

INFORMATION

on the status of IFIN-HH Trade Union representativeness for the negotiation of a new Collective Bargaining Agreement at IFIN-HH level

I. FACT SITUATION

The current collective bargaining agreement applicable in IFIN-HH was registered with the Territorial Labor Inspectorate of Ilfov under no. 46/826/20.06.2019, being valid for 24 months from the date of registration. Through Addendum no. 3/15.06.2021, registered with the Territorial Labor Inspectorate of Ilfov on 17.06.2021, the applicability duration of the Collective Bargaining Agreement was extended by 12 months, i.e., until 20.06.2022.

On 27.04.2022 IFIN-HH had a total number of 845 employees. Out of this number, according to the IFIN-HH payrolls for March 2022, 338 IFIN-HH employees are part of the IFIN-HH Trade Union, 33 IFIN-HH employees are part of the RADIAȚIA Trade Union, and the remaining 474 are not union members.

II. TIMELINE

II.1. Collective Bargaining Agreement for 2019 – 2021, registered with the Territorial Labor Inspectorate of Ilfov under no. 46/826/20.06.2019

- proof of representativeness – Resolution given on 04.02.2016 by Cornetu District Court, file 397/1748/2016; IFIN-HH employees: 694 employees, union members: 424
- notification to the Territorial Labor Inspectorate of Ilfov – joint letter by IFIN-HH (N.V.Zamfir)/Trade Union (E.Sandu) no. 5674/18.06.2019; IFIN-HH employees: 865 employees, union members: 455
 - total number of employees according to the Human Resources records:
 - 778 on 31.01.2016
 - 899 on 31.05.2019

II.2. Addendum no.1/13.03.2020, registered with the Territorial Labor Inspectorate of Ilfov on 20.03.2020

- proof of representativeness – Resolution given on 11.03.2020 by Cornetu District Court, file 2323/1748/2020;
- notification to the Territorial Labor Inspectorate of Ilfov - joint letter by IFIN-HH (N.V.Zamfir)/Trade Union (E.Sandu) no. 2122/17.03.2020; IFIN-HH employees: 712 employees, union members: 418
 - total number of employees according to the Human Resources records: 877 on 24.02.2020

II.3. Addendum no.2/09.11.2020, registered with the Territorial Labor Inspectorate of Ilfov on 13.11.2020

- proof of representativeness – Resolution given on 11.03.2020 by Cornetu District Court, file 2323/1748/2020;
 - notification to the Territorial Labor Inspectorate of Ilfov - joint letter by IFIN-HH (N.M.Mărginean)/Trade Union (E.Sandu) no. 8314/09.11.2020; regarding representativeness as per Resolution given by Cornetu District Court on 11.03.2020
- total number of employees according to the Human Resources records: 851 on 31.10.2020

II.4. Addendum no.3/15.06.2021, registered with the Territorial Labor Inspectorate of Ilfov on 17.06.2021

- proof of representativeness – Resolution given on 11.03.2020 by Cornetu District Court, file 2323/1748/2020;
 - notification to the Territorial Labor Inspectorate of Ilfov - joint letter by IFIN-HH (N.M.Mărginean)/Trade Union (E.Sandu) nr. 4446/15.06.2021; regarding representativeness as per Resolution given by Cornetu District Court on 11.03.2020
- total number of employees according to the Human Resources records: 839 on 31.05.2021

Centralized data:

Document type/no./date	Date of registration with the Territorial Labor Inspectorate of Ilfov	Number of employees in HR records	Number of IFIN Union members in the payrolls	Declared number of employees	Declared number of union members	Remarks
Cornetu District Court Resolution dated 04.02.2016	-	778	444	694	424	As per documents attached to IFIN Trade Union application lodged with Cornetu District Court
Collective Bargaining Agreement /20.06.2019	20.06.2019	899	430	865*	455*	* As per letter signed by IFIN (N.V. Zamfir) and IFIN Trade Union (E. Sandu) no. 5674/18.06.2019
Cornetu District Court Resolution dated 11.03.2020	-	877	424	712	418	As per documents attached to IFIN Trade Union application lodged with Cornetu District Court
Addendum no.1/13.03.2020	20.03.2020	877	424	712*	418*	* As per letter signed by IFIN (N.V. Zamfir) and IFIN Trade Union (E. Sandu) no. 2122/17.03.2020
Addendum no.2/09.11.2020	13.11.2020	851	387	-	-	As per Cornetu District Court Resolution dated 11.03.2020
Addendum no.3/15.06.2021	17.06.2021	839	354	-	-	As per Cornetu District Court Resolution dated 11.03.2020
Trade Union Letter no. 70422/29.04.2022	-	845	338	845*	338**	* As per IFIN-HH letter nr. 2738/28.04.2022 ** As per IFIN Trade

III. CURRENT SITUATION

The fulfilment of the representativeness conditions at IFIN-HH level was acknowledged by the IFIN-HH Trade Union according to the Resolution given by the Cornetu District Court on 11.03.2020, file no. 2323/1748/2020.

Through letter no. 600561/B2/BM1/17.02.2022, registered with IFIN-HH under no. 1043/28.02.2022, the Police Inspectorate of Ilfov County, the Economic Criminality Investigation Service contacted IFIN-HH asking that the nominal list of IFIN-HH employees be communicated, as at 24.02.2020 (877 employees, according to the nominal table attached to IFIN-HH letter no. 1304/04.03.2022). Over the phone, Ms. Elena Sandu, President of IFIN-HH Trade Union, referred to the existence of a criminal file (complaint lodged in 2020) for forgery and use of forgery with respect to obtaining representativeness in 2020.

Given the enforceability conditions of the abovementioned resolution, **through letter no. 50422/27.04.2022 (registered with IFIN-HH under no. 2019/27.04.2022 and with the Director General Cabinet Office under no. 110/27.04.2022), the IFIN-HH Trade Union, through the President, requested the communication of the total number of IFIN-HH employees to *verify the condition of representativeness of IFIN-HH Trade Union...with a view to renegotiating the Collective Bargaining Agreement in IFIN-HH.***

Following the reply sent by IFIN-HH through letter no. 2738/28.04.2022, **the IFIN-HH Trade Union, through the President, informs the Board of Administration of IFIN-HH in the meeting of 28.04.2022 and thereafter, informs the employer that *the IFIN-HH Trade Union has 338 union members, in which case relative to the total number of IFIN-HH employees, it no longer fulfils the condition of representativeness at IFIN-HH level* (letter no. 70422/29.04.2022, registered with the Director General Cabinet Office under no. 78/29.04.2022).**

Whereas the collective bargaining agreement is to expire on 20.06.2022, according to the provisions of art. 129 paragraph 3 of Law No 62/2011 of social dialog, *the employer, IFIN-HH, notified the intention to negotiate a new collective bargaining agreement for IFIN-HH to all stakeholders, i.e., IFIN-HH Trade Union (through letter no.2820/02.05.2022, registered under no. 10522/03.05.2022), Radiția Trade Union (letter no. 2818/02.05.2022, registered under no. 25/03.05.2022), and IFIN-HH employees (letter no. 2822/02.05.2022).*

Considering all the steps taken by the IFIN-HH Trade Union with regard to verifying the fulfilment of the representativeness condition and the notification sent to the institute's management, in the sense of not fulfilling the conditions required by the law in this respect, *the procedure for electing the **employees' representatives** was initiated in IFIN-HH, according to the provisions of art. 221 – 226 of Law No 53/2003 – Labor Code, republished, as further amended and supplemented, for their participation in the parity commission for the negotiation of the new collective bargaining agreement.*

Although the IFIN-HH Trade Union acknowledged that the organization for electing the employees' representatives in IFIN-HH has started, both directly (through letter no. 2818/02.05.2022), and through

the forms of communication within IFIN-HH (displaying in all locations, online posting, email communication), during the elections, namely on 27.05.2022, the **Trade Union sent a new letter to the IFIN-HH management (letter no. 50522/26.05.2022, registered with IFIN-HH under no. 2549/27.05.2022 and with the Director General Cabinet Office under no. 129/27.05.2022), this time notifying that the representativeness conditions are satisfied, without presenting any new document or operative event** in relation to the notification dated 28.04.2022 (in the meeting of the Board of Administration) and with respect to the situation pointed out through letter no. 70422/29.04.2022.

Taking into account the contradictory views expressed by means of the letters sent to the IFIN-HH management and considering the opinion expressed in the meeting of the Board of Administration of 28.04.2022, in relation to the existence, on the date of the entire correspondence initiated by the Trade Union, of the Resolution given by the Cornetu District Court on 11.03.2020 (file 2323/1748/2020), the **IFIN-HH management requested to communicate in due course the substantiating documents supporting the claims related to “representativeness being acquired again” (IFIN-HH letter no. 3480/30.05.2022, registered with IFIN-HH Trade Union under no. 90522/31.05.2022).**

To letter no. 100522/31.05.2022, the IFIN-HH Trade Union encloses a *nominal table of 95 individuals representing “NEW MEMBERS JOINING THE IFIN-HH TRADE UNION”, as well as a copy of Minutes no. 150/26.05.2022 of the IFIN-HH Trade Union Meeting, where the IFIN-HH Trade Union representatives were assigned in the parity commission.*

Checking the documents received in relation to the provisions of art. 34 paragraph 1 of the IFIN-HH Trade Union Statues, according to which **“new members joining the IFIN-HH Trade Union are admitted based on an individual application in writing approved by the Board”**, through letter no. 3542/02.06.2022 the IFIN-HH management asked for the proof of conformity with such statutory provisions. On 02.02.2022 the IFIN-HH Trade Union makes clarifications regarding Minutes no.150/26.05.2022, without sending the required documents (letter no. 02062022/02.06.2022, registered with IFIN-HH under no. 2605/02.06.2022 and with the Director General Cabinet Office under no. 132/02.06.2022).

Given the correspondence with the IFIN-HH Trade Union, the employer proceeded with verifying the special register for Trade Union Records held by the Cornetu District Court, and **from the data communicated by the competent court contained in the Registry Certificate issued on 02.06.2022, ensued a different membership of the Board (Executive Committee) than that specified in Minutes no. 150/26.05.2022**, invoked in Trade Union letters no. 50522/26.05.2022, no. 6052022/27.05.2022, no. 100522/31.05.2022, and no. 020622/02.06.2022.

Although according to the legal incidental provisions (art. 20 corroborated with art. 17 of Law No 62/2011 of social dialog, republished, as further amended and supplemented), the *IFIN-HH Trade Union had the obligation to register, within 30 days, with the Cornetu District Court, any further amendments to the statutes, and any change in the membership of the managing body*; from the document presented by the Trade Union (Minutes no. 150/26.05.2022) and the document issued by the Cornetu District Court (registry certificate dated 02.06.2022) it results that the *IFIN-HH Trade Union has not fulfilled this legal obligation*, for the changes made in its organizational structure to be binding.

We specify that **according to the statutory provisions (art. 11 and art. 30 of the IFIN-HH Statutes), the Trade Union Board is validated by the General Meeting**, this applying also to a possible change in the Board membership.

As regards the stage of assigning the IFIN-HH employees' representatives, we specify that 12 candidatures have been recorded, and ***until this date there have been three rounds of elections, none of the candidates obtaining half plus one of the total number of IFIN-HH employees.*** According to the regulation on conducting the elections, if there are no candidates elected with the vote of half plus one of the total number of IFIN-HH employees, *after maximum five rounds of elections, the vote is ended and a new elections procedure is organized.*

As we have already shown in the introduction, the legal duration of the Collective Bargaining Agreement applicable in IFIN-HH expires on 20.06.2022, the date after which a new agreement must be concluded, the current agreement not being extendable.

With respect to all of the above, the situation generated by the notice given by the IFIN-HH Trade Union about representativeness being lost is not clarified until this date and, moreover, the elections for assigning the IFIN-HH employees' representatives have not resulted in obtaining the necessary number of votes, so that, although the employer has notified the initiative on negotiating a new Collective Bargaining Agreement within the legal time limit, the status of the social dialog partner (representative trade union or employees' representatives) is uncertain.

Director General,
Dr. Nicolae Marius Mărginean

Legal Adviser,
Daniela Moraru