

Questions for EWLL seminar in Poznan

Workers representation in undertakings in the French law system

Introduction, general remarks and sources of law

▪ **Question 1:**

In which organizational forms can employees and workers collectively represent their rights and interests in your country?

France has a complex system of employee representation at workplace, through both the unions and structures elected by the whole of the workplace.

Consequently, there are 5 five main trade unions confederations:

- CFDT: French Democratic Confederation Labour
- CFTC: French Confederation of Christian Workers
- CFE-CGC: Confederation Française de l'Encadrement- Confédération Général de Cadres
- CGT: General Confederation of Labour
- FO: Workers' Power
- UNSA National Union of Autonomous Trade Unions

On the other side, company with at least 11 employees must put in place a works council referred to as "conseil social économique". This council substitute the former workers representative bodies, which were the following:

- The work council,
- The "délégué du personnel", a worker delegate that presented complaints to the employer to prevent labour law infringements
- The "CHSCT" (comité hygiène santé sécurité et conditions de travail), a committee which deals with health and safety issues.

The CSE ensures that employee's interest are permanently taken into account in the decision made by the employer.

This number of members varies with the company's headcount.

**Is there a kind of hierarchy between the forms, in particular:
trade union and works council?**

There are no real hierarchy between the Trade Union and works council.

▪ **Question 2:**

Is there a legal basis for representation of workers in undertakings in your legal system (in legislation or case law) and if so, what is this basis?

The legal basis for representation of workers undertakings is the French Labour Code as interpreted by case law when is necessary to make precision.

The roots of workers' representation is in the French constitution. The current French Constitution (1958) includes the preamble of the former French Constitution (1946), in which is written these lines:

Every man can defend his rights and interests through trade union action and join the union of his choice.

The right to strike is exercised within the framework of the laws regulating it.

Every worker participates, through his or her delegates, in the collective determination of working conditions and in the management of enterprises.

This explains why workers' representation is so important in the French labour law system.

Freedom of association

▪ **Question 3 :**

What is the role of the fundamental right of freedom of association in the system of representation of workers in your country?

Freedom of speech is considered an "essential freedom" in France. It is protected by the 1789 Declaration of Human and Civic Rights, which is incorporated by reference into the French Constitution. It is also protected by the European Convention on Human Rights, which is ratified by France.

Consequently, the fundamental right of freedom of association guarantee the right to join or to form trade unions. In addition, everyone is free or not to exercise the right to strike. Finally, the employer has an obligation of neutrality (art. L. 2281-3 C. trav.).

▪ **Question 4 :**

How the personal scope of freedom of association is elaborated in your legal system? Does it include self-employed workers?

The freedom of association includes self-employed workers.

▪ **Question 5:**

What are the requirements for qualification as legally or actually recognized organization?

In France, the Labour Code sets out the conditions for a trade union to be considered as representative. To be representative means that the organization can negotiate and conclude collective agreement with the employer to defend the rights of employees and their interests.

These criteria are as follows (art. L. 2121-1 C. trav.) :

- 1) Respect of French republican values
- 2) Independence
- 3) Financial transparency
- 4) A minimum seniority of 2 years in the professional and geographical field covering the level of negotiation
- 5) The hearing. The threshold of representativeness is 8% of the votes at national and interprofessional level, and 10% in companies.
- 6) Influence characterized by activity and experience
- 7) Membership numbers and dues

Independence and self-governance: protection against acts of interference

▪ **Question 6:**

How are the independence and self-governance of workers' organizations protected against external influences?

The self-governance of workers' organizations is protected by the criteria of article L. 2121-1 of the Labour Code.

Are there limits to the self-governance of workers' organizations in terms of setting their own rules (in legislation or case law)?

There are limits to the self-governance of workers' organizations in terms of setting their own rules. For example, in a case law of the 12th December 2016, the Court of cassation gave an element of definition of republican values. It considers that a trade union that encourages direct or indirect discrimination, because of the employee's origin, disregards republican values.

▪ **Question 7:**

Does the problem of “yellow unions” exist and what is their position in law and jurisdiction of your country?

The problem of “yellow unions” does not exist in the French labour law system.

Protection against discrimination

▪ **Question 8:**

How are workers’ representatives protected against discriminatory actions based on their representative status and activities?

The principle of non-discrimination prohibits the employer from taking into account an employee's trade union membership or trade union activity when taking a decision. This principle applies right from the recruitment procedure.

What remedies exist? (including protection against dismissal or protection against disciplinary measures)

Employees holding a mandate as a trade union, elected member of the committee, employees applying for such positions and to former staff representative are protected.

Staff representatives enjoy a protective status, which prohibits the employer from taking discriminatory measures against them.

In the event of dismissal, the employer must follow the usual procedure for any employee (whether for personal or economic dismissal). If there is a “Comité Social et Economique”(CSE) it must be consulted and give its opinion on the dismissal.

Furthermore, the employer must observe a special procedure. He should request an administrative authorization to the labour inspector for permission to dismiss the employee. This procedure also applies when the employer plans to transfer the employment contract of the protected employee. To ignore this protection is punishable under both civil and criminal law for the employer.

The duration of protection against dismissal varies according to the status of each staff representative.

These provisions are of public order. They are binding on everyone and any measure to the contrary taken by the employer is abusive and may give rise to damages.

Importance and position of non-union forms of workers' representatives

- **Question 9 :**

In view of the competencies of the various workers' representations: how is their relationship defined in legal terms (competition, cooperation)?

There is a cooperation between various worker's representation because they act at different levels and degrees. They have the same goal: the protection of the workers. However, their prerogatives differ, and therefor theirs competencies too.

The workers' representation which aren't the most representative, in your system, rise the workers' demands. This means that the workers' representations' claims to the employer improve the protection of employees.

The most representatives trades unions' tends to rise the strongest claims. This is the mission of the unions' delegates who require the employer to respect the rights and the rules in effect. For this, they have the power to negotiate and conclude collective agreements.

Competencies of trade unions and other forms of workers' representation

- **Question 10 :**

Which regulations (in legislation or case law) define which workers' representations are and can be parties to collective bargaining and can conclude collective agreements?

The parties depend on whether or not the company has union representatives.

Indeed, the Labour Code, in its article L.2232-16, provides priority to union representatives to negotiate and conclude collective agreements.

This is confirmed by the administration, since at least one delegate union is appointed in a company or establishment, collective bargaining must take place with this contact (Circ. DGT 20 of 13-11-2008).

The Macron order of September 22, 2017 facilitated negotiation, particularly for small businesses. When the company does not have union representatives, the employer can conclude and revise collective agreements with employee representatives: elected members with or without mandate, or employees with mandate.

Note that in very small businesses (less than 11 employees or 11 to 20 employees without elected representatives) the employer can propose a draft agreement on topics open to business negotiations. Negotiations are not really underway, but the employees are consulted by referendum.

All of its rules are set out in Book II, title III, Chapter II, Section III, Sub-section III on the negotiation procedures in companies without a union representative or works council of the Labour Code.

▪ **Question 11 :**

Does your system know and apply the concept of ‘preferential’ or ‘most representative trade union’ (entitled to collective bargaining and excluding other organizations)?

Our system knows the concept of « most representative trade union ». Indeed, the most representative trade union is allowed to collective bargaining. Precisely, it makes him a priority over the others trades unions which are not representative. The most representative trade union in the business, appoints an union delegate, to negotiate in the company.

However, in your system, most representatives and others trades unions share some prerogative such as the ability to present candidates at the first round of the elections.

▪ **Question 12 :**

Are all forms of workers’ representations entitled to industrial action?

Every employee has a right to industrial action. Trade unions call a strike, and employees can join them. Although the CSE never goes on strike, the members of the CSE can go on strike, as individual employees.

Worker representation in small enterprises

▪ **Question 13 :**

Do the workers in small and medium sized enterprises have the right to be represented by a collective body?

The workers in small and medium sized enterprises have the right to be represented by a collective body: the members of the “Comité Social et Economique”, who are elected by the employees.

The CSE is mandatory for all enterprises with at least 11 employees. The numbers of the elects increases with the enterprise’s size. For instance, a firm with a workforce of 11 has a CSE with one elect, with a workforce of 25 it is 2, with a workforce of 50 it is 4 and so on (C. trav. R. 2314-1).

If those representations exist, do they have the same competences as the workers' representation(s) in bigger firms? If not, how is their right to be represented secured?

In small and medium firms, which have less than 50 employees, the CSE's missions are to submit to the employer individual or collective complaints relating to wages and working conditions; the application of the French labour laws as well as the agreements applicable in the company. It has not the juridical personality (it cannot take legal actions, it has no patrimony, and it has not his own budget).

In bigger firms, which have more than 50 employees, the CSE has the same missions as before but it also ensures that employees' interests are taken into account in employer's decisions regarding the organization of work, financial and economic development of the firm, professional formation and health and safety. The CSE has furthermore social and cultural activities attributions.

In firm with more than 300 employees, there is a special mandatory commission: the "commission santé sécurité et conditions de travail" (/ health and safety and working conditions committee). This commission specializes in matters of health, safety, and working conditions.

The representations in small firm does not have the same competences as the workers' representation in bigger firm.

Recent developments in law and the future of workers representation

▪ **Question 14 :**

What is the position of trade unions and other workers' representations nowadays and in the foreseen future as to their role and their powers as collective bodies representing workers' interests?

Trade unions have less power than before because of the 22th September 2017's reform. The union representative is no longer the only employer's discussion partner. Indeed, since the Macron's reform, an employer who wants to negotiate a company-level agreement can negotiate with the union representative, the members of the CSE or.

Before the reform, several collective bodies represented the employees ("comité d'entreprise", "délégués du personnel", "comité d'hygiène, de sécurité et des conditions de travail") and each of these bodies had several members. Since the reform, there is only one collective body that represent the employees: the CSE. The numbers of members in collective bodies have decreased.

Plus, the members sit in an instance which deals with many different matters (health and safety, economic decision, social policy ...). This means that there is a professionalization of the collective bodies. Trade unionists are aware of this and must change to adapt to this new context.

▪ **Question 15 :**

Are there reforms or proposals of reforms of the law envisaged regarding the role and competences of workers' representation?

There are no reform envisaged regarding the role and competences of worker's representation. The last ones were on September 22, 2017 and on April 30, 2018. These two reforms were a major upheaval in French labour law. It is no surprise that no other reforms are in sight as of today.