

XXth Meeting of European Labour Court Judges
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QUESTIONNAIRE 1

Competing employee organisations, competing collective agreements

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1. Competing employee organisations

The organisation of employees' representation, main trade unions

- 1.1 Please give a brief description of how employees' representation is organised in your country. Are there one or more supra-organisations (main trade unions) comprising a number of employee organisations and which by law or by virtue of rules of associations to a greater or lesser extent represent these employee organisations in, for example, court proceedings. And are these main trade unions in a position to enter into collective agreements (for instance together with a member organisation) with an employer or employer organisation? Is the main union in a position to issue rules that regulate the relationship between the different employee organisations such as their mutual competition for members and the right to conclude collective agreements with employers (see questions 1.3 and 1.4)?

Competition between employee organisations

- 1.2. Is the relationship between the employee organisations in your country such that it would be appropriate to speak of competition among them? This question specifically relates to (i) any possible competition between two main unions (see question 1.1); (ii) any competition between employee organisations that belong to the same main union; (iii) any competition between employee organisations that do not belong to the same main union, or that do not belong to any main union; or (iv) any competition between elected workers' representatives and a trade union.

Anti-competitive agreements ("demarcation agreements")

- 1.3. Is it common for potentially competing employee organisations (including main unions) to enter into agreements with each other regarding the criteria for allocating individual employees to the different organisations (for example according to their education) with a view to limiting or avoiding competition for its members ("demarcation agreements")?

Rules for resolving demarcation disputes

- 1.4. Are there any rules governing how demarcation disputes between the individual employee organisations are solved? If yes, please describe these rules.

Employee organisations favoured by law

- 1.5. Are there any employee organisations in your country that by law or other public regulation are given preferential treatment compared to other employee organisations in one or more areas?
- 1.6. Do the employee organisations that by law/regulation as mentioned in question 1.5 do not enjoy the same rights/legal position as other employee organisations, receive any kind of compensation in this respect?

2. The conclusion of competing collective agreements

- 2.1. Are employers bound by demarcation agreements between two employee organisations? (see question 1.2) when entering into a collective agreement?
- 2.2. Can employers who are covered by collective agreements with employee organisations (agreement 1) enter into an agreement with another employee organisation (agreement 2) that wholly or partly covers the area covered by agreement 1?
- 2.3. Is an employee organisation, in principle, in a position to use industrial action (strikes, blockades) against an employer or employer organisation in order to coerce/compel/force the employer to enter into a collective agreement?

If the answer to question 2.3 is yes:

- 2.4. Is the scope for an employee organisation (A1) to use industrial action to coerce/compel/force the employer to enter into a collective agreement affected if the employer is already covered by an agreement with another employee organisation (A2) that wholly or partly covers the area that is covered by the agreement that A1 wishes to conclude with the employer?
- 2.5. Does it make any difference with regard to the response to question 2.4, if the competing employee organisations are members of the same main organisation? See question 1.1.
- 2.6. An employer joins an employer organisation that has concluded a collective agreement with an employee organisation A1 (O1).
 - 2.6.1. Is the employer automatically covered by O1 upon membership of the employer organisation?
 - 2.6.2. Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with A1? If yes, then what is the difference?
 - 2.6.3. Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with another employee organisation than A1? If yes, then what difference?

3. Employer's use of competing agreements

An employer is covered by two different collective agreements. One (O1) is concluded with employee organisation A1 and the other (O2) is concluded with employee organisation A2. The two agreements contain two different remuneration rates for the same work and the question is therefore which remuneration rate the employer should use when paying remuneration.

- a) Can the employer choose which of the two remuneration rates to use in respect of all employees, or
- b) Should he pay the members of A1 according to O1 and the members of A2 according to O2, or
- c) Should he use the remuneration rate of the collective agreement that is the most advantageous to the individual employee?

4. Can an employer leave an employers' organisation and transfer to another one?

If yes, under what conditions? Moreover, under what conditions, if at all, can an employer free him or herself from a collective agreement? One that he or she has signed, one that his or her employers' organisation has signed when he or she was a member?

CASE

Employee organisation A gives notice of a strike against company B because B has rejected a demand by A to establish a collective agreement. B's employer organisation protests and states that production at B's premises is covered in every respect by an agreement between B and the employee organisation S, and that there is therefore no legal basis for A's claim for setting up an agreement.

A demarcation agreement has been concluded between the employee organisations A and S. Under this demarcation agreement, the work done at B belongs to A's area of interest.

For the past 6 years before A's strike notice, B has used the agreement with S for all work performed at B without A raising any objections.

Is A's strike notice legal?

Does it make any difference if A and S are members of the same main organisation?