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Please kindly return the completed questionnaire to the general reporter: Angélica Muller, ILO at: [mullera@ilo.org](mailto:mullera@ilo.org) with a copy to her assistant at LABOURLAW unit at: [bernales@ilo.org](mailto:bernales@ilo.org)

**Questionnaire**

**Collective Agreements in Case of Transfer of Undertaking**

**I. PRELIMINARY QUESTIONS**

1. How do you define “collective agreement“ in your system? When and how does it work?
2. What degree of organisation (unions’ and employers’ associations resp.) do you have nationwide?
3. Who concludes collective agreements? Is it
  - Unions’ and employers’ associations
    - on a national level?
    - on a regional level?
    - on a company level?
    - on a plant level?
  - Unions’ and individual employers
    - on a national level?
    - on a regional level?
    - on a company level?
    - on a plant level?
  - Employees’ representatives – other than unions – (e.g. works councils) and individual employers?

Please summarise national peculiarities if necessary to understand the system in a European context.

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4. Is the state involved in the process of collective bargaining?
    - by mandatory regulations as to the contents of collective agreements
    - by mandatory registration and/or concession of unions or associations
    - by initiating collective agreements
    - by providing a system of or body for collective conciliation
      - if so, please summarise how it works, whether it is mandatory and if its recommendations are in any way binding
    - by having the authority to declare a collective agreement universally applicable?
  
  5. What is the relationship between collective agreement and individual employment contract?
    - Do collective regulations derogate/substitute individual agreements
      - always, without exception?
      - never? Do individual agreements always take precedence over c.a.?
      - in principle, unless the individual agreement is more beneficial to the employee? If so, how do you define “more beneficial”? Do you compare the whole contract or just that part of the contract that deals with the issue at hand (e.g. remuneration on the one hand, employment protection on the other hand)?
  
  6. Can (or must) in your system a collective agreement (or a part thereof) be made applicable in an employment relationship by a clause of reference in the contract of employment?
    - If such a clause of reference is not conditional but permissible: How often are collective agreements applied by virtue of congruent membership alone and how often by virtue of a clause of reference in the contract of employment?
    - If collective agreements have normative effect in your system: What is the legal situation if both parties of a contract of employment are members of the respective collective partners – which renders the c.a. normatively applicable – and refer to the same c.a. in the contract of employment?

## II. TRANSFER OF UNDERTAKING

1. In case of a transfer: Do conditions of work as ruled by a collective agreement transfer? (non-EU-members)
2. How do conditions of work as ruled by a collective agreement transfer?

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- Does it make any difference whether or not the collective agreement applicable with the transferor has normative effect? Does it retain normative effect if transferee is not bound by (the same or any other) collective agreement?
  - How does a collective agreement transfer if the basis of validity is the contract of employment?
  - How does a collective agreement transfer – statically (i.e. as it stands at the time of the transfer) or dynamically (i.e. in the current version)?
  - How – if at all - can the transferee change the terms of a collective agreement for the transferred employee?
    - Can he enter an employers' association and then apply the terms of that collective agreement?
    - Does it depend on whether or not the employee is a member of the union which concluded that collective agreement?
    - Can the terms of the transferred collective agreement be lawfully altered by amending the contract of employment? Immediately after the transfer or after a certain period of time?

3. How would you solve this case:

Alemo (A) works as a kitchen helper in the restaurant of a department store. He is a member of the Trade & Services Union (TSU), the employer is a member of the association of commercial employers (ACE). The contract of employment provides, "During your employment with [the store], your terms and conditions of employment will be in accordance with collective agreements negotiated from time to time by the [TSU and ACE] ...".

By virtue of the current version of the collective agreement A receives 2,500 € monthly wages. On January 1<sup>st</sup> 2014 the kitchen is transferred to Parkwood Caterers (P), a catering sector undertaking. Parkwood is member of the Caterers' association (CAT). Their collective agreement, concluded with the Union of Food and Restaurant Employees (UFO), provides monthly wages of 1,300 € for kitchen helpers.

a) P pays A 1,300 €, A demands 2,500 €. Who is right?

b) On April 1<sup>st</sup> 2014 the collective agreement for the trade and service employees is amended. The monthly wages for kitchen helpers is increased to 2,600 €. The caterers's collective agreement remains unchanged. Can A demand to be paid 2,600 € henceforth by virtue of the clause of reference in the contract of employment)?

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c) Does it make any difference to this case if the department store is not a member ACE but applies the collective agreements for the trade and service employees because it has concluded a

“Collective Agreement of Acknowledgement” with TSU stating that the employer will apply the terms of the collective agreements for the trade and service employees in its current version?

4. Has the ECJ’s ruling re *Alemo Herron*

<http://curia.europa.eu/juris/celex.jsf?celex=62011CJ0426&lang1=en&type=NOT&ancre=>

any relevance in your country? Will you have to change your jurisdiction?