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Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives

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I. Introduction

Conflict resolution is an essential part of any well-functioning labour market and industrial relations system. Where there are labour relations one inevitably finds labour disputes and the need to resolve them efficiently, effectively and equitably for the benefit of all the parties involved and the economy at large. The framework put in place to deal with such disputes is a crucial component of any country's industrial relations system. The options available to the social partners and to governments are numerous and range from informal negotiations all the way to formal litigation and may even include government intervention to resolve certain labour disputes in the public interest.

While the range of choices for resolving labour disputes is broad, the present discussion focuses only on the **extra-judicial mechanisms** of conciliation, mediation and arbitration – that is, solutions which do not involve going to court or appearing before a labour tribunal. And while there is a great variety of conflicts that can arise between workers and employers, this paper further focuses on those mechanisms used to resolve disputes in cases of **collective disputes**, that is, disputes associated with the process of collective bargaining (*interest* disputes) or in the application/interpretation of collective agreements (*rights* disputes) and which arise between employers and groups of workers most often represented by trade unions.

As a point of reference, this note draws largely on some of the practices and experiences of the EU Member States and in particular the newest EU Members[1] to show how countries in economic transition, and often with limited experience in collective dispute resolution, have built up their own dispute resolution frameworks. This is not intended as an exercise to evaluate these different systems or to rank their relative effectiveness but primarily to serve as a resource for comparison between the various policy approaches adopted by countries in transition. Neither does this presentation try to present the ideal type of collective dispute resolution system. While each country has developed its own practices based on distinctive policy priorities, the unique labour market and industrial relations landscape of each country is a fundamental consideration in designing a dispute resolution framework and accounts for the variety of approaches taken by different countries. But while there is perhaps no one size fits all solution there are a number of similar elements that go into every dispute resolution system, which will be discussed below.

In addition to sketching collective dispute resolution practices in Europe and outlining the relevant ILO standards and positions on this topic , this paper includes three detailed case studies (one from the United States, one from the United Kingdom and one from Denmark) to show how government agencies have effectively intervened both to prevent and to resolve collective labour disputes and to highlight the paramount role that the social partners play in settling such disputes.

[1] Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia who joined in 2004, and Bulgaria and Romania who joined in 2007. This paper draws much of its country-specific examples from reports on collective dispute resolution prepared as part of a European Industrial Relations Observatory (EIRO) survey on the same topic.

II. Dispute resolution – general concepts explained

Before embarking on a discussion of the various systems of collective dispute resolution adopted by the newest EU Member States, it is worth pausing to consider some basic concepts and terminology. This is important on the one hand because it will help provide a logical framework for comparing the dispute resolution systems while also clarifying certain terms, which are not always used consistently from one country to the next.

Generally speaking, employment disputes are divided into two categories: individual and collective disputes. As the term implies**, individual disputes** are those involving a single worker whereas **collective disputes** involve groups of workers – usually represented by a trade union.

Collective disputes can further be divided into two sub-categories: rights disputes and interests disputes. A **rights dispute** arises where there is disagreement over the implementation or interpretation of statutory rights, or the rights set out in an existing collective agreement. By contrast, an **interest dispute** concerns cases where there is disagreement over the determination of rights and obligations, or the modification of those already in existence. Interest disputes typically arise in the context of collective bargaining where a collective agreement does not exist or is being renegotiated.

In terms of collective disputes, the kind of dispute often has important legal and strategic consequences for determining the method for resolving it. In the case of a rights dispute where there is a valid collective agreement in force, this same agreement might include provisions setting out the mechanism the parties must follow in the event of a dispute. And depending on the country, there may be legal provisions requiring certain collective disputes to proceed in a specified manner to arrive at a resolution (e.g. a collective interest dispute involving an essential public service may be subject to compulsory arbitration under the law).

With respect to resolving these different types of disputes (leaving aside litigation and other kinds of judicial action), there are essentially three options: conciliation, mediation and arbitration.[2] All three of these alternatives involve the intervention of a third party and it is rather the degree of intervention that differentiates one from the other.

In some countries, no distinction is made between conciliation and mediation or the terms tend to overlap (see Table 8, Malta and Slovenia). Elsewhere, there is a definite if subtle difference between the two. While both conciliation and mediation are processes involving the intervention of a neutral third party, the role of a **conciliator** is to help facilitate communication between the parties, without making any specific proposals for resolving the dispute. On the other hand, in addition to keeping the lines of communication open, a **mediator**'s role may also include proposing terms of settlement, which the parties are free to accept or reject. The third mechanism**, arbitration** may be

[2] Together, conciliation, mediation and arbitration are commonly called alternative dispute resolution (ADR), which refers to any means of settling a dispute other than through a court or labour tribunal.

compulsory or voluntary, binding or advisory – depending on the legal circumstances or the choice of the parties. In any case, arbitration involves the intervention of a neutral third party who is empowered to examine legal arguments and evidence from both sides and to make a binding decision in the case.

III. Dispute prevention and resolution – two sides of the same coin.

While keeping in mind the above framework for dispute resolution and before considering each of its elements in more practical detail, it is important not to lose sight of the fact that labour policies and workplace strategies designed to *prevent* collective disputes before they erupt are an equally significant aspect of good labour relations. For instance, sound workplace policies and procedures can at the same time serve as a foundation for successful business while fostering good workplace relations. Open lines of communication between workers and management, worker participation in decisions that affect the workplace, as well as effective and regular practices of social dialogue can each contribute not only to better cooperation and understanding between workers and employers but to the prompt and equitable settlement of collective labour disputes when these arise.

Governments also have a number of effective tools at their disposal to promote good labour relations and to contribute to an industrial environment that, while not eliminating collective disputes altogether, at least minimizes them to the greatest extent possible. A government's most prominent role is as regulator of the labour market. Maintaining and enforcing a legislative framework that promotes effective collective bargaining based on the independence of the parties and the voluntary nature of negotiations is fundamental for strengthening harmonious labour relations and is itself reinforced by effective dispute resolution mechanisms.

Moreover, government dispute resolution agencies are another instrument to assist businesses and employees develop better employment relations by providing information services or training on such matters as handling discipline and grievances at work, preventing discrimination and building effective workplace communication.

Case Study 1: Conflict Management and Prevention

The UK Advisory, Conciliation and Arbitration Service (Acas)

Conflict Advisory Services Provided to Bradford Metropolitan District Council

In 2002, Bradford Metropolitan District Council introduced its Advisory and Mediation Service to help resolve situations, such as bullying, discrimination, harassment and victimisation which were affecting some of its employees. Building on this initiative, the District Council asked Acas for help in extending mediation to potential collective disputes, particularly with respect to the Council department responsible for vehicles, garbage collection and community transport (fleet services).

Acas conducted joint working sessions with both managers and employee representatives. They

began by exploring the perceptions about working relationships and started a discussion on more collaborative ways of working. Acas then introduced the parties to the theory and principles of partnership and highlighted examples of good practices established from experience in other organisations. Following this initial input, Acas continued to support the parties in their discussions, suggesting ways of moving the project forward and overcoming potential barriers.

The Council's aim for its mediation initiative was to "facilitate a change in the organisation's ethos so that a cooperative approach is used to handle all workplace difficulties." As a result there has been a significant reduction in the number of individual complaints, disciplinary and employment tribunal cases. Giving people back some control over their working relationships and encouraging informal methods of dispute resolution improved employment relations over the long-term.

Acas was instrumental in extending mediation to potential collective disputes by encouraging early and open communication and by helping the Council and its representatives move away from a confrontational relationship style. There is now a more positive dialogue within the Council's established negotiating structures and greater participation in decision-making between management and employees.

Background of Acas

Founded in 1975, Acas is a publicly funded yet independent organisation in the United Kingdom that provides voluntary and mostly free conciliation and arbitration services in addition to independent advisory services and training to help employers and employees solve problems and improve performance. It is governed by a council of representatives comprised of employers, unions, civil society and academics.

Source: Acas (www.acas.org.uk)

While governments possess a number of important legislative, policy and institutional tools to cultivate labour market conditions that favour harmonious working relations, a government's overall influence and capacity to prevent collective labour disputes can only go so far. Ultimately, the social partners are the main actors when it comes to preventing and resolving collective disputes. Supporting their autonomy and freedom to bargain/negotiate with one another in cases of collective disputes is a critical factor for maintaining stable industrial relations and legitimate dispute resolution outcomes that are acceptable to both parties involved. This principle of social partner autonomy in matters of dispute resolution is perhaps nowhere more evident than in Denmark, as the following case study shows, where the government intervenes in only the rarest of cases, leaving workers and employers a wide margin to resolve collective disputes through mutually agreed solutions.

Case Study 2: The Role of Danish Social Partners in Collective Dispute Resolution[3]

In Danish labour law, there is a strong and longstanding tradition that the formation of legal rules is entrusted first and foremost to the social partners through the conclusion of collective agreements. This approach reflects a deep-rooted belief within Danish industrial culture in the primacy of freedom of association and collective bargaining, and the role of the social partners in managing their own affairs with minimal interference from government authorities. In this respect, it is interesting to note that while the vast majority of Danish workers are covered by collective agreement[4] there is no general statute regulating the conclusion or content of such agreements.

This same tradition of social partner autonomy applies to the field of collective dispute resolution where the great majority of disputes are resolved through negotiation between the parties. For instance, Danish law does not provide for the resolution of collective *interest* disputes through arbitration.[5] Rather, the ruling principle is that interest disputes should be resolved by negotiation and bargaining between employers and workers. Where these efforts do not succeed, an interest dispute can then serve as a legitimate basis for industrial action. The Government may intervene in circumstances where the parties are unable to resolve their differences after a prolonged strike or lockout, but State intervention remains the exception, not the rule, with the social partners bearing most of the responsibility for ensuring the resolution of their proper disputes. There is in fact a legal obligation on the part of the social partners to engage with one another through each stage of negotiation – an obligation which can result in the imposition of fines by the Labour Court if it is breached.

Where the parties are covered by a collective agreement and have a dispute over its implementation or interpretation (*rights* dispute), a "peace obligation" normally applies requiring the parties to attempt as to resolve the conflict through negotiation at the local level. If this is unsuccessful, the next step involves workplace mediation. If a solution is still not reached, the dispute then passes to the social partner organizations themselves. The great majority of these disputes are settled at some point along this elaborate negotiation process. If, however, the dispute goes unresolved, most remaining cases are settled by either an industrial arbitration tribunal or through the Labour Court.

Another unique feature of industrial relations in Denmark is the prevalence of enterprise-based Cooperation Committees. These Committees are as common in the public sector as they are in the private sector and are based on agreements between worker and employer organizations for the purpose of improving cooperation between employees and management in order to enhance workplace communication and to improve business operations through consultation. The work of these Committees is designed to contribute to better workplace relations, which is believed to contribute to diminishing the number of collective disputes or, where such disputes arise, to reaching a mutually satisfactory and negotiated solution built on existing practices of enterprise-level dialogue.

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[3] See generally, O. Hasselbalch: "Denmark", in *Labour Law and Industrial Relations*, International Encyclopaedia of Laws (The Hague, Kluwer Law International, 2005).

[4] It is estimated that 90 per cent of manual workers and 80 per cent of white-collar workers are union members and that 75 per cent of all Danish workers are covered by collective agreement.

[5] All the same, the parties may agree to resolve an interest dispute through arbitration if they so choose, but in any case, arbitration is not obligatory by law.

IV. Dispute resolution, International Labour Standards and the ILO

Conventions and Recommendations

The main ILO instrument dealing with dispute prevention and settlement is the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92). It recommends that voluntary conciliation "should be made available to assist in the prevention and settlement of industrial disputes between employers and workers." It further recommends that such procedures should include equal representation of employers and workers, should be free and expeditious and that provision should be made to allow the parties to enter into conciliation voluntarily or upon the initiative of the conciliation authority. It also recommends that parties should refrain from strikes or lockouts while conciliation or arbitration procedures are in progress, without limiting the right to strike.

Dispute resolution is further addressed under the Collective Bargaining Convention, 1981 (No. 154), which provides that bodies and procedures for the settlement of labour disputes should be designed to contribute to the promotion of collective bargaining (Article 5(2)(e)). While Convention No. 154 focuses on collective bargaining, it does not rule out the use of conciliation and/or arbitration as part of the bargaining process where such processes are voluntary (Article 6). One objective of dispute resolution is in fact to promote the mutual resolution of differences between workers and employers and, consequently, to promote collective bargaining and the practice of bipartite negotiation.

With respect to the public sector, the Labour Relations (Public Service) Convention, 1978 (No. 151) provides that the settlement of disputes over the terms and conditions of employment is to be sought "through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved" (Article 8).

Also, the Examination of Grievances Recommendation, 1967 (No. 130) addresses dispute resolution at the enterprise level, including rights disputes over alleged violations of collective agreements.[6] The instrument sets out a number of recommendations on the development and implementation of workplace dispute mechanisms, emphasizing the importance of preventative measures such as sound personnel policy and the co-operation between the social partners on decisions that affect the workers. It further recommends that where efforts to resolve the dispute have failed, there should be a possibility for final settlement either through the procedures set out by collective agreement, through conciliation or arbitration by the competent public authorities, through recourse to a labour court or other judicial authority, or through any other procedure which may be appropriate under national conditions (Paragraph 17).

Other ILO instruments make reference to the role of the labour administration in resolving disputes. For example, the Labour Administration Recommendation, 1978 (No. 158) provides that the "competent bodies within the system of labour administration

[6] Recommendation No. 130 does not apply however to collective claims aimed at modifying the terms and conditions of employment.

should be in a position to provide, in agreement with the employers' and workers' organisations concerned, conciliation and mediation facilities, appropriate to national conditions, in case of collective disputes" (Paragraph 10).

ILO supervisory machinery

The ILO supervisory bodies[7] have by and large addressed the issue of collective dispute prevention and resolution in the context of the right to strike. They have noted that a prohibition on the right to strike may result in practice from certain legal requirements relating to dispute resolution. For example, requiring the parties to pursue conciliation or mediation before a strike can take place is legitimate as long as the procedures "are not so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness."[8] There has been particular concern expressed over the use of compulsory arbitration that results in a binding award since this approach makes it possible to virtually prohibit all strikes or end them quickly.[9]

These same supervisory bodies have established specific principles for arbitration in the context of collective bargaining. The ILO Committee of Experts has said that arbitration should be freely chosen and that the parties should be bound by the final decision. Compulsory arbitration on the other hand, which is imposed by the authorities, is "generally contrary to the principle of voluntary negotiation of collective agreements established in Convention No. 98, and thus the autonomy of bargaining partners."[10] There is an exception, however, in cases involving essential services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population.[11]

The ILO maintains that an effective system of dispute settlement must be combined with respect for freedom of association. A lack of respect for freedom of association can lead to situations where workers are not adequately represented when a dispute arises, leading potentially to unsatisfactory settlements and continued labour unrest. Likewise, where freedom of association is weak, the legitimacy of tripartite and bipartite resolution bodies is also in question since there may be doubt as to the independence and impartiality of the dispute procedures.

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[7] Notably, the Committee of Experts on the Application of Conventions and Recommendations, and the Committee on Freedom of Association.

[8] ILO: *Freedom of association and collective bargaining,* Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), International Labour Conference, 81st Session, Geneva, 1994, para 171 ("General Survey").

[9] General Survey, para 153.

[10] General Survey, para 257. "Legislation which provides for voluntary conciliation and arbitration in industrial disputes before a strike may be called cannot be regarded as an infringement of freedom of association, provided recourse to arbitration is not compulsory and does not, in practice, prevent the calling of the strike." ILO: *Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth (revised) edition, Geneva, 2006 ("CFA Digest"), para. 549.

[11] *Ibid*, para 564.

For a dispute resolution system to be effective it must also be accessible in terms of cost[12] and location while remaining open to all segments of the working population without discrimination. Accessibility is also an issue for workers who might be excluded from the system such as non-unionized workers, supervisors, or those in the informal economy or in export processing zones.

The effectiveness of a dispute resolution system further depends on the strength of the social partners since, as the primary actors in any labour dispute, their understanding of and participation in dispute settlement is critical to its proper functioning. In addition, a properly functioning dispute resolution system depends on appropriate legal frameworks including reliable enforcement mechanisms so that the parties have confidence that the outcomes of their negotiations will be respected.

Beyond the guidance provided by international labour standards and jurisprudence relating to dispute resolution, the ILO is also engaged in a variety of activities and interventions assisting member States to establish and strengthen labour courts, industrial tribunals and dispute resolution mechanisms so that labour disputes are dealt with efficiently, effectively and equitably.[13]

V. Normative Frameworks for Collective Dispute Resolution

Legislation

Every new EU Member State has some legislative rules for dispute resolution covering all manner of individual and collective disputes (see Table 10 below). In certain cases, the framework is part of a country's general labour law or code (e.g. Hungary). In other cases, the rules on dispute resolution are found scattered across a host of different statutes, regulations or decrees governing labour relations (e.g. Lithuania and Slovenia). Still other countries adopt singular pieces of legislation that deal solely with labour dispute resolution (e.g. Bulgaria, Latvia, Poland). No matter what form they take, laws on dispute resolution commonly address a range of similar issues covering, for instance, the status of the parties involved in a dispute, their corresponding rights and obligations during the course of a dispute (e.g. cooling off periods in relation to industrial action) and detailing the different mechanisms and processes for resolving the dispute.[14]

[12] Many public dispute resolution agencies such as the United Kingdom's Acas or the United State's Federal Mediation and Conciliation Service (FMCS) are publicly funded and offer most of their services free of charge. Other bodies have fee sharing arrangements although the fee structure may depend on whether a government body is involved in resolving the dispute (usually paid for by the government) or whether the dispute is handled privately (costs split between the parties). The CFA has stated that, provided the costs of conciliation, mediation and arbitration services are reasonable and do not inhibit the ability of the parties to make use of the services, requiring the parties to pay for such services is not a violation of freedom of association. See CFA Digest, para 602.

[13] Such activities include capacity building, reviewing draft legislation or codes of conduct, diagnosing existing dispute resolution systems, working with the constituents to find alternative systems that meet their needs and capacities and promoting the ratification and implementation of relevant international labour standards.

[14] The CFA adds that the outcomes of arbitration should not be pre-determined by legislation for such a system to be truly independent and to enjoy the confidence of the parties. See CFA Digest, para 995.

While some European countries have extensive legal rules on the subject (Lithuania), other countries have no specific provisions pertaining to dispute resolution (the Netherlands[15]). Obviously, more rules do not automatically yield more effective dispute resolution practices. In fact, although Lithuania has some of the most extensive legislation in this area, the EIRO report on Lithuania notes that its dispute resolution system does not actually function in reality – a situation which employers and workers from that country attribute to the complexity and bureaucratic character of the dispute resolution rules.[16] It has been argued that the predominance of legislative provisions on dispute resolution in the new EU Member States is perhaps related to the relative weakness of the social partners and the diminished influence that collective bargaining has had over the dispute resolution process and its development.

The rules that apply in cases of collective dispute resolution in the private sector are not necessarily identical to those that apply in the public sector.[17] One reason is because governments have decided that in certain cases, public employees provide essential services that require more stringent dispute resolution arrangements to ensure that the health and safety of the population is not endangered as a result of a labour dispute and potential work stoppage (for example, in some countries, industrial action among public employees in the military, police and emergency services is restricted if not outlawed altogether). In addition, governments sometimes choose to establish separate internal mechanisms for resolving disputes between government departments, agencies and their staff. The United Kingdom, for instance, has set up dedicated dispute resolution bodies for certain public sectors, and Denmark has created the post of public conciliator.

Collective bargaining

While laws are a common means for regulating dispute resolution, many disputes are settled through private arrangements, often agreed to in the context of collective bargaining.[18] As such, collective agreements are a prominent normative source for

[15] The European Foundation survey on conflict resolution reports that the lack of specific regulations and dispute resolution institutions in the Netherlands is a consequence of the traditionally strong role played by the social partners and robust practices of collective bargaining and social dialogue that exist between workers and employers in that country. European Foundation for the Improvement of Living and Working Conditions: *Social dialogue and conflict resolution in the acceding countries*, Dublin, 2004, p. 56.

[16] EIRO: *Collective dispute resolutions in an enlarged European Union – case of Lithuania*, Dublin, 2005, http://www.eurofound.europa.eu/eiro/2005/08/word/lt0508102t.doc (accessed 17 September 2007).

[17] Nineteen out of the 26 EU countries surveyed by the EIRO had some form of regulations dealing specifically with dispute settlement in the public sector or civil service. Of the remaining seven countries without public sector regulations, six of them were new EU Member States (the Czech Republic, Hungary, Lithuania, Latvia, Poland and Slovakia). EIRO: *Collective dispute resolution in an enlarged European* Union, EIRO thematic feature, European Foundation for the Improvement of Living and Working Conditions, Dublin, 2006, p. 8.

[18] According to the EIRO report on Hungary, about half of all collective agreements negotiated in the country contain regulations on internal conflict settlement and 28 per cent establish some sort of conflict-management committee. Also, the majority of multi-employer collective agreements include some mechanism to solve collective disputes at the workplace level. EIRO: *Collective dispute resolutions in an enlarged European Union – case of Hungary*, Dublin, 2005, http://www.eurofound.europa.eu/eiro/2005/08/word/hu0508102t.doc (accessed 17 September 2007).

dispute resolution. Such agreements may even be drafted to expressly avoid government intervention or to establish mutually acceptable protocols for resolving disputes through, for instance, the appointment of private conciliators, mediators or arbitrators. And depending upon the number of workers in a given country covered by collective agreements, privately negotiated provisions on dispute resolution may apply to a significant percentage of the workforce and represent an important basis for a country's dispute resolution framework.[19]

A preference for resolving disputes through the social partners rather than through government intervention is one approach taken in several European countries when it comes to collective labour disputes. This approach reflects a policy grounded in the principles of autonomy and voluntarism of the social partners over their own affairs including disputes. These principles are seen as important components of democratic and stable industrial relations and a necessary feature of collective bargaining and freedom of association. The Freedom of Association Committee of the Governing Body of the ILO (CFA) has regretted in certain cases that governments did not give priority to collective bargaining as a means of regulating employment disputes in non-essential services but felt instead compelled to resort to compulsory arbitration.[20] In Norway, when bargaining between workers and employers at the local level breaks down, it is not uncommon for disputes to be referred to national level federations and unions in order to resolve outstanding differences without government involvement. In Sweden, the social partners handle 60 per cent of collective disputes independently whereas the National Mediation Office deals with only 40 per cent of cases.

Dispute resolution institutions

There are a variety of regulatory strategies that countries pursue to provide a framework for orderly and effective industrial, and in particular, collective dispute resolution. Most commonly this involves some form of legislation whether as a part of existing labour law or as a separate law specifically addressing the topic of labour dispute resolution. In addition, countries often times create statutory bodies or agencies, often at both the national and local levels, to facilitate the process of dispute resolution and to provide conciliation, mediation and arbitration services to interested parties.[21] These bodies, which are typically managed on a bipartite or tripartite basis, play a vital institutional role in not only facilitating the prevention and resolution of disputes but also in monitoring disputes that occur in the labour market thereby providing valuable information for policy makers and social partners alike. Examples of some of the institutions that exist in the EU include:[22]

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[19] In Denmark, 85 per cent of the labour force is subject to collective agreement (100 per cent of the public sector and 73 per cent of the private sector).

[20] CFA Digest, para. 996.

[21] As an exception, the EIRO report on Slovenia notes that there is no national service in the country providing third-party intervention in labour disputes or maintaining a list of mediators and arbitrators. EIRO: *Collective dispute resolutions in an enlarged European Union – case of Slovenia*, Dublin, 2005, http://www.eurofound.europa.eu/eiro/2005/08/word/si0508202t.doc (accessed 17 September 2007).

[22] European Foundation Report, op. cit. note 15, p.55. By contrast, in the Netherlands, there are no specific regulations or institutions dealing with the resolution of labour disputes.

i. Public institution/official within the labour administration[23]
ii. Independent *public* conflict resolution agency[24]
iii. Independent *private* conflict resolution agency[25]
iv. Person independent of the labour administration[26]
v. Voluntary, autonomous conflict resolution bodies set up by the social partners[27]

Within Europe, it has been noted that there is a marked difference between dispute resolution frameworks of the EU 15 countries and those countries that joined the EU after 2004. Not surprisingly, according to the 2006 EIRO survey, the EU 15 countries were found to have more regulations and organisations dealing with conflict resolution than the new Member States who generally speaking are at the early stages of designing and implementing their own dispute resolution models.[28]

Case Study 3: Collective Dispute Resolution

The US Federal Mediation and Conciliation Service (FMCS)

Northrup Grumman Ship Systems and
Pascagoula Metal Trades Department, IBEW, IAM, and OPEIU

Northrop Grumman is a $15 billion, global aerospace and defense company with 800,000 employees and operations in 25 countries. Northrop Grumman Ship Systems (NGSS) is a division of Northrop Grumman, employing 17,000 shipbuilding professionals, 10,000 of which are represented by 13 different labour unions whose collective agreements were set to expire in late February 2003.

Before the arrival of this deadline, attempts were made to reach agreement efficiently and avoid a work stoppage. Negotiations were handled by a single mediator and the parties started negotiating in November of 2002, meeting a total of 78 times.

Over the course of these meetings, the parties addressed a number of complicated issues including health care premiums, drug costs and plan designs, wages, holidays, contract language, and contract duration. On February 24, 2003, tentative agreements were reached with the Metal Trades Council (9 of the unions involved), and, soon thereafter, agreements were reached with the remaining unions.

However, ratification votes failed in every unit, and all the unions had strike-vote authorization.

[23] This system can be found in Belgium, Finland, Denmark, Estonia, Cyprus and Malta.
[24] While such an institution is beyond direct government control, it is usually staffed and financed by the public authorities. These agencies are found for example in the United Kingdom, Ireland and Sweden and Hungary.
[25] In Europe, only Spain has such a mechanism.
[26] Such a system is used in the Czech Republic and Slovakia and is not widespread among European Member States.
[27] Consider Germany, Latvia, Lithuania, Poland and Slovenia.
[28] EIRO Report, op. cit. note 17, p. 18. The same report suggests that the new EU Member States need to focus on implementing public sector regulations and, overall, on making their dispute resolution systems more effective.

The FMCS immediately invoked a 14-day cooling off period and ordered all parties to resume negotiations to avoid a highly disruptive work stoppage.

With FMCS intervention and intense negotiations, all 13 unions reached four-year agreements with NGSS and the contracts were ratified. The parties agreed to some of the most progressive and innovative agreements in the shipbuilding industry including the formation a joint labour-management committee to develop and implement a variable pay/gain sharing plan, and the formation of a joint task force to address health care issues in order to avoid similar problems in future contract negotiations.

Background of the FMCS

Created in 1947, the FMCS is an independent US Federal agency that provides free mediation services in contract negotiation disputes between employers and their unionized employees upon the request of the parties. In addition to these traditional services, the FMCS also provides Interest-Based Bargaining (IBB) training and facilitation to parties entering into collective bargaining, which focuses on problem-solving and a consensus-building approach. The FMCS notes that the likelihood of successful bargaining rises dramatically when the teams are trained *and* when the bargaining process is facilitated. Parties who have benefited from these services consider FMCS facilitation of IBB to be a less intrusive third party intervention than traditional bargaining mediation.

Source: FMCS (www.fmcs.gov)

Labour inspection services

In a number of countries, labour inspection services play a prominent part in dispute prevention and resolution. The involvement of inspectors in industrial relations, however, remains a somewhat controversial topic.[29] The controversy is essentially over the extent to which labour inspectors should be involved in industrial relations and whether the functions of an inspector are compatible with those of a conciliator, mediator or arbitrator in the event of a collective labour dispute. Under the French system which can be found in Greece, Spain, Turkey and most of Latin America and Francophone Africa, labour inspectors often function as conciliators in cases of collective disputes. By contrast, under the British tradition, whose influence is apparent in Cyprus, Germany and the Nordic countries, inspectors are strictly forbidden from interfering in industrial disputes. In between these two approaches there are a range of practices revealing unique approaches to the interplay between labour inspection and dispute resolution. To give but one example, the Polish Collective Disputes Settlement Act requires employers to bring a dispute to the attention of the regional labour inspector who then typically requires that a workplace inspection be carried out. While in such cases the inspector does not strictly act as a conciliator or mediator, announcing the results of the inspection and a possible imposition of fines is believed to contribute to the settlement of some industrial disputes.

[29] See W. von Richthofen: *Labour Inspection: A guide to the profession* (Geneva, International Labour Office, 2002), pp. 32 and 92.

There is even some uncertainty over the role of labour inspectors in dispute settlement when one considers the relevant International Labour Standards. On the one hand, the Labour Inspection Recommendation, 1947 (No. 81) says that labour inspectors *should not* act as conciliators or arbitrators in labour disputes (Article 8). On the other hand, the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133) is not so categorical. It points out that *normally* the work of labour inspectors should not involve acting as conciliator or arbitrator, but that where no special dispute resolution body exists, agriculture inspectors may be called upon as a *temporary* measure to act as conciliators (Article 3).

VI. Modes of collective dispute resolution

As briefly discussed above, the three most widely practiced non-judicial methods to resolve industrial disputes are conciliation, mediation and arbitration. As far as the CFA is concerned, there is no preference between conciliation and mediation since "both are means of assisting the parties in voluntarily reaching an agreement." Neither does the Committee take a position as to the desirability of a separate conciliation and arbitration system over a combined mediation-arbitration system, "so long as the members of the bodies entrusted with such functions are impartial and are seen to be impartial."[30]

It is clear, however, that governments and social partners alike consider the development of non-judicial dispute resolution methods to be crucial in stabilizing volatile labour relations. According to the EIRO report on Bulgaria, hundreds if not thousands of strikes over the past 15 years took place due to a lack of efficient dispute resolution mechanisms and the lack of a tradition of seeking peaceful settlement between the parties. It further noted that the trade unions and employers expect that new regulations on mediation and arbitration and the establishment of a tripartite National Institute for Conciliation and Arbitration will contribute to the reliable and durable resolution of industrial conflicts.[31]

i. Conciliation

Certain countries consider conciliation and mediation to be one and the same, but technically speaking, conciliation is different in that, unlike a mediator, the conciliator does not make any suggestions to the parties on a possible resolution. Rather, the aim of the conciliator is to bring the parties together and assist them in arriving at a mutually agreed solution. In theory, both collective *interest* and *rights* disputes can be settled through conciliation. In practice, however, conciliation is more commonly used at the negotiation phase of collective bargaining when there are disputes of *interest*.

[30] CFA Digest, op. cit. note 10, para. 603. Likewise, the CFA has stated with reference to Article 8 of Convention No. 151 regarding the settlement of disputes that this Article has been interpreted as giving a choice between negotiation, conciliation, mediation of arbitration in the resolution of disputes. See Ibid, para. 890.

[31] EIRO: *Collective dispute resolutions in an enlarged European Union – case of Bulgaria*, Dublin, 2005, http://www.eurofound.europa.eu/eiro/2005/08/word/bg0508205t.doc (accessed 17 September 2007).

Conciliation is the most informal of the three types of dispute resolution and is often undertaken unofficially without the intervention of government authorities or specialized dispute resolution agencies. This is the case in Cyprus where conciliation is in fact not recognized by law but where third party interveners from trade unions or employer organizations sometimes take on the role of conciliator in the event of a dispute – even when these same individuals are directly involved in the negotiation process.

In Hungary, interest disputes are supposed to be settled first through conciliation, which is initiated by written submission from one party to the other setting out the grounds of dispute. For seven days following such a submission, the parties must refrain from taking any action that would jeopardize an agreement. Once an agreement is reached, its terms are binding and legally enforceable. Prior to 1999, the Hungarian Labour Code required disputing parties to undergo pre-court conciliation at the company level. This requirement was repealed in 1999 although parties were still required to hold a reconciliation meeting prior to the start of litigation. Despite the change in the law, the social partners are still free to negotiate a provision for mandatory workplace conciliation in their collective agreements, but in practice, such provisions are rare. Case studies have shown that only a small proportion of larger companies have internal conciliation procedures to help resolve labour disputes. The EIRO report on Hungary[32] notes that union confederations have recently argued for the reintroduction of workplace pre-court conciliation with the involvement of a neutral third party.

Latvia and Lithuania share a unique approach to conciliation through the use of what are known as *conciliation commissions*. These commissions are empowered to deal with both collective interest and rights disputes and, at least in Lithuania, are a mandatory step in the collective dispute resolution process. Consistent with the emphasis in both countries on the role of the social partners in resolving collective disputes through bilateral consultation, a conciliation commission is established by the parties who also select an equal number of representatives who are then responsible for considering the dispute and taking a decision by mutual agreement – a decision that is binding on both parties and that has the validity of a collective agreement. While this mechanism has the appearances of a more formal adjudication, there is no involvement of a third party,[33] and the final outcome must have the consent of both sides. In Latvia, if such a commission does not succeed in resolving the dispute, the case may then proceed according to the procedures set out in the collective agreement or, absent such procedures, to mediation or arbitration. However, in the case of a rights dispute, the only alternative is to make a claim in civil court. In Lithuania, regardless of the type of dispute, if the commission fails to reach an agreement on all or part of the demands, it may refer the case to a labour arbitration hearing, third party court or conclude the proceedings by drawing up a protocol of disagreement.

Conciliation can also be used as a means to address an underlying collective disagreement before it transforms into a full fledged dispute. In Malta, the Department of Industrial and Employment Relations offers its conciliation services when there are

[32] Case of Hungary, op. cit. note 18.
[33] In Lithuania, a mediation officer may be appointed to act as chairperson of the conciliation commission.

indications that an industrial conflict may occur. Of all emerging industrial disputes in Malta, very few end up before the courts or labour tribunal. In fact, between 1998 and 2002, 80 per cent of all industrial disputes were referred to conciliation and 78.3 per cent of these cases were resolved successfully.[34]

ii. Mediation

More than conciliation and arbitration put together, mediation is the most widely used method for resolving *interest* disputes among the acceding European countries.[35] Mediation is equally suited and commonly used in situations of collective *rights* disputes.

In the Czech Republic, the first step in resolving a collective dispute is for the parties to hold negotiations *in the presence* of a mediator. In fact, industrial action through strikes or lockouts cannot be pursued until such proceedings have taken place. While this step is not properly speaking mediation, if the two sides are still unable to reach an agreement, they may then choose to appoint a mediator from a list kept by the Ministry of Labour or as agreed to by the parties. The eventual mediator does not decide the dispute but instead issues a written settlement proposal. If no solution is reached within 30 days, the mediation is deemed to have been unsuccessful and the parties may then proceed to arbitration.

In Estonia, mediation is the only method for industrial dispute resolution that is regulated by statute. As part of this system, the position of Public Mediator was created in 1995. This official is appointed to a three year term following tripartite consultation and is responsible for selecting local mediators (24 in total) and for managing mediation services between disputing parties for the entire country. Collective disputes at the enterprise level are generally dealt with by local mediators whereas disputes between federations of employers and trade unions are handled by the Public Mediator. Since its creation, the Public Mediation Office has dealt with nearly 300 cases, 80 per cent of which have been successfully resolved. The EIRO report on Estonia notes that most of the cases are submitted by workers and concern issues related to wages and collective bargaining, but in recent years, employer representatives are increasingly appealing to the Public Mediator.

In contrast to Estonia, Hungarian labour law has no provisions addressing the procedures of mediation in cases of collective dispute. Rather, if the parties choose a mediator from the register of the Labour Mediation and Arbitration Service (MKDSZ), the internal rules of this Service apply. If the parties choose someone from outside of the MKDSZ, the mediator and the parties themselves decide upon what steps to follow. Either way, any agreement reached in the course of mediation is considered to be equivalent to a collective agreement and legally binding on the parties. According to MKDSZ statistics, since 1996, the number of cases has never surpassed 50 in any given year and that nearly

[34] EIRO: *Collective dispute resolutions in an enlarged European Union – case of Malta*, Dublin, 2005, http://www.eurofound.europa.eu/eiro/2005/08/word/mt0508103t.doc (accessed 17 September 2007).
[35] EIRO Report, op. cit. note 17, p. 18.

all of these cases (mostly dealing with disputes over wages and staff reductions) are resolved satisfactorily.

In Poland, mediation is generally the next stage after private negotiations between the parties have failed to resolve a collective dispute. The parties are given five days to agree upon a mediator and where they cannot agree, they may request the Ministry of Labour to appoint one from a government list drawn up in consultation with the social partners. Practically speaking, however, the Ministry of Labour does not impose a mediator against the wishes of the parties. While the prevailing view is that industrial action remains an option of last resort, if the prescribed time period for the mediation process expires, trade unions may organize a two hour warning strike. The EIRO report on Poland notes that it is increasingly common to see mediators getting involved in situations which have not yet developed into collective disputes. This new development is largely the consequence of amendments to the Tripartite Commission Act in 2003 by which mediators, working on behalf of regional social dialogue commissions, take on the role as "goodwill emissaries", intervening to help resolve situations that threaten industrial peace and expanding the role of mediators beyond dispute resolution to include responsibility for dispute prevention.

iii. Arbitration

Arbitration exists in the vast majority of EU Member States (24 out of 26[36]), but is not widely practiced[37], leaving conciliation and mediation as the most popular mechanisms when it comes to solving collective disputes. [38] This quasi-judicial process, in which a neutral party renders a decision, is generally considered to be an option of last resort in cases where the social partners cannot otherwise resolve their differences. More specifically, arbitration typically follows after attempts at mediation between the parties have proven unsuccessful. The European Foundation notes that many countries only associate arbitration with collective *rights* disputes (i.e. disputes over the interpretation or implementation of a collective agreement) but that arbitration is also relevant, if not always suitable, in cases of *interest* disputes.[39]

In Bulgaria, when mediation fails to resolve a collective dispute, the parties may voluntarily agree to the intervention of an individual arbitrator or an arbitration commission. Whichever option is chosen, the arbitration process involves an open

[36] The two exceptions are Belgium and Estonia.

[37] Between 2000 and 2004 in Cyprus, only 10 collective disputes were referred to arbitration whereas 1072 cases were referred to mediation. Over the same time period in Romania there was a total of 558 collective disputes with only 18 of these being resolved through arbitration. In Slovakia, only two disputes made it to arbitration out of 139 registered cases between 2000 and 2004.

[38] EIRO Report, op. cit. note 17, p. 18.

[39] *Interest arbitration* is a process that is sometimes used to determine the terms of a collective agreement between bargaining parties instead of having recourse to industrial action through strikes or lockouts. It is most commonly used in collective disputes regarding essential services where the government assumes a public policy interest in preventing industrial action. In such cases, interest arbitration is usually imposed upon the parties by legislation and the arbitrator or arbitration panel attempts to replicate the outcome as though the parties had been able to resolve the dispute themselves. In other cases, such as in Slovenia, interest arbitration is available as a voluntary procedure which can be used either on an ongoing or *ad hoc* basis to resolve disputes between works councils and employers.

hearing between the parties (two hearings at most) where the arbitrator(s) hear from both sides before delivering a binding decision in the matter. Alternatively, during the course of these proceedings, the parties may be persuaded to sign an arbitration agreement, which has the same legal effect as an arbitration decision but which is freely chosen by the parties instead of imposed by the arbitrator(s).

In the Czech Republic, arbitration cannot begin unless the parties have already attempted to resolve their differences through mediation and have jointly agreed to the arbitration process. However, if a dispute arises in a workplace where strikes are prohibited or if it concerns the fulfilment of commitments under a collective agreement, either party may request the appointment of an arbitrator. If the dispute is an *interest* dispute, the arbitrator's decision amounts to the conclusion of a collective agreement and is not subject to appeal. In the case of a *rights* dispute, the parties may appeal the decision of the arbitrator which can be reviewed by a court at the request of one of the parties. The costs of arbitration (and mediation) in the case of a collective disputes are covered by the Ministry of Labour and Social Affairs which, the Government argues, makes these options more economically advantageous for the social partners as opposed to pursuing a strike or lockout early in the dispute process.

The Hungarian Labour Code provides for arbitration in the event of an *interest* dispute but not in the case of a *rights* dispute.[40] The EIRO report for Hungary notes that only the Labour Court has exclusive authority and competence to adjudicate in the latter case, which it also notes can be a slow and painstaking process.[41]

In Lithuania, the creation of a Third Party Court offers the parties an alternative to the usual arbitration procedure which is normally presided over by a district court judge and six arbitrators appointed by the parties to the dispute. A Third Party Court is not a permanent institution and does not involve the participation of a district court judge. Rather a Third Party Court is an *ad hoc* body where the parties each appoint one or several arbitrators who have 14 days to resolve the dispute. The decision of the Third Party Court is legally binding and is open to industrial action if it is not enforced.

Voluntary versus compulsory dispute resolution

The responsibility for resolving collective industrial disputes lies, generally speaking, with the parties involved in the dispute itself, reflecting the principles of autonomy and voluntarism, which are important features of genuine collective bargaining and freedom of association. The social partners usually enjoy a great deal of latitude in settling their own disputes and in deciding upon the strategies for doing so, either through direct negotiation, conciliation, mediation or arbitration, or even through the use of industrial action.

[40] This is the same situation in Slovenia where collective *rights* disputes can only be settled through court action.
[41] Case of Hungary, op. cit. note 18.

Yet it is not uncommon to encounter rules requiring compulsory conciliation, mediation or arbitration in certain circumstances, resulting in enforceable awards and agreements.[42] Under Finnish law for example, mediation is compulsory although there is no obligation to reach an agreement. Elsewhere in Malta, mediation is compulsory but only when negotiations between the parties have collapsed. This is similar to the situation in Estonia or Lithuania where unsettled disputes must be referred to the public authorities to be dealt with by a public conciliator or commission. In still other cases, dispute resolution may only be mandatory where the dispute arises in a particular sector such as the public sector or in cases where the dispute affects the delivery of "essential" public services.

According to the CFA, recourse to compulsory arbitration in cases where parties do not reach agreement through collective bargaining is permissible only in the context of essential services in the strict sense of the term (i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population).[43]

VII. Conclusion

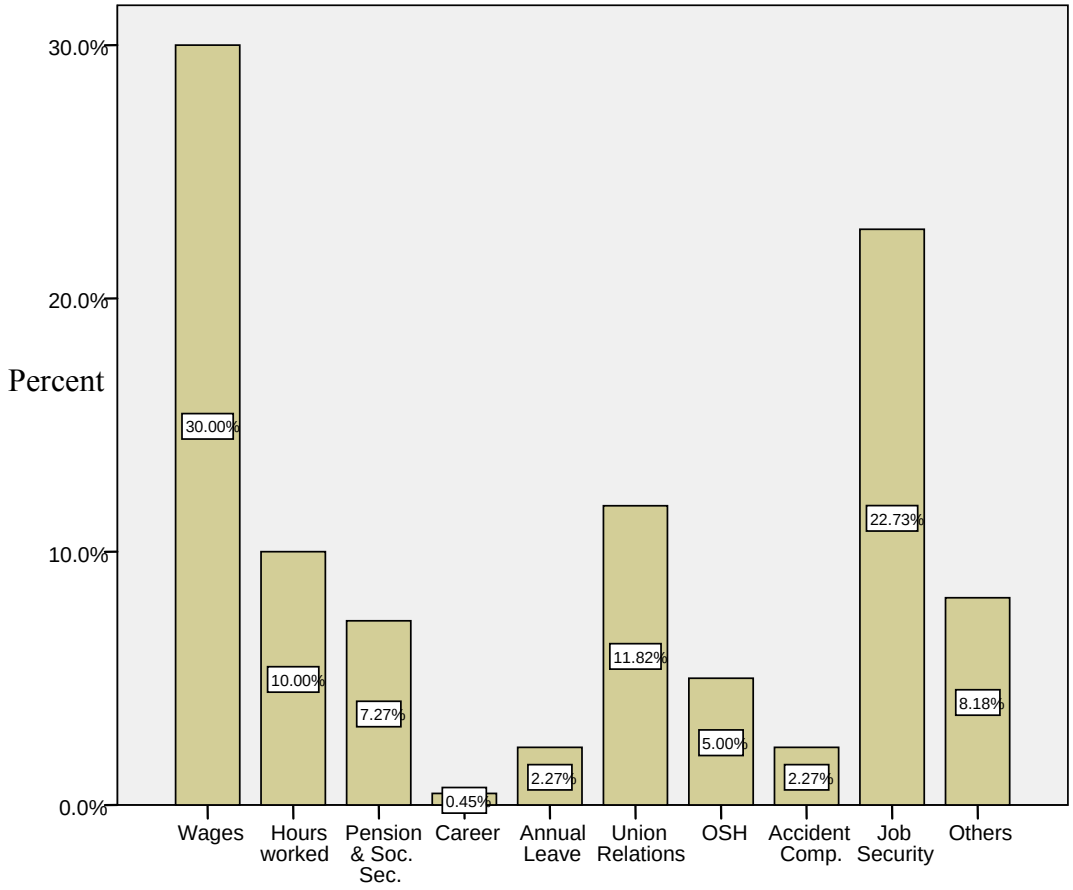
A few observations can be drawn from the above presentation. First, while there are a variety of dispute resolution practices and different approaches to how these practices are regulated, one constant feature is the prominent involvement of the social partners in preventing and resolving collective labour disputes. We have also seen evidence from the standards set by the ILO and the experiences of the governments and social partners of the important interplay between freedom of association, the freedom to bargain collectively and a properly functioning dispute resolution system.

Secondly, and related to the first, while governments have a range of regulatory and institutional tools at their disposal to assist the social partners, their capacity to prevent and resolve collective labour disputes is limited. In this regard, and depending on the national industrial relations context, governments appear to take the role that best complements the efforts of the social partners to ensure that collective disputes are prevented in the first place and effectively and efficiently resolved when they do arise.

Lastly, although it not possible to identify a best approach among the different systems of dispute resolution, it is just as important to consider how to prevent disputes as it is to resolving them once they arise. Furthermore, allowing flexibility of choice for the social partners within a well regulated system that guarantees access, transparency and legitimate outcomes, will contribute to securing and preserving industrial peace and cooperation between the social partners and to preventing and resolving collective labour disputes.

[42] The EIRO reports that 14 of the 26 EU Member States have legislation providing for compulsory dispute resolution. See EIRO Report, op. cit. note 17, p. 7.
[43] CFA Digest, op. cit. note 10, para. 994. See also paras. 564, 565 and 596.

Table 1 – Main causes of collective industrial conflicts between 1990-2006 according to ILO Constituents



Source: ILO Industrial Relations Survey, 2006[44]

Table 2 – Attitudes towards the effectiveness in resolving collective industrial conflicts. Change between 1990 and 2006 according to ILO Constituents.

Constituent	More effective	Less effective	Unchanged
Government	63.6%	4.5%	31.8%
Employers	48.0%	12.0%	40.0%
Workers	34.8%	34.8%	30.4%
Total	**48.6%**	**17.1%**	**34.3%**

Source: ILO Industrial Relations Survey, 2006

[44] This survey was conducted by the ILO's DIALOGUE branch during late 2006 and early 2007. The survey examines overall trends in industrial relations systems around the world between the early 1990s and 2006**,** including with respect to collective industrial conflicts and dispute resolution. The figures in Tables 1, 2 and 3 are based on answers from the constituents who responded to the questionnaire from 44 countries covering Africa, Asia and the Pacific, Latin America, the Caribbean and North America.

Table 3 – Attitudes towards the time taken to resolve collective industrial conflicts. Change between 1990 and 2006 according to ILO Constituents.

Constituent	More quickly	Less quickly	Unchanged
Government	59.1%	9.1%	31.8%
Employers	56.0%	12.0%	32.0%
Employees	34.8%	30.4%	34.8%
Total	**50.0%**	**17.1%**	**32.9%**

Source: ILO Industrial Relations Survey, 2006

Table 4 – Satisfaction with dispute resolution system and progressive change in the new EU States

An overview of the state of contentment of trade unions and employers in the new EU Member States, also indicating whether changes in labour legislation are currently taking place or not

Country	**Satisfaction with System**		**Progressive Change**
Bulgaria	Unions – No	Employers – Yes	No
Cyprus	Unions – Yes	Employers – Yes	No
Czech Republic	Unions – No	Employers – Yes	No
Estonia	Unions – No	Employers – No	No
Hungary	Unions – No	Employers – Yes	No
Lithuania	Unions – No	Employers – No	Yes
Latvia	N/A	N/A	No
Malta	Unions – Yes	Employers – Yes	No
Poland	Unions – No	Employers – Yes	No
Romania	Unions – No	Employers – No	No
Slovenia	Unions – Yes	Employers – Yes	Yes
Slovakia	Unions – Yes	Employers – Yes	Yes

Note: *The parties were rated as 'content' if they were satisfied with the current system or not overtly frustrated with industrial relations in their country. Progressive change is marked Yes if legislation is pending, but marked No if it has only been discussed but no change is imminent.*

Source: European Foundation for the Improvement of Living and Working Conditions (2006)

Table 5 – Different mechanisms and organisations involved in resolving collective disputes in the new EU States

Country	Public institution or official within the labour administration	Independent *public* conflict resolution agency	Independent *private* conflict resolution agency	An expert independent of the administration but chosen by the Ministry	Voluntary, autonomous conflict resolution body set up by the social partners	Other mechanisms
Bulgaria		○		●		
Cyprus	●					
Czech Republic				●		
Estonia	●			○		
Hungary		●	○			
Lithuania				○	●	
Latvia					●	
Malta	●	○	○	○		
Poland					●	○
Romania	●			○		
Slovenia		○			●	
Slovakia				●		

● = most frequently used

○ = other mechanisms used

Source: European Foundation for the Improvement of Living and Working Conditions (2006)

Table 6 – Institutions for dispute resolution in the new EU States

Country	Institutions (in order of frequency used)
Bulgaria	The National Institute for Conciliation and Arbitration
Cyprus	The Ministry of Labour
Czech Republic	The Ministry of Labour
Estonia	Public Conciliator, Labour dispute committees independent of the court system
Hungary	Labour Mediation and Arbitration Service (MKDSZ)
Lithuania	Conciliation Commission
Latvia	Conciliation Commission; National Tripartite Council
Malta	The Director of the Department of Industrial and Employment Relations; Conciliations Panel appointed by the Minister of Employment and Industrial Relations with consultation from the Malta Council for Economic and Social Development; Industrial Tribunal and a Court of Enquiry
Poland	Polish Association of Mediators; Social dialogue commissions which any involved social partner may seek out
Romania	Ministry of Labour, Social Solidarity, and Family
Slovenia	Economic and Social Council; Autonomous conflict resolution bodies some of which were established by the Chamber of Commerce
Slovakia	Ministry of Labour, Social Affairs, and Family

Source: European Foundation for the Improvement of Living and Working Conditions (2006)

Table 7 – An overview of which new EU States have special regulations for the public sector

Country	Public sector regulations
Bulgaria	Yes
Cyprus	Yes
Czech Republic	No
Estonia	Yes
Hungary	No
Lithuania	No
Latvia	No
Malta	Yes
Poland	No
Romania	Yes
Slovenia	Yes
Slovakia	No

Source: European Foundation for the Improvement o f Living and Working Conditions (2006)

Table 8 – Conciliation, mediation and arbitration in the new EU States

A breakdown showing which procedures apply in the participating countries and which are used concurrently

Country	Procedure
Bulgaria	Mediation + Arbitration
Cyprus	Mediation + Arbitration
Czech Republic	Mediation + Arbitration
Estonia	Conciliation + Mediation
Hungary	Conciliation + Mediation + Arbitration
Lithuania	Conciliation + Mediation + Arbitration
Latvia	Conciliation + Arbitration
Malta	Conciliation/Mediation + Arbitration
Poland	Mediation + Arbitration
Romania	Conciliation + Mediation + Arbitration
Slovenia	Conciliation/Mediation + Arbitration
Slovakia	Mediation + Arbitration

Conciliation/Mediation = viewed as synonymous

Source: European Foundation for the Improvement of Living and Working Conditions (2006)

Table 9 – Compulsory dispute resolution (collective disputes) in the new EU States

Country	Compulsory	Compulsory Resolution Applied
Bulgaria	Yes	Only in the public service
Cyprus	Yes	Mediation after social partner dialogue has collapsed
Czech Republic	No	N/A
Estonia	Yes	If a dispute cannot be settled, it must defer to the public conciliator, the trade unions or the courts.
Hungary	No	N/A
Lithuania	Yes	Must submit unsettled disputes to the Conciliation Commission
Latvia	Yes	Not specifically grounded in law, but conciliation is a norm
Malta	Yes	If a negotiating deadlock occurs
Poland	No	N/A
Romania	Yes	Conciliation, mediation and arbitration
Slovenia	No	N/A
Slovakia	Yes	Mediation

Source: European Foundation for the Improvement of Living and Working Conditions (2006)

Table 10 – Legislation on industrial relations and dispute resolution in the new EU States

Country	Legislation
Bulgaria	Law on Collective Labour Dispute Resolution of 1990; Labour Code Amendments of 2001
Cyprus	Industrial Relations Code of 25 April 1977; Essential Services Agreement of 16 March 2004
Czech Republic	Act No. 2/1991 Coll. on collective bargaining; Decree No. 114/1991 Coll. on mediators' and arbitrators' fees; Decree No. 210/1995 Coll. specifying arbitrator fee; Decree No. 57/2002 Coll. specifying mediator fee; Act No. 119/1992 Coll. on travel expenses; Act No. 455/1991 Coll. on trade licensing
Estonia	Collective Agreements Act enforced in April 1993; Collective Labour Dispute Resolution Act enforced in June 1993; Individual Labour Dispute Resolution Act enforced in September 1996; The Employment Contracts Act and Public Service Act
Hungary	The Labour Code of 1992
Lithuania	The Labour Code of the Republic of Lithuania including The Law on Collective Agreements 1991; The Law on Trade Unions 1991; The Law on Wages 1991; The Law on Employment Contract 1991; The Law on the Regulation of Collective Disputes 1992
Latvia	Labour Law of 2002; Civil Process Law; Labour Dispute Law of 2003
Malta	The Employment and Industrial Relations Act (EIRA) of 2002
Poland	Legislative Act regarding resolution of collective disputes of 1991; Polish Labour Code of 1995
Romania	Law no. 143/1997 on collective employment agreements; Government Emergency Ordinance no. 65/2005 on the modification of the Labour Code; Law no. 58/2003 on the organization and operation of The Economic and Social Council; Law no. 168/1999 on work conflicts resolution
Slovenia	General Collective Agreement for the Commercial Sector from 1997; Labour and Social Courts Act of 2004; The Labour and Social Courts Act of 1993; The Employment Relations Act of 2002; Public Servants Act of 2000
Slovakia	The Act No. 2/1991, Coll. of Laws on collective bargaining; The Act No. 2/1991 on mediation and collective dispute resolution

Source: European Foundation for the Improvement of Living and Working Conditions (2006)