FUNDACIÓN
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Servicio Interconfederal
de Mediación
y Arbitraje

ASAC
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FIFTH AGREEMENT
ON INDEPENDENT LABOUR
DISPUTE RESOLUTION

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FIFTH AGREEMENT

ON INDEPENDENT LABOUR DISPUTE RESOLUTION

(EXTRAJUDICIAL SYSTEM)

7th February 2012

BOE, 23rd February 2012

PREAMBLE

Since the signing of the first Agreement on Extrajudicial Dispute Resolution (Acuerdo de Solución Extrajudicial de Conflictos, ASEC) on 25th January 1996, which made clear the firm will of the signatory organisations to develop a mechanism for resolving disputes and was included in Article 37.2 of the EC, in the International Agreements and Recommendations of the ILO, the Community Charter of workers' fundamental business rights, the Workers' Charter, and the doctrine of the Constitutional Court itself and its successive renewals, the independent resolving of disputes in a work context has been created and developed within our State. This system has already been operating for decades and has been widely used in the application of these procedures at both a state and autonomous region level.

In essence and in their configuration labour disputes are complex and very varied in type: individual, collective, of law, of interest, etc. It is therefore logical that the extrajudicial or independent resolving of disputes was conceived as an alternative to judicial proceedings in order to resolve any discrepancies that might occur between workers and employers or their representatives by means of the intervention of one or several mediators.

The balance as regards its application has been positive, with the introduction in each one of its updates of the necessary improvements and adaptations of the procedures established in the light of the experience that has been gained. On occasion the modifications made have been more intense than numerous, with the improvement of the efficiency of the mediations and the action of the mediators with the increasing of the former, promoting solutions of arbitration and the action of the arbitrators, widening the disputes, and widening adhesion to the same to include a greater number of companies and sectors.

On 2nd February 2011 the Business and Economic Agreement (Acuerdo Social y Económico, ASE) was signed by the same trade-union and business organisations that have been signing the successive State Agreements for the Resolving of Disputes.

Among other contents, the ASE concentrated on the establishing of the basic criteria for the reforming of collective bargaining, and with the above agreement the social partners supported "the permanent improved management and administration of the agreements during their time frame, promoting instruments of consultation, interpretation, the resolving of discrepancies, and proposals for the improvement of the agreement, among others, and favouring the contributing of active assistance by means of the extrajudicial resolving of disputes".

In order to develop this Agreement, and with the aim of renewing independent dispute resolution in the field of relations at a state level, the V Agreement for Dispute Resolution is hereby signed with the denomination of Agreement on Independent Dispute Resolution, which will allow greater versatility of the means of resolving discrepancies, and at the present juncture the more rapid and efficient resolving of disputes, given the need to find quick solutions to the demands of the adaptation processes of the companies.

The changes in the V Agreement are designed to give greater importance and a new boost to the systems for the resolving of state disputes, and also serve as a reference framework for systems within the autonomous regions. With this Agreement compliance will naturally be possible with the legal precepts that have been in operation after the reform effected by Law 35/2010 of 17th September on urgent measures for the reforming of the labour market, and Royal Decree-Law 7/2011 of 10th June on urgent measures for the reforming of collective bargaining.

The strengthening of the instruments for the independent resolving of discrepancies will imply the improvement of the mechanisms for the participation of companies and of their workers which depend on the resolving of disputes inherent to collective labour relations, giving satisfaction in a balanced manner to the approaches of different groups on making possible the reconciliation of the interests of both parties in the face of an extremely changeable situation. The latter requires agile procedures and immediate answers to current uncertainties and demands. The efficiency of the measurements included in the ASAC will redound to the improvement of workers' rights on the one hand and of companies' competitiveness and productivity on the other.

Based on the foregoing, this new Agreement includes important novelties that can be expressed as follows:

- The use of extrajudicial means is to be based in principle on goodwill, except when as a result of agreement by the corresponding parties, at a company level or higher, the obligatory nature of the same is established,

which is particularly applicable to the institution of arbitration. In this case the quick and effective operation of such measures must be guaranteed to the effects of not affecting the right to effective judicial protection or delaying the resolving of controversies by another means.

- The Commissions for the Administration of the Agreement of the collective agreements, among other functions, play an essential part in the resolving of disputes originating in the application and interpretation of the same. This must also be acquired with regard to disputes as to disagreement during the consultation period in the event of the substantial modification of the working conditions stipulated by a collective accord and in the cases of salary opt-out clauses. The importance given in the Agreement to commissions for the administration of the agreement in duties relating to the resolving of discrepancies justifies not only the new precepts included in the same but also the inclusion as an "annex" of a series of recommendations aimed at the negotiators of the accords and agreements, in order to guarantee the speed and effectiveness of the same and the safeguarding of the rights affected.

- The shortening of deadlines, at least in certain disputes, will make the procedures as quick as possible.

- Greater consensus in the list of mediators and above all of arbitrators will allow the system to be as quick and effective as is required.

- It includes a greater number of collective disputes: the interpretation and application of collective accords and agreements; controversies in the Commissions for the Administration of the Agreement of collective accords; the renovation of collective accords and agreements when they expire and after a certain period of negotiation without agreement being reached; disputes that may occur during the periods of the consultation of Articles 40, 41, 44.9, 47, 51, and 82.3 of the revised text of the Workers' Charter Law; the challenging of collective accords; the substitution of the consultation period in the bankruptcy Employment Regulation Reports (Expedientes de Regulación de Empleo, EREs); disputes deriving from discrepancies in the negotiation by the company of agreements of the non application of collective accords, when the latter contemplate the negotiated non application of part of their content; disputes if there should be disagreement in the cases of extraordinary temporary flexibility anticipated in the collective accords and the calling of strikes and the determining of the security services and the maintaining of the same.

- Preferential attention is given to the dedication and training of mediators and arbitrators.

- More agile, quicker, and more efficient procedures are determined, promoting their proximity to the company, and favouring the presence of mediators and arbitrators that enjoy the confidence of the parties, with a view to their making a positive contribution to the managing of situations of disagreement.

To these effects, the following up of disputes should be assessed in their initial stages and not only in the final stages of the consolidation of the disagreement. The procedural deadlines should be reduced to a minimum and a procedural guide to encourage the efficiency of the procedures should be drawn up.

Regarding the procedure, it is important to stress that mediation and arbitration must be governed by the principles of gratuitousness, swiftness, equality, the formal interviewing of the parties, and contradiction, impartiality, efficiency, immediacy, simplicity, brevity, and flexibility.

As well as being completely neutral (especially in the case of unipersonal bodies), the mediators and arbitrators must be chosen from among professionals having a wide knowledge of the matters to be treated and being available for immediate action.

As far as the institution of mediation is concerned, this must be obligatory once it has been requested by one of the parties, except in those cases in which the agreement of both parties is required. Two main forms of action can be established, i.e. unipersonal action and joint action, thus opening up the possibility that the mediator can subsequently become an arbitrator.

Regarding arbitration, it is necessary not only for it to be very quick and flexible but also to reconsider its officers in that arbitrators must not only be ready to resolve legal disputes as they have done up to now (those deriving from the administration of the collective accord) but also mainly disputes of interests, such as those originating in internal flexibility and in the opt-out clauses of the collective accords or their renewal.

The Agreement originates with the aim of ensuring that the state system for independent dispute resolution has instruments of general direct application to the sectors and companies included in their scope of application, without detriment to the systems themselves in certain sectors and companies.

Nevertheless, the Agreement is also born with the aim of acting as a reference for the various systems for independent dispute resolution that may be agreed at a sectorial, territorial, or company level (including groups of companies or associated companies).

Regarding the former, the Agreement includes various stipulations that allow both the subsequent inclusion of these systems in the scope of the ASAC and the application of this Agreement when such systems of their own are not adapted to the new type of disputes established by the aforementioned legal precepts.

Regarding territorial agreements and in particular those referring to autonomous regions, without detriment to the respect for freedom of negotiation, the signatories of the ASAC undertake to promote the regulation of these procedures in the various agreements supported by the basic principles that inform the system at the ASAC, with the aim of achieving the homogeneity of the system as a whole. This will make it easier for the companies and their workers and the legal operators to resolve any discrepancies in collective matters.

On the other hand, we consider it necessary to change the name of the Agreement for Labour Dispute Resolution in order to stress the part that should be played in the resolving of the same by organisations representing employers and workers, regardless of and without detriment to business jurisdiction.

The signatory organisations consider it necessary for the public authorities to give their full support to the renovation and strengthening of the autonomous measures for the resolving of disputes, promoting a suitable institutional context to this end, given the multiple benefits that these systems have in labour relations, in company activities, and their general influence on the economy and on society as a whole. It thus follows that the bid for the strengthening of these mechanisms should be at this time a strategic objective of the public authorities and the economic and social partners.

AGREEMENT

SECTION I

CHAPTER I

GENERAL PRECEPTS

Article 1. Objective.

1. The objective of this Agreement is to maintain and develop an independent system for resolving the collective labour disputes that may arise between employers and workers or their respective representative organisations.

2. This Agreement does not cover:

   1. Disputes concerning National Insurance.

   Despite this, collective disputes concerning complementary National Insurance, including pension plans, will be subject to this Agreement.

   2. Disputes in which the state, Autonomous Regions, local entities, or entities of Public Law with a legal personality of their own associated with or dependent on the same mentioned in Article 69 of the Law on Business Jurisdiction are parties, without detriment to that established in letter b) on the third additional precept of this Agreement.

Article 2. Territorial and temporal scope.

1. This Agreement will be applied over the whole of Spain for those disputes contemplated in article 4.

2. As far as the new normative framework is concerned and the reforms that this implies to independent means of resolving disputes, the signatory parties agree to bring forward the expiry of the IV Agreement to 31st December 2011 and to establish the coming into effect of this V Agreement on 1st January 2012.

This Agreement will be valid until 31st December 2016. After this date it will be extended for successive five-year periods, if no express accusation is forthcoming from any of the parties, at least six months in advance of the termination of each period.

Accusations must be formulated in writing by any of the parties signing the Agreement and sent to the

remaining signatory parties, with a copy being sent so as to register with the Labour Authority. In any case, if there is an accusation against the Agreement, the validity of the latter will be extended for a twelve-month period. During this time, the signatory parties undertake to negotiate with a view to the extending of this period and may submit their discrepancies during the negotiation process to the dispute resolution procedures stipulated in this Agreement. Once the said extension comes to an end without agreement having been reached as to renewal, the Agreement will no longer be valid.

Article 3. Legal nature and efficiency.

1. This Agreement is signed under the protection of that established in section III of the revised text of the Workers' Charter Law, in Articles 6 and 7 of the Constitutional Law of Trade-Union Freedom and in Articles 2 h), 63, 65.3 and 65.4, 68, 156.1, and 236, among others, of the Law Regulating Business Jurisdiction.

2. On dealing with a specific matter as to what is the independent solution to collective labour disputes, this constitutes one of the agreements contemplated in article 83.3 of the revised text of the Workers' Charter Law, and is consequently affected by the legal nature and efficiency that the Law attributes to the same, which is generally and directly applicable without detriment to that established in section 3 below for the disputes and the scope mentioned in Article 4.

   Notwithstanding the foregoing, it will be understood that this V Agreement is applicable to those parties that were a part of the IV ASEC, unless any of them should notify SIMA of the contrary within a period of three months as from its coming into effect. In this case notification must be sent simultaneously to the other party so as to comply with that set down in the following section. In the same manner, those parties that are not affected by the IV ASEC will have the same period and procedure at their disposal in order to indicate their desire that this V Agreement should not apply to them.

3. By means of a collective accord or a state sectorial collective agreement or an agreement of a company, group of companies, or associated companies that have work centres in more than one autonomous region, internal dispute resolution systems may be established to apply to the disputes anticipated in Article 4, which are not part of the Interconfederal Mediation and Arbitration Service (Servicio Interconfederal de Mediación y Arbitraje, SIMA) anticipated in Article 5 of this Agreement.

   Those legitimate parties that have adopted, as indicated in the section above, internal dispute resolution systems, may join this Agreement at any time by means of the instruments of ratification or adhesion indicated below:

   a) Agreement on specific matters under the protection of Article 83.3 of the revised text of the Workers' Charter Law, signed by the employers' and trade-union associations represented in the corresponding sectorial or sub-sectorial field. The Agreement may include the text of the V Agreement or refer expressly to it.

   b) Specific adhesion to the Agreement in a sectorial or sub-sectorial Collective Accord that is national in scope or extends beyond an Autonomous Region, or in an Accord with a company or group of companies or associated companies that has work centres in more than one Autonomous Region.

   c) Specific insertion of the Agreement within a sectorial or sub-sectorial Collective Accord that is national in scope or extends beyond an Autonomous Region, or in an Accord with a company or group of companies or associated companies that have work centres in more than one Autonomous Region.

   d) Signing a document consisting of an agreement between the management of the company and the inter-centre committee or the committees or personnel delegates of the work centres of the said company, or the trade unions which as a whole include most of the workers' representatives, in those companies that have work centres in more than one Autonomous Region. This signing may also be carried out in cases of a group of companies or associated companies.

   Adhesion or ratification must both be unconditional and refer to the totality of this Agreement.

Article 4. Disputes affected.

1. The following types of labour dispute are liable to be subjected to the procedures anticipated in this Agreement if they arise in the fields mentioned in number 2 of this article:

   a) Collective disputes of interpretation and application defined in accordance with that set down in Article 153 of the Law Regulating Business Jurisdiction and without detriment to the intervention of the Commissions for the Administration of the Agreement referred to in Articles 85.3 h) 1 and 91.3 of the Workers' Charter Law in disputes as to the interpretation and application of collective agreements.

   b) Controversies in the Commissions for the Administration of the Agreement of collective agreements that imply the blocking of the adoption of agreements for the resolution of the functions attributed to them either legally or traditionally. The initiative of subjection to the procedures anticipated in this Agreement must be instigated by the entity stipulated in the collective agreement, or failing this by the majority of both representations.

   c) Disputes that arise during the negotiation of a collective agreement involving their blocking.

      It will not be necessary for any period of time to pass in order to submit to the procedures anticipated in this Agreement, when this is jointly requested by those having the power to sign the Agreement with general validity.

      If the breakdown occurs five months after the constitution of the negotiating table, mediation may be requested by either the employers' representation or that of the workers taking part in the corresponding negotiation; nevertheless the said representation must be in the majority. A majority will not be required if this is stipulated in the collective accord, when the negotiation deadlines stipulated in Article 85.3. f) of the revised text of the Workers' Charter Law or in the accord that is being extended have expired.

      In any case, any substantial differences that have caused the breakdown of negotiations must be declared.

   d) Disputes arising during the negotiation of a collective accord or agreement that entail the breakdown of the corresponding negotiations for a three-month period to be counted as from the constitution of the negotiating table, except in the case of the extension of an agreement regarding a period other than that mentioned above, in which case that set down in the same will be applicable.

      In this case mediation may be requested by either the employers' representation or that of the workers taking part in the corresponding negotiations; nevertheless the said representation must be in the majority.

      It will not be necessary for this period to pass when mediation is jointly requested by both representations.

      In any case, the substantial differences that have caused the breakdown in negotiations must be declared.

   e) Disputes deriving from discrepancies that have arisen during the consulting period required by Articles 40, 41, 47, 51, and 82.3 of the revised text of the Workers' Charter Law.

   f) Disputes deriving from discrepancies that have arisen during the consulting period required by Article 44.9 of the revised text of the Workers' Charter Law which do not refer to collective transfers or to the substantial modification of the collective work conditions.

   g) Disputes that lead to the challenging of collective accords prior to the initiating of legal proceedings.

   h) The substitution of the consultation period granted by the judge by mediation and arbitration, at the request of the bankruptcy administration or the legal representation of its workers in the cases stated in Art. 64.5 in the final paragraph of the Bankruptcy Law.

   i) Disputes deriving from discrepancies that have arisen during the negotiation by the company and the legal

workers' representation of agreements of the non application of certain working conditions agreed in sectorial collective accords, when the said accords contemplate their negotiated non application.

j) Disputes in the event of disagreement between the legal representation of the workers and the company, in cases of extraordinary temporal flexibility anticipated in the collective accords.

k) Disputes that give rise to a strike call or which arise regarding the determination of security and maintenance services in the event of a strike.

2. Previous disputes may be subject to the procedures contemplated in this Agreement, provided that they arise in one of the following fields:

a) A sector or sub-sector of activity that goes beyond the scope of an Autonomous Region.

b) A company, group of companies, or associated companies when the dispute affects several work centres located in different Autonomous Regions.

In this case and when a collective dispute concerning the interpretation and application of an Accord is involved, the latter must be an Accord of a company, group of companies, or associated companies or one at a lower level than a company one but higher than each one of the work centres affected.

c) Companies, groups of companies, or associated companies or work centres of the same located in an Autonomous Region when they are included in the field of application of a national sectorial Collective Accord, and when the resolution of the dispute may have consequences for companies and work centres located in other Autonomous Regions. In these cases the Accord mentioned must expressly reflect this possibility.

3. This Agreement neither includes the resolution of individual disputes nor covers disputes and fields other than those anticipated in this article, which may be subject to the procedures contemplated in signed agreements or those that may be signed in the different autonomous fields, or which are established in the Collective Accords to be applied.

CHAPTER II

THE INTERCONFEDERAL SERVICE OF MEDIATION AND ARBITRATION (SERVICIO INTERCONFEDERAL DE MEDIACIÓN Y ARBITRAJE, SIMA)

Article 5. Legal nature and functions.

1. The Interconfederal Service of Mediation and Arbitration is a collective bargaining institution made up in equal parts of the most representative trade-union and employers' associations that have signed the V Agreement. It has legal personality and the capacity to act; from a legal and formal viewpoint it has the attributes of a foundation protected by the Ministry of Employment and Social Security. Its resources are public in character and its activities are free of charge.

2. The SIMA is governed by an Administration Board composed in equal numbers by representatives of the signing parties of this V Agreement and by a President who may form part of the said representations or be appointed by mutual agreement in order to facilitate its decisions by consensus.

3. The Interconfederal Service of Mediation and Arbitration will have the functions, composition, and operation established in this Agreement and in the remaining development precepts. It constitutes the management and administrative support of the procedures for resolving disputes, to which is entrusted the application of the precepts of this Agreement.

4. The SIMA will make sure that gender perspective is contemplated in the development of the mediation and arbitration procedures and in the resolution of the same when this is required by the nature of the dispute.

Article 6. Operation of the Service.

1. The Service has its own internal regulations. These rules regulate the daily operation of the Service, the distribution of the tasks, the resolution of competition disputes, if these occur, the procedure of citation and notification, and the publishing of its actions.

2. The Service will receive the documents giving rise to the procedures, effect citations and notifications, register and certify the appropriate documents, and in general take charge of whatever tasks may be necessary in order to ensure and facilitate the suitable development of the procedures, in accordance with that set down in this Agreement and in its operating precepts.

3. The minutes of the meetings and actions carried out will be signed by whoever is acting as secretary of the same.

4. The Collective Accords or sectorial agreements may establish specific mediation or arbitration bodies. These bodies will become part of the Service, once this has been agreed by the Follow-up Commission of this Agreement after checking that the principles established in it are respected in its processing.

   If it has been agreed that the Commission for the Administration of the Agreement should act as a specific mediation and arbitration body, this Commission must delegate to a maximum of three members.

5. The SIMA will only accept those applications for mediation and arbitration deriving from that set down in this Agreement.

Article 7. Appointment of mediators and arbitrators.

1. The SIMA will draw up a list of mediators and arbitrators that will be provided to those requiring its services.

   This list consists of the mediators and arbitrators proposed and agreed by the parties signing this Agreement, and will contain those proceeding from the bodies constituted by the Accords or Agreements referred to in article 6.4 of this Agreement and the effects of the said precept.

   The parties, aware of the progressive expansion of the disputes subjected to this V Agreement, consider it necessary to pay particular attention to the continuous training and appropriate dedication of the mediators and arbitrators, to the effects of making the resolution procedures regulated in this Agreement as efficient as possible.

2. The parties of a dispute subjected to this V Agreement must appoint a mediator or mediators and an arbitrator or arbitrators from those included on the list.

3. The parties in dispute may by mutual agreement appoint a single mediator who does not appear on the lists of the Interconfederal Service of Mediation and Arbitration. In these cases, the mediation should meet the criteria set down in the operating rules and service procedure.

SECTION II

PROCEDURES FOR RESOLVING DISPUTES

CHAPTER I

PRECEPTS COMMON TO PROCEDURES FOR RESOLVING DISPUTES

Article 8. Procedures.

1. The procedures established in this Agreement for resolving disputes are:

   a) Mediation, which will be obligatory in those cases determined below, and provided that it is requested by one of the parties of the dispute, except in those cases in which agreement between both parties is required. Mediation through the SIMA replaces prior administrative conciliation to the effects anticipated in Articles 63 and 156 of the Law Regulating Business Jurisdiction.

   b) Arbitration, which will only be possible when both parties request it in writing by mutual agreement.

      Notwithstanding that anticipated in the previous paragraph, when this has been expressly established in the collective accord that has been denounced, arbitration will be compulsory for its renewal when the negotiation deadlines established in Article 85.3. f) of the revised text of the Workers' Charter Law or the collective accord itself have expired without agreement having been reached.

      It will likewise be obligatory in the other cases anticipated in the collective accord.

      In both cases the collective accord may contemplate mediation prior to compulsory arbitration by the arbitrator him/herself or a different third party.

2. The parties in dispute, either initially or during the procedure, may empower third party mediators to act as arbitrators.

3. The parties may appoint a mediator to carry out his/her duties continuously within a specific field, in relation to any controversies that may arise in the same, including the possibility of intervening with a preventive purpose at the request of either of the parties, when owing to the concurrent circumstances the various positions may result in any of the disputes included in Article 4. The SIMA needs to be aware of this mediation to the corresponding effects, owing to which it must be notified by either of the parties.

Article 9. Governing principles of the procedures.

The procedures anticipated in this Agreement will be governed by the principles of cost-free status, swiftness, formal interviews of the parties, impartiality, equality, and contradiction, while respecting at all times current legislation and constitutional principles.

The procedures will be adapted to the formalities and deadlines anticipated in this Agreement and in the general precepts of interpretation adopted by the Follow-up Commission of the same, always aiming to be as efficient as possible and swift in its development.

Article 10. Prior intervention of the Commission for the Administration of the Agreement of the Collective Agreement.

1. In disputes deriving from the interpretation and application of a Collective Accord, the prior intervention of a Commission for the Administration of the Agreement of the same will be necessary, as otherwise the procedure cannot be initiated. The same rule will govern disputes concerning the interpretation and application of other agreements or collective accords if a Commission for the Administration of the Agreement has been established.

   The submission procedure prior to the Commission for the Administration of the Agreement, referred to in the paragraph above, will be understood to have ended when the deadline established in the Accord itself has expired, or if express regulation is lacking when 15 days have passed after the presentation of the application.

2. In disputes deriving from discrepancies that have arisen during the consultation period required by Articles 40, 41, 44.9, 47, 51, and 82. 3 of the revised text of the Workers' Charter Law, the prior intervention of the Commission for the Administration of the Agreement of the same will be necessary if this has been agreed in the collective accord, and in any case when under the protection of Article 41.6 paragraph two and Article 82.3 paragraph six of the revised text of the Workers' Charter Law either of the parties request the intervention of the said Commission.

   The step of the prior intervention of the Commission for the Administration of the Agreement referred to in the previous paragraph will be understood to have expired when a seven-day deadline has passed as from when the discrepancy is brought up.

3. In the cases anticipated in the previous sections, mediation in the Service will be understood to have expired when the Commission for the Administration of the Agreement acts as a specific mediation body integrated within the same in the terms indicated in Article 6.4 paragraph two.

4. In compliance with that set down in Article 85.3 h) of the revised text of the Workers' Charter Law, the collective accords must guarantee in any case the swiftness and efficiency of the operation of the Commission for the Administration of the Agreement in order to safeguard the rights affected and the utmost flexibility and immediacy of the dispute resolution procedures anticipated in this Agreement. In this respect, this Agreement includes an annex of recommendations on the operation of the Commissions for the Administration of the Agreement.

Article 11. Efficiency of the solutions reached.

The legitimation requirements contemplated in Articles 87, 88, 89.3, and 91 of the revised text of the Workers' Charter Law and Articles 154 and 156 of the Law regulating Business Jurisdiction must be present so that the agreements that may be reached by mediation or arbitration are effective generally or for third parties.

If the opposite is true, the commitments or stipulations contracted will only come into effect for those workers or companies directly represented by the trade unions, employers' organisations, or promoting companies in the dispute who have signed agreements in which the procedure of mediation is concluded or if this is accepted as a result of the corresponding arbitration commitment.

CHAPTER II

MEDIATION PROCEDURE

Article 12. General aspects.

1. Mediation will be carried out preferably by a unipersonal body, or if this is expressly chosen by the parties, by a joint body of two or three mediators, who in accordance with that anticipated in this Agreement will actively try to resolve the differences that have given rise to the dispute.

2. The parties of the mediation procedure will record in writing the discrepancies that exist, appointing a mediator or if appropriate mediators, and indicating the matter or matters that will concern them.

3. The mediation procedure will not be subject to any pre-established procedure, except for the appointment of a mediator or mediators and the formalisation of the agreement that may be reached if appropriate. The data and information provided will be treated as confidential, and that set down in Organic Law 15/1999 of 13th December on data protection must be fully observed.

4. Within the scope of this Agreement the mediation procedure will be obligatory when one of the legitimated parties requests it, except in those cases when the agreement of both parties is required.

   Notwithstanding this, mediation will be necessary as a pre-procedural requirement for the bringing of collective dispute action before business jurisdiction by any of the parties, and therefore replaces prior administrative conciliation.

   Likewise, the call to strike will require the failure of the mediation procedure before it is formally notified.

   In those cases referred to in articles 40, 41, 44.9, 47, 51, and 82.3 of the revised text of the Workers' Charter Law, and with the aim of resolving the discrepancies that may have arisen during the consultation period, all mediation options must be tried if this is requested by at least one of the parties. This does not imply the extension of the deadlines contemplated by law for this reason.

5. The mediation procedure carried out in accordance with this Agreement replaces the compulsory step of conciliation anticipated in Article 156.1 of the Law Regulating Business Jurisdiction within its field of application and for the disputes to which it refers.

   The initiation of the mediation procedure will prevent the calling of strikes and the adopting of lockout measures, such as the taking of legal or administrative action or any other aiming to resolve the dispute, for the reason or cause subject to the mediation and as long as the latter lasts.

6. In any case the parties may agree to submit voluntarily to the arbitration procedure regulated in Chapter III of this Agreement without the need for resorting to mediation. In the same way, the parties may empower, either from the beginning or during the mediation procedure, the mediator or mediators to arbitrate some or all of the matters subject to controversy.

Article 13. Subjects legitimated to request mediation.

In accordance with the type of disputes that may be subjected to the procedure, and provided that they arise in the fields anticipated by this Agreement and in accordance with the applicability of the same to the various sectors, sub-sectors, and companies, the following subjects will be legitimated to instigate the mediation of the disputes included in Article 4:

a) In the disputes referred to in sections a) and i), all subjects that are empowered according to law to promote a collective dispute demand by jurisdictional means or in order to call a strike will be legitimised.

   In these cases the Service must notify the request for mediation to the remaining trade-union and

employers' associations representing the field within which the conflict arises to the effects of their participation in the procedure if this is considered appropriate.

b) In the disputes anticipated in section b), legitimation will correspond to whoever is determined in the collective accord, and in the absence of regulation to the majority of both representations of the Commission for the Administration of the Agreement.

c) In the disputes anticipated in sections c) y d), the legitimation corresponds to the subjects mentioned in the said sections.

d) In the disputes referred to in sections e) and f), the employer and the workers' representation participating in the corresponding consultations will be legitimated. The decision to instigate mediation must be that of the majority of the representation promoting it.

e) In the disputes regulated in section g), all those subjects holding legitimation for challenging the collective accords will be legitimated in accordance with Article 165 of the Law on Business Jurisdiction.

f) In the disputes regulated in section h), the bankruptcy judge or the person determined by the latter to these effects.

Article 14. Request for mediation.

1. The promotion of mediation will be initiated with the presentation of a document addressed to the Interconfederal Service of Mediation and Arbitration.

2. The request for mediation should contain the following clauses:

   a) The identification of the employer or the collective subjects that may legitimately become part of the procedure in the field of the dispute.

      In those cases in which it is appropriate, the identification of the remaining trade-union and employers' associations representing the said field should also be included.

   b) The subject of the dispute, with specification of its origin and development and of its aim and raison d'être. Those who request mediation must provide the mediator or mediators with those events or data that they considered to be relevant for the resolution of the dispute.

      Likewise, at the petition of the party requesting the mediation, the identification or clarification by the mediator or mediators of events or data that are considered to be relevant for the resolution of the dispute may be subject to the same.

   c) The group of workers affected by the dispute and the geographical extent of the same.

   d) The accreditation of the intervention of the Commission for the Administration of the Agreement, or of having addressed the latter without effect, and if appropriate the report issued, in the following cases:

      1. Disputes concerning the interpretation and application of a Collective Accord.

      2. Disputes concerning the interpretation and application of other agreements or collective agreements, if they include a Commission for the Administration of the Agreement and its prior intervention has necessarily been established.

      3. Disputes deriving from discrepancies that have arisen during the consultation period required by Articles 40, 41, 44.9, 47, 51, and 82.3 of the revised text of the Workers' Charter Law, if the prior intervention of the Commission for the Administration of the Agreement of the same has been agreed in the Collective Accord, and in any case when under the protection of Article 41.6 paragraph two and Article 82.3 paragraph six of the revised text of the Workers' Charter Law either of the parties has requested its intervention.

e) The mediator or the joint mediation body appointed.

f) The address, date, and signature of the employer or the collective subject initiating the procedure.

3. Once mediation has been instigated by the Interconfederal Service of Mediation and Arbitration, all negotiation options will be tried within ten days. During the first three working days of said period, the SIMA must attend the request for a mediator or mediators and summon them in order to start the mediation.

   If the parties have not appointed a mediator or mediators, the SIMA will ask the former to appoint them on the same day as that of the reception of the application. Once three days have passed since the presentation of the application, the mediation will be carried out by those appointed by the parties. If one of them has not appointed a mediator, the mediation will be carried out by the mediator proposed by the other party. If neither of the parties have appointed a mediator within the above deadline, the proceedings will be dismissed.

4. Subjects requesting mediation may require the mediator or mediators to carry out the procedure within a tighter deadline than that indicated in the previous section, provided that in their application they identify the mediator or mediators they have agreed on.

5. The appointment of the mediator or mediators contemplated in number four will be from the persons included on the lists approved by the Administration Board of the Interconfederal Service of Mediation and Arbitration, which will be updated periodically. These lists will include the mediators proposed and agreed by the signatory organisations. In accordance with that set down in Article 6.4, if appropriate the parties may appeal to the specific mediation body incorporated in the Service.

6. The mediator or mediators should be independent of the specific dispute in which they act; there must be no direct personal or professional interests liable to alter or condition their mediating activity.

   To this effect the following cases will be considered:

   a) If the dispute is a sectorial one, the advisors from each party who have taken part in the dispute as such may not be mediators, in common with members of the management body of the trade-union/s or the employers' association/s affected.

   b) If the dispute is that of a company, group of companies, or group of associated companies, whether the latter have an internal Collective Accord or not, members of the company committee or committees, or if appropriate personnel delegates, members of the management bodies of the trade-union sections, and the management of the company or companies will be incompatible, together with those advisers from either party who have taken part in the original negotiation of the dispute.

7. In disputes arising in companies concerning the interpretation and application of an accord, agreement, or collective sectorial accord, the Commission for the Administration of the Agreement of which has been conferred mediation duties, the members of the same may be appointed mediators, without their being incompatible in any way.

8. Once mediation has been promoted and during its negotiation, the parties will abstain from adopting any other measure aimed at resolving the dispute.

Article 15. Action of the mediators.

1. The action of the mediator or mediators will begin immediately after their appointment. The procedure will be developed according to the negotiations considered appropriate by the mediating body. The mediator or mediators will gather the information they consider necessary in order to operate, guaranteeing in all cases the confidentiality of this information.

   The SIMA will ensure communication between the mediators provided that the latter consider this appropriate.

2. The mediation body will try to achieve agreement between the parties, moderating the debate and granting the parties the interventions considered appropriate. In all cases the right of hearing of those appearing will be guaranteed, together with the principle of equality and contradiction, without lack of proper defence occurring.

3. The mediator or mediators will formulate proposals for the resolution of the dispute, which may include the subjection of the discrepancies to arbitration. The parties will expressly accept or reject the proposals formulated.

   Likewise, after the formal interview and within the ten-day period or that agreed by the parties, the mediator or mediators may formulate proposals for the resolution of the dispute that will be considered not to have been made if they are not accepted by the parties.

   The agreement of the parties to submit the matter to arbitration will mean the end of mediation without the need to await the termination of the deadlines.

Article 16. End of the mediation.

1. Provided that the legitimation requirements legally established occur, the agreement achieved by mediation will have the same validity as that established in the agreement after the consultation period referred to in Articles 40, 41, 47, 44.9, 51, and 82.3 of the revised text of the Workers' Charter Law and Article 64.6 of the Bankruptcy Law. In other labour disputes it will have the same validity as that agreed in the Collective Accord, and will be deposited, registered, and published in the terms stated in Article 90 of the revised text of the Workers' Charter Law.

   To the effects of the enforceability and challenging of the mediation agreement, that established in Articles 67 and 68 of the Law Regulating Business Jurisdiction will be applicable.

2. If agreement is not reached, the mediator or mediators will enter a record of this immediately, registering the lack of agreement and if appropriate the proposal or proposals formulated and the reasons alleged by each of the parties for non acceptance.

3. If the bodies intervening in the mediation are those constituted within the collective accord or agreement, the latter will report the resolution to the Interconfederal Service of Mediation and Arbitration for registry effects.

4. The mediation agreement may be challenged under the terms and within the deadlines indicated in Article 67 of the Law Regulating Business Jurisdiction.

Article 17. Specific procedure in the case of a strike.

1. Before the formal notification of a strike, mediation must occur at the request of the conveners. They should formulate their request in writing, including the aims of the strike, the negotiations carried out, and the date planned for strike action to start. A copy of this document will be sent to the employer.

2. At least seventy-two hours should pass between the request for mediation and the formal communication of the strike, unless the parties decide by common agreement to extend this period. Within a twenty-four deadline the SIMA should attend the request for mediation, proceed according to that set down in Article 14.3 on the appointment of a mediator or mediators, and summon the parties in order to carry out mediation.

   This does not imply the extension of the deadlines contemplated in current legislation for this reason.

3. Likewise, the voluntary submission by mutual agreement of the parties to the arbitration procedure will be possible.

4. Appearance at the corresponding mediation proceedings is obligatory for both parties as a consequence of

the duty to negotiate that is implicit to the nature of this mediation.

The mediator or mediators may formulate proposals for the resolution of the dispute that are considered not to have been made if the parties do not accept them.

5. The formal document of notification of the call to strike should specify that mediation has been attempted within the deadlines indicated above, or that it has occurred without agreement having been reached. If this circumstance is not accredited by the conveners, it will be understood that the strike has not been called correctly.

6. When mediation is suggested in relation to the performing of the security and maintenance services, it will be initiated at the request of either of the parties if the suggestion has been made within the twenty-four hours following the formal notification of the strike. This procedure will also last seventy-two hours.

CHAPTER III

ARBITRATION PROCEDURE

Article 18. General aspects

1. By means of the arbitration procedure the parties agree voluntarily to entrust matters to a third party and to accept beforehand the solution the latter proposes to the dispute that has arisen.

   The parties in dispute must declare their express will to submit to the impartial decision of an arbitrator or arbitrators that must of necessity be complied with.

2. The parties may promote arbitration without the need to avail themselves previously of the mediation procedure referred to in the previous chapter, or may do so after all mediation options have been exhausted or during their course according to section 6 of Article 12 and sections 3 and 4 of Article 15. Notwithstanding the foregoing, the parties may request the arbitrator to carry out mediating duties at any time prior to his action as such.

3. Once the arbitral commitment has been formalised the parties will refrain from instigating other procedures on any matter or matters subject to the arbitration, as well as from having recourse to a strike or lockout.

4. In the case anticipated in Article 8.1b) paragraph 2, action will be taken as set down in the collective accord.

Article 19. Subjects legitimated to request arbitration.

The same subjects referred to in article 13 of this Agreement are legitimated to instigate the arbitral procedure by mutual agreement according to the type of dispute and the field affected.

In the case anticipated in Article 8.1b) paragraph 2, the procedure will be promoted by legitimated subjects under the terms established in the collective accord.

Article 20. Request for arbitration.

1. The promotion of the procedure will require the presentation of a document to the Interconfederal Service of Mediation and Arbitration signed by the legitimated subjects who wish to submit the matter for arbitration.

The promotion document must indicate the arbitrator or arbitrators that are proposed to settle the matter that has arisen.

Likewise it should contain:

a) The identification of the employer or the collective subjects that hold legitimation in order to adhere to the procedure in the field of the dispute.

In those cases in which it is appropriate the identification of the remaining trade-union and employers' associations representative of the said field should also be included, to the effects of notifying them of the arbitral commitment in case they wish to join it.

b) Specific matters on which the arbitration must pronounce, whether this is in law or in equity, with the determination of its origin and development, of the claim and the reasons that support it, and the deadline for the making of an arbitral award. The parties may ask the arbitrator to make his/her award based on the final position that the former may present to him/her in one or several of the specific matters subjected to arbitration.

c) The commitment to accept the arbitral decision.

d) If the decision requested must be dictated in law or in equity.

e) The deadline within which the arbitrator must make a decision, without detriment to that set down in Article 21.2 of this Agreement. In particular, the parties may establish tight deadlines in those cases in which the law or the collective accord provides for periods of consultation or negotiation in which the rapid resolution of the controversy is a priority.

f) Addresses of the parties affected.

g) Date and signatures of the parties.

2. Copies of the arbitral commitment will be sent to the SIMA secretariat and also to the competent labour authority to the effects of the constancy and subsequent publicity of the decision.

3. The appointment of the arbitrator or arbitrators will be free and will fall to impartial experts. In the event of disagreement, the arbitrator will be appointed from a list of five arbitrators that has been agreed by the parties, from which each party rules out successively and alternately the names it considers appropriate until a single name remains; the parties decide who they begin to rule out by a random process.

4. In the case anticipated in Article 8.1,b) paragraph 2, the arbitrator will be appointed under the agreed terms.

Article 21. Action of the arbitrators.

1. The activity of the arbitrator or arbitrators will begin immediately after their appointment. The procedure will develop according to the steps considered appropriate by the arbitral body, which may require the appearance of the parties, request complementary documentation, or request the help of experts if this is considered necessary. In order to do so a list of experts on various specialities that may most frequently be required to these effects will be available, on which the former have agreed to be included under the conditions of action that have previously been established.

   In any case the right to a hearing of those appearing will be guaranteed, together with the principle of equality and contradiction, without defencelessness occurring. The arbitrator or arbitrators may request the help of experts if this is necessary. Minutes certified by the arbitrator or arbitrators will be taken from the session or sessions.

2. The arbitrator or arbitrators, who will always act jointly, will communicate to the parties the resolution adopted

within the deadline set in the arbitral commitment, notifying equally the secretariat of the Interconfederal Service of Mediation and Arbitration and the competent labour authority. If the parties should not agree on a deadline for the communication of the decision, this must be issued within ten working days as from the appointment of the arbitrator or arbitrators.

Exceptionally, as a result of the difficulties of the dispute and its implications, the arbitrator may extend the aforementioned ten-day deadline by means of a motivated resolution. In any case the decision must be issued before forty working days have passed.

3. The arbitral award must be explained and notified immediately to the parties.

4. The arbitral resolution will be binding and immediately executive.

5. The arbitral resolution will be deposited at the SIMA and sent to the labour authority for its deposit, registering, and publication when appropriate.

Article 22. Validity of the arbitral decision

1. The arbitral resolution will have the same validity as that agreed in the agreement after the consultation period referred to in Articles 40, 41, 44.9, 47, 51, and 82.3 of the revised text of the Workers' Charter Law and Article 64.6 of the Bankruptcy Law, provided that the legally established requirements are present. In other labour disputes it will have the same validity as that agreed in the Collective Accord, and will be deposited, registered, and published under the terms contemplated in Article 90 of the revised text of the Workers' Charter Law.

   If appropriate, it will have the effects of a final judgment in accordance with that set down in Article 68 of the Law Regulating Business Jurisdiction.

2. The arbitral decision excludes any other procedure, collective dispute demand, or strike on the resolved matter and depending on its efficiency.

3. The arbitral decision may only be appealed against under the terms and within the deadlines established in Articles 65.4 and 163.1 of the Law Regulating Business Jurisdiction.

SECTION III

Article 23. Follow-Up Commission.

1. The Follow-Up Commission will be made up of six trade-union members and six employer members. It has competence in the interpretation, application, adaptation, and follow-up of this Agreement. It is also responsible for the acceptance and integration, under the terms established in Article 6, as specific bodies of the system of those agreed in a collective accord. The President and two Secretaries, who may be renovated annually, will be appointed from among its members.

   The Follow-Up Commission will have its own rules of operation.

2. The headquarters of the Follow-Up Commission will be situated at the SIMA premises in Madrid, at Calle San Bernardo, nº 20, 5ª planta.

PRECEPTS

ADDITIONAL PRECEPTS

FIRST ADDITIONAL PRECEPT

If a collective dispute of those affected by this Agreement may be submitted equally to another procedure for the resolution of disputes, which is valid within the scope of an Autonomous Region, the parties affected must choose by means of agreement the procedure they will submit to.

SECOND ADDITIONAL PRECEPT

The organisations signing this Agreement express their wish to address the Government so that by means of the corresponding tripartite agreement and the legally appropriate procedure, measures may be provided to ensure the financing and execution of the same.

THIRD ADDITIONAL PRECEPT

The Follow-Up Commission of this Agreement will analyse and approve if appropriate the inclusion in the same of:

a) Collective controversies deriving from state agreements of professional interest or wider than those of an Autonomous Region affecting more than one Autonomous Region, provided that these are established voluntarily by an express agreement of adherence, and without detriment to other agreements or accords that may exist on the subject, and respecting in any case that anticipated in the last paragraph of Article 18.1 and in Article 18.4 of Law 20/2007 of 11th July on the Freelance Work Charter, as far as economically dependent self-employed workers are concerned.

b) Collective disputes between public employees and the General State Administration and public bodies, agencies, and other public law entities dependent on it or associated with those that provide their services, provided that this has been established by means of an agreement of express adherence adopted in the application of Article 45 of Law 7/2007 on the Basic Charter for Public Employees and its development legislation. Likewise and with the same requirements, collective disputes of staff working for the General State Administration subject to labour laws.

Any arrangements that may be formulated between the groups affected and the SIMA will be drawn up in writing and signed by those representing the representative Organisations in each case. Their execution by the services of the SIMA Foundation will not involve any profit.

TRANSITORY PRECEPTS

FIRST TRANSITORY PRECEPT

Those mediation and arbitration proceedings with a registration date with the SIMA predating the publication in the Official State Gazette of this Agreement will be processed according to the previous ASEC.

SECOND TRANSITORY PRECEPT

In those sectors, subsectors, companies, groups of companies, or associated companies of the field anticipated in Article 4.2, and prior to the coming into effect of this Agreement, which have adopted independent systems for resolving disputes other than the ASEC, the validity of the same will be maintained insofar as adhesion to this Agreement in the terms set down in Article 3.4 does not occur.

Nevertheless, if by 30th June 2012 they have not adapted their systems to the urgent measures contemplated in Royal Decree-Law 7/2011 of 10th June for the reform of collective bargaining, this agreement will be applicable to them as far as what has not been adapted is concerned as from the aforementioned date.

FINAL PRECEPT

By virtue of the recognised nature and validity of this Agreement, it will be sent to the labour authority for its deposit, registration, and publication.

ANNEX OF RECOMMENDATIONS ON THE COMMISSIONS FOR THE ADMINISTRATION OF THE AGREEMENTS

Some recommendations for the "rapid and effective" operation of the Commissions for the Administration of Agreements:

a) To the effects of speeding up their operation, the numerical composition of the Commissions for the Administration of Agreements must be as small as possible, always respecting the legitimation levels of the negotiating commission when it has been attributed duties of the adaptation and modification of the collective accords.

b) Frequent periodic meetings should be arranged in such a way that they are taken into account in advance on the members' agenda and can be postponed if there are no matters to discuss. In any case extraordinary meetings must be anticipated as well as ordinary meetings when urgent decisions need to be taken.

c) The application of telematic and audiovisual resources to the meetings, deliberations, and the adoption of decisions must be facilitated, so that the members do not have to be physically present for the commission to operate in a valid manner.

d) Members must always have replacements to avoid cancellations owing to a lack of quorum.

e) The deadlines for the adoption of decisions must count as from the submitting of the dispute to the commission for the administration of the agreement.

f) The dispute must be submitted to the commission by means of as few formal procedures as possible and with the minimum documentary requirements.

g) The procedure of the intervention of the Commission for the Administration of the Agreement is to be considered to have been carried out if no decision is adopted by the commission within the established deadlines.

h) Such deadlines must be as short as possible. In certain cases they have already been established by law (Art. 41.6 of the Workers' Charter). Deadlines of less than 10 days must be the general rule and tighter deadlines must be anticipated for urgent matters (48-72 hours).

i) The adoption of the agreements must be in most cases by the simple majority of each of the representations – or even the simple majority of the voters – and more qualified majorities must be chosen only in certain cases.

j) In sectorial collective agreements, particularly state ones or those of big companies, the general rule must be the existence of decentralised commissions for the administration of agreements.

k) These collective agreements are also affected by the general rule of the existence of specialisation by matters of various commissions for the administration of agreements, to the effects of avoiding the accumulation of work that would limit its efficiency.

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