženim za pripremni rad u restrukturiranju;

Tim izvršnog menadžmenta biće imenovan/izabran (zavisi od sistema koji sindikat koristi) od strane predstavnika sindikata/zaposlenih i predstavljace jednu trećinu menadžmenta u kompaniji.

Procedura nominovanja predstavnika zaposlenih će se izvršiti putem kolektivnog pregovaranja.

Finansijsko učešće zaposlenih

Partner vidi finansijsko učešće zaposlenih kao važan metod postizanja ciljeva učešća zaposlenih i bitan alat za poboljšanje i razvoj učešća socijalnih partnera i socijalnog dijaloga na nivou kompanije.



Имајући у виду тренутну пандемију у којој је свет, партнер се слаже да је увођење овог учеšћа начин да се боље расподели богатство међу запосленима и компанијама и начин да се побољша учеšће имајући за циљ да се превазиду разлике, да се промовише развој компанија, да се задржи радна снага и одржи ниво запошљавања.

Партнер указује да је увођење шема WFP, као што је «Bonus» (шема дељења профита) начин да се постигне циљ.

Ово је нарочито релевантно у оквиру малих и средњих предузећа, где запослени и кампање треба заједно да раде у обојану корист.

У ту сврху партнер се слаже да је најбоље водити дебате и увести ово питање у оквиру колективног преговарања јер на тај начин то питање може бити под утицајем услова у свакој компанији и/или грани.

Нови облици рада

Имајући у виду потребу да се гарантује једнакост свих радника на нестандартним пословима и радника на платформама,

Партнер се слаже о употреби нових облика рада, као што је рад на платформама, ако се он спроводи уз пуно поштовање свих међународних и европских инструмената о људским, синдикалним, социјалним правима и правима на БЗР.

Запослени, покривени новим облицима рада, морају имати приступ редовном информисању и консултовању, исто као и радници који су физички присутни на свом рандом месту. Ако је ово случај, и како би се испоштовале безбедносне мере услед КОВИДА-19, то се може десити коришћењем доступних дигиталних алата, наиме дигиталних платформи.

Очекивани сценарији

Партнер се слаже да механизми информисања и консултовања играју важну улогу у очекивању сценарија и проналажењу решења за изазове тако што ће унапред радити на њима.

У ту сврху партнер се такође слаже да обука игра важну улогу, уз антиципацију будућих потреба, као што су потребе за обуком, преквалификацијом и доквалификацијом.



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Pandemija – KOVID-19

Svet se suočava sa nezapamćenom sanitarnom krizom zbog KOVIDA-19. Partner se slaže o potrebi da se preduzmu mere koje osiguravaju bezbednost pojedinca i privrede. Sa takvim ciljem na umu partner se slaže o važnosti privilegovanja kvaliteta socijalnog dijaloga, kao načina da se obezbedi kontinuitet rada i održi zaposlenost. Neophodne mere treba doneti u okviru kolektivnog pregovaranja.

U tu svrhu partner se slaže o važnoj ulozi koju igraju mehanizmi informisanja i konsultovanja zaposlenih.

Socijalni partneri moraju da igraju važnu ulogu u merama koje treba doneti, ne samo da bi se sprečile socijalne i ekonomske posledice, već i da bi se promovisao oporavak kompanija, obezbeđivanjem zapošljavanja i stvaranjem bezbednih radnih mesta gde su uslovi rada takođe bezbedni, i stvaranjem bezbedne i zdrave sredine.

Imajući ovo u vidu, partner se slaže o poboljšanju uloge informisanja i konsultovanja, ne samo da bi se pronašla rešenja za probleme nastale usled pandemije jer je to jako važan alat za naslućivanje mera/potreba, već i da bi se pripremili za rad u budućnosti. Situacija u kojoj živimo je pokazala da nismo pripremljeni i da je bilo potrebno da se suočimo sa aktuelnom situacijom kako bismo postali svesni mana sistema. Da je postojao funkcionalni mehanizam, ne bismo ni saznali da nešto ne valja.

Mesto: *Beograd, Srbija*

Vreme: *7. decembar 2020*

Samostalni sindikat
metalaca Srbije
Predsednik


Zoran Marković





САМОСТАЛНИ СИНДИКАТ МЕТАЛЦИ СРБИЈЕ

ЧЛАН СВЕТОСКЕ МЕТАЛСКЕ ФЕДЕРАЦИЈЕ
ЧЛАН ЕВРОПСКЕ МЕТАЛСКЕ ФЕДЕРАЦИЈЕ

11000 Београд, Дечанска 14, Тел/факс (011) 3231-641, 3340-722, 333 5 243
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Autonomous Metal Workers' Union of Serbia, under the project «Upper Level – Joint Social Commitment – as the Key to I&C and Participation and Their Challenges»,

Having into consideration the importance of the role played by the employees' mechanisms of Information and Consultation at National level;

Having into consideration the existing rights of employees' I&C, foreseen by the national law and aiming to better assure the efficiency of the employees' rights on information and consultation,

Having into consideration the need to improve the actual existing definitions of Employees' Information and Consultation to better comply with the needs of both employees and companies,

Having into consideration the positive potential of employee participation in the executive management as a source of additional information and consultation for the best possible decision making in company and as in establishing a cooperation for a continuous and ongoing dialogue,

Having into consideration the need to work towards that aim and use the collective bargaining as an important way to achieve this goal,

The partner agrees on the following:

- **Information and Consultation rights**

Definitons

The partner agrees on the need to have a more precise definition of the concepts so that it complies with the European law but also because they agree that such mechanism, in order to better be applied, should include:

- Information: means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate,



prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings;

- Consultation: means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings;

Trade union representatives, at company level (shop steward) or the trade union official, has the right to information and consultation, besides the matters included by collective bargaining, on the following matters:

Information and consultation shall cover:

- (a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;
- (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
- (c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations;
- (d) information and consultation on the needs of the company with regard to training with a view to determining the training needs of the company's workers;
- (e) information and consultation on the need of the company in making use of new work forms, such as platform work.

Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.

Consultation shall take place:

- (a) while ensuring that the timing, method and content thereof are appropriate;



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- (b) at the relevant level of management and representation, depending on the subject under discussion;
- (c) on the basis of information supplied by the employer and of the opinion which the employees' representatives are entitled to formulate;
- (d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;
- (e) with a view to reaching an agreement on decisions.

Procedure:

The trade union representative requests in writing, respectively, to the management body of the company or establishment the information elements regarding the matters covered by the right to information.

The information is provided in writing, within eight days, or 15 days if its complexity justifies it.

In the case of consultation, the employer requests in writing the opinion of the trade union representative (s), which must be issued within 10 days of receipt of the request, or within a longer period that is granted given the extent or complexity of the matter.

If the trade union representative asks for pertinent information on the matter of the consultation, the period referred to in the preceding paragraph starts from the provision of the information, in writing or at a meeting in which this occurs.

When the employer's decision to exercise management and organizational powers arising from the employment contract is involved, the information and consultation procedure must be conducted by both parties in order to reach, whenever possible, consensus.

The creation of a body, at sectoral level, focused on Employees' Information and Consultation, aiming to monitor and check the process compliance with the legislation, to collect critics, suggestions and claims from both employees, employees' representatives and companies and to act, impartially, as a mediator in the face of conflicts, offering legal advice in order to find solutions for conflicts.



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This body aims to act as a supervisory body and as a first resource in the event of the need to challenge the confidentiality of information or the refusal to provide it or consultations. It should be an urgent nature procedure in order to secure the useful effect of the decision. This body will perform the function of settling existing or future conflicts.

- **Employees' Participation Right**

The partner agrees on the importance of the workers representatives' participation right in solving conflicts or avoiding conflicts. In addition when employees are offered the possibility to participate in the decision making will lead to better results in business, management and human resources.

The partner agrees that it is important to establish a cooperation for a continuous and ongoing dialogue and having this as a basis they agree on the creation of an executive management team within the collective bargaining level (at company and/or sectoral level).

This will allow to provide a feedback channel towards the employees that will benefit everyone.

This will not restrict the ability and rights of the employer to make decisions.

The employees that are part of the participation process are bound by confidentiality.

Having this mind, the partner agrees that employees have the right to participate in the decision taking procedure. For such purpose the partner agrees on the creation of an executive management team.

This team has the right to participate, every three months, in a company's management's meeting.

For such purpose the executive management team has the right to:

- a) Prior information and consultation on issues to be approached in the meeting, namely on the formulation of restructuring plans or projects;
- b) Present suggestions, complaints or criticisms to Organs competent bodies of the company



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c) Meet with the bodies in charge of preparatory restructuring work;

The executive management team will be pointed out by the trade unions/employees' representatives and will represent one third of the company's management body do the company.

Procedure and nomination of the Employees' representatives should be made via collective bargaining.

- **Employees' Financial Participation**

Partner sees the introduction of Employees' Financial Participation as an important way to achieve the goals of employees' involvement and a useful tool for improving and developing the engagement of social partners and social dialogue at company level.

Having in mind the present pandemic situation the world is living, the partner agrees that the introduction of such is a way to better redistribute wealth amongst employees and companies and a way to improve the engagement having as a goal overcoming the difficulties and to promote the development of the companies and to maintain the workforce and employment.

The partner points out that introduction of WFP schemes, such as the «Bonus» (profit sharing schemes) as a way to achieve this goal.

This is particularly relevant within the SME's companies, where employees and companies should work together for their own benefit.

For such purpose the partner agrees that the best way to debate and to introduce this is within collective bargaining once this can be influenced by the individual conditions of each company and /or branch.

- **New work forms**

Having into consideration the need to guarantee the equality of all non-standard workers and workers in platform companies,

Partner agrees on the use of new work forms, such as platform work, if it is carried out in full compliance with international and European instruments on human, trade union, social rights and occupational safety and health.



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Employees covered by the new work forms must have access to information and consultation, on a regular basis and within what is established for the workers working in person in their workplace. If it is the case, and to comply with the safety measures in place due to COVID 19, such can take place using the digital tools available, namely digital platforms.

- **Anticipation scenarios**

Partner agrees that employees' information and consultation mechanisms play an important role in anticipating scenarios and in finding out solutions for the challenges ahead by working on it in advance.

For such purpose the partner also agrees that training, in a way to anticipate future needs) play an important role, such as training needs, reskilling, upgrading skills.

- **Pandemic situation – COVID 19**

The world is facing a severe unprecedented sanitary crisis due to COVID-19. The partner agrees on the need to take measures to secure individuals and economies. With such goal in mind the partner agrees on the importance of privileging a quality social dialogue as the way to secure continuity of the operations and keep the employment. Necessary measure should be taken within the scope of the collective bargaining.

For such purpose the partner agrees on the important role played by the employees' information and consultation mechanisms.

Social partners must play an important role in the measures to be taken not only in order to prevent social and economic consequences, as well to promote the recovery of the companies, securing employment and creating safe workplaces with the necessary safety conditions, creating a secure and healthy environment.

Having this in mind the partner agrees on enhancing the role of employees' information and consultation not only to find solutions for the problems raised by the pandemic situation as it is a very important tool to anticipate measures/needs and to prepare the work in the future. The actual situation we are living in has shown that it has not been well prepare and it was



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necessary to face the actual situation to gain awareness of such. If the mechanisms were in place and functioning it was not need to wait to see that it was not the case.

Done at *Belgrade, Serbia*

Date: *7 December 2020*

Autonomous Metalworkers'
Union of Serbia
President


Zoran Marković



SÉRVIA/SERBIA

DECLARAÇÃO UNILATERAL SERBIAN EMPLOYERS ASSOCIATION (Inglês)



UNILATERAL DECLARATION SERBIAN EMPLOYERS ASSOCIATION (Serbish)



SERBIAN ASSOCIATION OF EMPLOYERS under the project «*Upper Level – Joint Social Commitment – as the Key to I&C and Participation and Their Challenges*»,

Having into consideration the importance of the role played by the employees' mechanisms of Information and Consultation at National level;

Having into consideration the existing rights of employees' I&C, foreseen by the national law and aiming to better assure the efficiency of the employees' rights on information and consultation,

Having into consideration the need to improve the actual existing definitions of Employees' Information and Consultation to better comply with the needs of both employees and companies,

Having into consideration the need to work towards that aim and use the collective bargaining as an important way to achieve this goal,

The partners agree on the following:

- **Information and Consultation rights**

Definitons

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- Consultation: means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings.

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Consultation shall take place:

- (a) while ensuring that the timing, method and content thereof are appropriate;
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Serbian Association of Employers

For such purpose the partners also agree that training, in a way to anticipate future needs) play an important role, such as training needs, reskilling, upgrading skills.

• **Pandemic situation – COVID 19**

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Belgrade,
December 11, 2020

SERBIAN ASSOCIATION OF EMPLOYERS


Srđan Drobniaković, Director