

Collective agreements

Questionnaire

**General Reporter: Judge Michel Blatman,
Conseiller, Chambre sociale de la Cour de cassation,
France**

Preliminary remarks

Relationships between employer and employees are fundamentally unequal. In order to obtain better wages and working conditions, workers organize themselves and in this way acquire (in particular through strikes and unions) the ability to bargain more efficiently with their employers. Collective agreements are the result of collective bargaining. Employees are no longer seen in their individual relationships with employers but rather act and negotiate collectively.

Thus are overstepped the stage of the contract of employment and the level of the enterprise, to reach more and more collective levels: company, branch, inter-profession, group.

If these agreements are the expression of a new test of strength for employees, they also are an advantage for the undertaking, when they reach to broad enough geographic and professional sphere on an industry level and thereby create conditions of equal competition with other businesses by eliminating labour cost distortions.

Collective bargaining which leads to collective agreements and covenants has different forms, from conflicting to organized negotiation.

On one hand, collective agreements convey a certain prominence of collective work relationships over individual ones, and a certain normative competence between the public authority and the social partners, on the other. But these elements are not necessarily clear and stable, and legal and labour relations problems sometimes arise.

This questionnaire aims to review the practices in different countries and show the solutions given to the various problems encountered.

1 Definitions

1.1 What is the definition of the collective agreement in your country?

- 1.2 Is there a distinction made between different types of collective agreements according to their source, content or scope (occupational or territorial)?
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2. Please summarize the history of collective agreements in your country.

3. Collective agreement as a source of law

- 3.1 What are the constitutional or/and legal grounds of collective agreements?
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- 3.2 Does a collective agreement have a contractual or statutory status (or both)?
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- 3.3 The relationship between collective agreements and other sources of law

- 3.3.1. How do collective agreements receive legal status from the Constitution and the constitutional principles in force in your country?
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- 3.3.2. Relationships between collective agreements and general principles

A) Hierarchy of standards

1) Principle of hierarchy

- a) Are collective agreements and covenants subject to superior standards?
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- b) Does a hierarchy of levels exist between collective agreements?
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2) Derogations

- a) Are collective agreements subject to the “principle of favour” (exemption “in melius” from the laws or higher-ranked agreements)?
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- b) Can they be less favourable than the latter or is it acceptable that lesser ranked agreements contradict unfavourably (“in pejus”) to higher ranked agreements?
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B) Principle of equality: non-discrimination and “equal pay for equal work”

- 1) May collective agreements set conditions of unequal treatment and are these upheld as legal?
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- 2) Are collective agreements subject to the principle of equality?
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C) Law and order

- 1) Is there a definition of “social” law and order (which is different from “economic” or “management” law and order)?
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- 2) Is there a distinction between absolute and relative law and order?
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D) Is there a duty of good faith in collective bargaining?

3.3.3. Collective agreements and other sources of law

A) Collective agreements and law

- 1) Are collective agreements allowed to abridge rights that employees have been given by law?
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- 2) May the law itself annex a collective agreement?
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- 3) May a law delegate some of its powers to a collective agreement?
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B) Collective agreements and regulations

- 1) Should collective agreements be extended by a regulation to govern the whole profession, even businesses that are not members of the signatory unions?

- 2) Are some collective agreements subject to approval by ministerial order?

C) Collective agreements and customs

- 1) Does a collective agreement challenge custom when its object is the same?

- 2) Does the voluntary enforcement by the employer of a collective agreement that normally does not apply to him/her constitute a custom?

- 3) Have you something else to say about this point?

E) Collective agreements and the labour contract

- 1) Is the contract of employment allowed to contain clauses less favourable to the employee than the relevant collective agreement?

- 2) Is the collective agreement incorporated into the contract of employment or does it remain independent from it?

- 3) May a new collective agreement modify the contract of employment?

4. Elaboration of collective agreements

4.1. Collective bargaining

4.1.1 How many levels of bargaining exist in your country?

4.1.2 How are they related?

4.1.3 Is collective bargaining freely decided or mandatory?

4.1.4 What subjects may collective bargaining include?

4.2. Conclusion of collective agreements

4.2.1. Signatories

a) Who can be parties to the collective agreement?

(1) Only unions (or their representatives)?

(2) Also the employees, or work-council, or workforce delegates?

(3) Other responses?

b) Must the parties meet a condition of representativity?

c) May the agreement be signed by only one union, though in the minority, or is it necessary that a majority of unions do not oppose the text of the agreement?

d) Does a right of opposition exist?

4.2.2 Formal requirements

- a) Must collective agreements be made in writing?

- b) Must a notice be given?

- c) Must collective agreements be registered?

5 The enforcement of collective agreements

5.1. Scope of collective agreements

5.1.1. Geographic area

- a) National, regional, local?

- b) International?

5.1.2 Professional sphere

What jobs, professions or branches are concerned?

5.2 Determining which collective agreement is enforceable

5.2.1 Is the main activity of the business a criterion?

5.2.2 What about the mandatory application of “extended” collective agreements?

5.2.3 Is it possible for an employer to voluntarily apply a collective agreement that does not apply to his/her business? Then, how to prove this voluntary enforcement?

5.2.4 Which collective agreement is to be enforced in case of coincidence of several agreements? According to what criteria?

5.3 Binding force of collective agreements

5.3.1 Are collective agreement enforceable upon signing?

5.3.2 Do collective agreements apply automatically?

5.3.3 Are collective agreements binding (imperative)?

6. Content of collective agreements

6.1 Is the content mandatory, or can the parties choose it freely (or both)?

6.2 Different subjects dealt with

6.2.1 Freedom of collective industrial organization?

6.2.2 Form and content of the contract of employment

- Requirements concerning the use of fixed-term contracts?

- Form of the contract: in writing; compulsory mentions?

- Various clauses

- o Covenant not to compete?

- o Compensation (financial) for covenant not to compete?

- o Probationary period?

6.2.3 Minimum wages?

6.2.4 Classification and career of staff members?

6.2.5 Hours of work

- On-call time and hours of “equivalence”? _____

- Vacation? _____

- Overtime and fixed wages? _____

- Compensatory rest? _____

- Part-time work? _____

- Minimum rest time and maximum work time? _____

6.2.6 Rights of an employee who is on sick leave?

- Suspension of performance of the contract of employment?

- Guaranteed resources? _____

- Job security? _____

6.2.7 Discipline

6.2.8 Vocational training?

6.2.9 Follow-up of the agreement?

7 Interpretation of and litigations relating to collective agreements

7.1 Which bodies are responsible for interpreting the collective agreements?

7.1.1 Joint boards?

7.1.2 Other bodies or organizations?

7.1.3 What is the scope of their interpretation?

a) Is it binding for the judge?

b) Can it be retroactive?

7.1.4 Is the judge entitled to interpret him/herself collective agreements?

7.2 Remedies against breach of collective agreements

7.2.1 Are penalties provided?

7.2.2 Which body or authority ascertains violations?

7.2.3 What are the civil remedies?

a) Individual claims?

b) Collective lawsuits?

7.3 Proceedings related to collective agreements

7.3.1 Is there a distinction made between individual and collective litigations in this matter?

7.3.2 Which court(s) or body(ies) have jurisdiction over legal matters relating to collective agreements?

7.3.3 How is the judge informed of the existence and content of a collective agreement? What is the role of the judge and the parties in litigation relating to collective agreements?

8. **Altering and challenging of collective agreements**

8.1 Cases and procedures

8.1.1 Do procedures exist for the review and termination of collective agreements?

8.1.2 What happens to collective agreements in the case of a transfer of undertaking or change of employer?

8.1.3 What happens before and during the time of expiration of the agreement?

8.1.4 What is the procedure for substituting a collective agreement with another one?

8.2 Can employees retain vested or established rights (“droits acquis”) in case of termination of collective agreements?

9 Conclusions

9.1 Is there a policy promoting collective bargaining and contractual collective law?

9.2 Are there problems concerning the relationship between contract of employment and collective agreements?

9.3 Does the connection between law and collective agreements operate in favour of employees (principle of favour, ratchet effect), or does it allow less favourable conditions?

9.4 Are there any additional conclusions or problems you want to mention?
