
# XVIII WORLD CONGRESS OF LABOUR AND SECURITY LAW

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## TOPIC 2
## LABOUR LAW (IN ITS INDIVIDUAL AND COLLECTIVE ASPECTS) AND PRODUCTIVE DECENTRALIZATION

**REPORT OF THE**

**CROATIAN SOCIETY FOR LABOUR AND SOCIAL SECURITY LAW**

Contact
zeljko.potocnjak@zg.htnet.hr

## 1. GENERAL

Please indicate if in your country there is a trend toward increased productive decentralization of enterprises as described above. If there is such a trend,

a. which are the most current forms of productive decentralization;
b. if possible, present cases of companies operating in your country according to a productive decentralization strategy. What does the principal company typically keep under its direct control and what does it delegate/outsource to affiliated/subsidiary/partner companies? Are the latter enterprises independent of the principal company or they are controlled by it;
c. can you assess the impact of this strategy on individual labour relations;
d. can you assess the impact of this strategy on collective labour relations?

**Yes, there is a trend towards productive decentralisation of enterprises, mainly in the form of subsidiaries. For example in the food industry it is very common pattern that parent companies establish subsidiaries for production of a specific brand that covers certain type of products (e.g. frozen food, salts, milk products, meat products). Such subsidiaries are mainly under direct control of parent companies. However, parent companies, as well as those subsidiaries, usually outsource the production of collateral products (e.g. packing materials).**

**Further on, according to our knowledge, in some cases productive decentralisation of enterprises via subsidiaries has been motivated by the avoidance of obligations in case of collective redundancies by the parent company.**

## 2. GROUPS OF COMPANIES AND UNITY OF ENTERPRISE

Please indicate if under your national law or case law it is possible to consider that a principal company and its contracting affiliates, subsidiary companies or partners must be treated as if they were a single enterprise for the purpose of the application of labour and social protection law. If it is possible, please indicate the criteria on the basis of which such a decision can be reached and the legal effects which would follow.

**Under our national law, each contracting affiliates, subsidiary company or partners provided they are established and registered as companies, are treated as a single company for the purpose of the application of labour and social protection law. Concerning the effects of collective agreements, there is a possibility of treating a parent company as a single enterprise, depending on the signatory parties. See infra answer to question 7.**

## 3. TRANSFER OF UNDERTAKING AND OTHER MODIFICATIONS IN THE LEGAL SITUATION OF AN UNDERTAKING OR PARTS THEREOF

a. Does your national law or case law have a legal definition of "transfer of undertaking or parts thereof". Under what situations, if any, does the definition apply to the externalization (subcontracting, outsourcing) of certain operations of an undertaking?

**Both, the status change and the legal transaction can result in the "transfer of undertaking or parts thereof". The procedure of status change resulting in "transfer of undertaking or parts thereof" is for each type of companies (e.g. public limited company, private limited liability company) regulated by Company Act. For the legal transactions relevant is Civil Obligations Act.**

**The definition of "transfer of undertaking or parts thereof" does not cover subcontracting; however it is not clear whether it covers outsourcing of certain operations of an undertaking.**

b. Please describe the rules applicable in your country for the protection of workers' rights in situations involving the transfer of an undertaking or parts thereof.

**Relevant rules are provided in Labour Act quoted below:**

***Transfer of contracts to a new employer***

*Article 129 (136)*

*(1) If, as a result of a status change or legal transaction, the whole company or part of the company (plant), is transferred to a new employer, all labour contracts of workers working in the company or part of the company which was subject to transfer are also transferred to the new employer.*

*(2) The worker whose labour contract has been transferred as provided in paragraph 1 of this Article retains the rights he or she acquired until the transfer date in relation to the dismissal, notice periods, severance pay and other issues related to employment.*

*(3) The employer to whom labour contracts are transferred as provided in paragraph 1 of this Article assumes, as of the transfer date, all the rights and obligations from the labour contract that has been transferred, in unaltered form and scope.*

*(4) The employer who transfers the company or part of the company to a new employer shall inform the new employer, fully and accurately, about the rights of the workers whose labour contracts are being transferred.*

*(5) The employer shall inform the worker whose contract is being transferred about the transfer of his or her labour contract to the new employer. This information is to be given in writing.*

*(6) The labour contracts referred to in paragraph 1 of this Article are transferred to the new employer as of the date when the transfer of the company or part of the company took legal effect.*

*(7) If transfer of the company or part of the company is made in the bankruptcy proceedings or rehabilitation proceedings, the rights that are being transferred to the new employer may be reduced in accord with the collective agreement that has been concluded or agreement between the works council and the employer.*

*(8) If a works council was established in the company or part of the company which is subject to transfer, the works council continues its work, but for no longer than one year.*

*(9) If an agreement has been concluded between the works council and the employer in the company or part of the company which is subject to transfer, its application continues until the conclusion of a new agreement, but for no longer than one year.*

*(10) If the company or part of the company is transferred to a new employer only for a limited period, the employer who is transferring the company or part of the company is, together with the new employer, jointly liable for the obligations towards the workers that arose after the date of transfer of the company or part of the company, up to the value of the assets transferred to the new employer for a limited period.*

*(11) The provisions of paragraphs 1 to 10 of this Article apply, as appropriate, also to institutions and other legal persons.*

*(12) The person who, by transferring the company or part of the company or in another way, fraudulently avoids fulfilling his or her obligations towards the worker, shall be ordered by the court having jurisdiction to fulfil his or her obligations, even if the labour contract was not concluded with this person.*

***Influence of change of employer on the application** of a collective agreement*

*Article 197 (207)*

*In the cases referred to in Article 136 of this Act, the workers shall continue to be subject to the collective agreement which applied to them at the time of the change, until the conclusion of a new collective agreement, but for no longer than one year.*

c. Is it mandatory under your national law that the employees' representatives be consulted or informed at the time of a transfer of an undertaking or parts thereof. If it is, what is the procedure for this consultation? Are the employees' representatives informed or consulted when the employer intends to outsource certain of its operations. Is there any obligation under your national law to negotiate on these topics?

**Under national law, works council must be consulted on the expected legal, economic and social consequences for the workers in the cases of transfer of undertaking or parts thereof.**

**The information related to the proposed decision must be forwarded to the works council integrally and in due time, so that the council may have an opportunity to put forward comments and proposals, in order to enable the results of discussion to have material impact on decision-making. Unless otherwise specified by an agreement between the employer and the works council, the works council shall forward its observations about a proposed decision to the employer within eight days. If the works council does not provide its observations about the proposed decision within the time limit, it shall be presumed that it does not have any comments and proposals.**

**It is important to note that the negative opinion of the work's council rendered in the consultation process imposes no formal obligations on the employer. However, if the employer fails to consult works council on expected legal, economic and social consequences for the workers in the cases of transfer of undertaking or parts thereof, such a decision on transfer of undertaking or parts thereof will be null and void.**

d. How are the relations between the transferor and the transferee enterprises organized when the latter continues to operate in the former's premises?

**There are no specific rules on this issue. General provisions should be applied. See *supra* answer to this question under (b).**

e. How are the relations between the transferred employees and the transferor enterprise organized when the transferee enterprise continues to operate in the transferor's premises. Who of the transferor or the transferee assign tasks and determines wages and conditions of employment?

**There are no specific rules on this issue. General provisions should be applied. See *supra* answer to this question under (b).**

**The employer to whom labour contracts are transferred assumes, as of the transfer date, all the rights and obligations from the labour contract that has been transferred, in unaltered form and scope, which means that the wages and conditions of employment relationship were determined by the transferor. Moreover, the workers shall continue to be subject to the collective agreement which applied to them at the time of the transfer, until the conclusion of a new collective agreement, but for no longer than one year. Tasks will be assigned by a transferee, as a new employer, but according to the nature or type of work specified in the transferred contact of employment.**

**However, since the transferee is the new employer he can change the transferred contract of employment in accordance with the general rules on the change of contract pursuant to the Labour Act.**

## 4. THE LEGAL SITUATION OF THE EMPLOYEES OF CONTRACTORS AND OTHER AFFILIATED ENTERPRISES VIS A VIS THE PRINCIPAL/PARENT ENTERPRISE

a. Under which conditions can the principal/parent enterprise be held liable for the obligations of its contractors or other affiliated companies vis a vis employees of the latter in respect to the following:

i. Health, safety and occupational hazards;

ii. Wages and other terms and conditions of employment;

iii. Social Security and other employee benefits insurance contributions;

iv. Others?

**In general, the principal/parent enterprise cannot be held liable for the obligations of its contractors or other affiliated companies vis a vis employees of the latter in respect to the above issues.**

**However, the principal/parent enterprise can be held liable in two cases. First, if the company or part of the company is transferred to a new employer only for a limited period, the transferor and the transferee are jointly liable for the obligations towards the workers that arose after the date of transfer of the company or part of the company up to the value of the assets transferred to the new employer for a limited period. Second, the transferor who by transferring the company or part of the company fraudulently avoids fulfilling his obligations towards the worker, may, upon worker's claim, be ordered by the court to fulfil his obligations.**

b. Is it mandatory to inform the employees of the contractors and other affiliated enterprises of the identity of the principal company for which their employer works?

**There is no such obligation**.

c. Please, describe any judicial decisions whereby the existence of a direct employment relationship between a principal company and the employees of its contractors or other affiliated companies has been established. What have been the legal effects of these decisions?

**There is no such decision.**

## 5. LEASE OF WORKERS AND OTHER FORMS OF SUPPLY OF WORKERS

a. Can two or more legally distinct enterprises lease workers between them? If they can,

i. how does the law protect the rights of *leased* employees?

ii. Who keeps the authority of the employer vis a vis the *leased* employees. Is it the user enterprise or the enterprise which formally employs them?

iii. Who determines the assignment of tasks, wages and other conditions of employment of the *leased* employees, and may terminate their employment if the case may be. Is it the user enterprise or the enterprise which formally employs them?

**The lease of workers between two legally distinct enterprises is not present in the practice, because from the provisions regulating employment relationships it not clear whether such lease would be allowed.**

**However, Croatian Labour Act expressly stipulates that for the purposes of training for independent work, an apprentice may be sent to work for another employer on a temporary basis.**

b. Please describe how the supply of workers through temporary work agencies (TWA) is regulated in your country. In particular:

i. Cases in which leasing temporary workers is permitted;

**For limitations regarding leasing temporary workers see *infra*, answers to this question under (v) and (vi).**

ii. Industries or activities for which the supply of temporary workers is forbidden;

**There are no such industries or activities.**

iii. Is it mandatory in your country that TWAs be licensed? If it is, under which conditions are licenses issued?

**According to Croatian Labour Act, the TWA must be registered pursuant to the Companies Act only for the activity of temporary dispatch of workers and it must be entered in the records of the ministry in charge for labour issues**

iv. What kind of contract governs the respective relations among the principal company (user enterprise), the TWA and the temporary workers who are dispatched to the user?

**Croatian Labour Act provides for two contracts. On the one hand, "labour contract for temporary work" regulates the employment relationship between the worker and the TWA. On the other hand, the relationship between the TWA and the user is regulated by the "worker assignment agreement". We stress out that during the work of dispatched worker via TWA to a user, there is no direct contract relationship between the user and the dispatched worker.**

v. Is the despatching of a temporary worker subject to time limitations?

**Pursuant to the Croatian Labour Act the TWA may not assign a worker to the user (other employer for which the worker performs work) to perform the same work for an uninterrupted period longer than one year. An interruption shorter than one month is not considered as an interruption of the one-year period.**

vi. What other restrictions are there on the use of temporary workers?

**Workers cannot be temporary posted in the following cases:**

- **for assigning substitute workers to the user whose workers are on strike,**
- **if the user has in the last 6 months, due to business reasons, dismissed labour contracts of workers who performed the same jobs for which the assignment of workers is currently requested,**
- **for the performance of jobs for which is prescribed shortened working hours (jobs in which, despite the application of occupational safety and health measures, it is impossible to protect the worker from harmful effects).;**
- **for assigning workers to another agency,**
- **in other cases specified by collective agreement that is binding on the user.**

vii. How are the temporary workers' wages and other conditions of employment determined?

**In the case when a labour contract for temporary work is concluded for a fixed period of time that is equal to the period for which the worker is assigned to the user, such contract must contain provisions on:**

1. **the parties and their residence or seat,**
2. **the expected duration of the contract,**
3. **the user's seat,**
4. **the place of work,**
5. **the jobs that will be performed by the worker,**
6. **the date of commencement and termination of work,**
7. **the salary, salary supplements and the intervals in which the salary is paid,**
8. **the duration of a normal working day or week.**

**The contracted salary of the assigned worker may not be established in the amount lower than the salary of a worker employed with the user doing the same job, and if there are no such workers, a similar job. If the salary may not be established in such a way, it is to be established by the worker assignment agreement.**

viii. Under which conditions may a user enterprise be held liable for the obligations of a TWA vis a vis the dispatched employees?

**A user enterprise cannot be held liable for obligations of a TWA vis a vis the dispatched employees. However, if a dispatched employee suffers damage at work or in relation to work on the user's premises, he may claim compensation for damages from the TWA or from the user enetrprise.**

ix. How are the collective labour relations between a TWA and its despatched temporary workers structured? How are the collective labour relations between a user enterprise and despatched workers structured?

**There are no specific provisions in the Croatian Labour Act. Therefore, general rules on collective labour relations should be applied. In addition, we point out, that since the despatched worker is in an employment relationship only with TWA and not with the user, collective labour relations could be developed only between the TWA and the possible trade union of despatched workers.**

**Since employment relationship with TWA is a novelty in Croatian labour law, at the moment in practice there are no such trade unions, hence no collective labour relations between a TWA and its despatched temporary workers.**

x. Please indicate the sanctions envisaged by the legislation of your country for the illegal use of temporary workers.

**Illegal use of temporary workers represents major violations and the gravest violations committed by the employer and are sanctioned by the penal provision of the Labour Act.**

**In this respect <u>serious violations</u> committed by employers are:**

**(1) Conclusion of a labour contract for temporary work which does not contain clauses required under the Labour Act;**

**(2) Assigning of a worker to the user to perform the same work for an uninterrupted period longer than one year;**

**(3) Failure to inform the works' council about the number of assigned workers it hired and the reasons for their hiring, within the time limit prescribed by the Labour Act;**

**(4) Failure tto indicate in legal transactions the number under which it was entered, as an agency, in the Ministry's records;**

**The <u>most serious violations</u> committed by the employer are:**

**(1) Assigning a worker without having concluded a worker assignment agreement, conclusion of a worker assignment agreement which does not contain clauses required under this Act or for conclusion of such an agreement in situations when it can not be concluded;**

**(2) Assigning a worker to a user without a labour contract or assignment note, or if the assignment note does not contain the information required under the Labour Act.**

**For the <u>serious violations</u> the employer-legal person shall be fined by a fine in an amount ranging from HRK 31.000,00 to 60.000,00 (cca. 4.000-8.000 EUR), while employer-natural person and the responsible person in the employer-legal person shall be fined in an amount ranging from HRK 4.000,00 to 6.000,00 (cca. EUR 500 – 800).**

**For the <u>most serious</u> <u>violations</u> the employer-legal person shall be fined by a fine in an amount ranging from HRK 61.000,00 to 100.000,00 (cca. EUR 8.000-13.000), while employer-natural person and the responsible person in the employer-legal person shall be fined in an amount ranging from HRK 7.000,00 to10.000,00 (cca. EUR 900 – 1.300).**

c. Please describe any judicial decisions holding that there was a direct employment relationship between a user enterprise and employees supplied to it either under the form of a lease (a) or at that of a temporary posting (b), and the legal effects of such decisions.

**(a) Concerning lease between two or more legally distinct enterprises see supra answer to question 5(a).**

(b) **There is no direct employment relationship between a user enterprise and employees supplied to it under the form of a temporary posting. See *supra* answer under 5 (iv).**

**At the moment there are no judicial decisions, since the possibility of employment via TWA is a novelty in the Croatian labour law introduced by the 2003 amendments to the Croatian Labour Act.**

## 6. <u>FRANCHISING</u>

a. If available, please provide some general information on franchising regulation and practice in your country.

**There are no specific provisions in the Civil Obligations Act. However, the contract on franchising is present in practice. Therefore, as contract which is not specifically regulated by the Civil Obligations Act it is regulated by its**

**general rules, that among others, also refer to trade usages and other usages.**

b. What is, in your country, the legal position of a franchisee vis a vis a franchisor? Is the franchisee considered an independent entrepreneur or as a subordinated agent of the franchisor? Please describe any judicial decisions holding that a franchisee was in fact a subordinated agent to a franchisor and the legal effects of such decisions.

**In Croatia the franchisee is considered as an independent entrepreneur. There is no relevant judicial practice.**

c. What is the legal position of the franchisee's employees? Can they be also regarded as workers dependent on the franchisor?

**No, the franchisee's employees cannot be regarded as workers dependent on the franchisor.**

## 7. COLLECTIVE ACTION AND COLLECTIVE BARGAINING IN A CONTEXT OF PRODUCTIVE DECENTRALIZATION

a. What is the position of your country's unions vis a vis productive decentralization;

**One cannot speak about the general position of Croatian trade unions vis a vis productive decentralisation. They react on a case by case basis when they consider that productive decentralisation might result in decrease of labour rights.**

b. does the law provide for the collective representation of employee's at a group's level? If it does, how is such representation structured;

**The law does not provide mandatory for the collective representation of employee's at a group's level. Nevertheless, such representation is possible, since Croatian Labour Act provides that workers have the right, without any distinction whatsoever, and according to their own free choice, to establish and join a trade union, subject to only such requirements which may be prescribed by the statute or internal rules of a trade union. Furthermore, trade unions may create federations or other forms of association in order to pursue their interests together at a higher level, including also the right to freely join federations and cooperate with international organisations established for the purpose of the promotion of their common rights and interests. Hence, "higher-level trade union" is possible at the level of a group of companies.**

**It is worth mentioning that if the employer's operations are organised through several organisational units, workers may establish several works councils which would enable adequate participation of workers in decision-making. In that case a general works council is established, composed of representatives of works councils elected in organisational units.**

c. are there in your country or of several enterprises working in close partnership;

**Although *de iure* possible, *de facto* in Croatia the existence of a single trade union representing the whole of the workers of a group of companies is not common. However, the common practice during the**

**process of collective bargaining is the cooperation of all the trade unions active in companies that are members of a group.**

**See *infra* answer to 7 (d).**

d. has there been collective bargaining covering the all of a group of enterprises or several enterprises working in close partnership. If so, which subjects has the bargaining addressed;

**Widespread practice in Croatia is the existence of a single collective agreement for the whole group, signed by all the trade unions active in all the companies that are members of a group, on the one side, and by all of those companies, on the other side.**

e. have you had strikes or other forms of collective action addressed against a group of enterprises or several enterprises working in close partnership?

**The strike is possible only against the employer. Since the group of enterprises cannot be considered as an employer, but each subsidiary of a parent company is employer of its own workers, the trade unions can organize the strike only against each subsidiary. However, since Croatian Labour Act also provides for solidarity strike, there is a possibility of several parallel strikes and solidarity strikes against all companies-employers that are members of a group.**

**However, in practice there was no strike addressed against a group of enterprises or several enterprises working in close partnership.**

## 8. OTHER QUESTIONS

Please present any other issue which in your country's law or practice relates to this topic and has not been addressed in this questionnaire.

**No other relevant issues.**