



**ASSOCIATION FRANCAISE  
DE DROIT DU TRAVAIL ET DE LE SÉCURITÉ SOCIALE**

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

**XVIII WORLD CONGRESS OF  
LABOUR AND SOCIAL SECURITY LAW**

**Paris September 5-8, 2006**

**QUESTIONNAIRE**

Topic 2: Labour Law (in its individual and collective dimensions) and productive decentralization (outsourcing of work and contracting of labour)

Co-rapporteurs Raffaele de Luca Tamajo and Adalberto Perulli (Italy)  
Commentators: M. Mizumachi (Japan)  
Eduardo Ameglio (Uruguay)  
Manfred Weiss (Germany)

**INTRODUCTION**

The XX Century integrated or *fordist* enterprise is now being replaced by a new form of organization, *post-fordist*. Like *fordist* organizations, *post-fordist* enterprises keep their strategic business unity. However, they separate the different production and commercial segments of their business, starting from the design and ending in the marketing and after-sales operations, keeping some activities or operations under their direct control and contracting other operations or activities to partner companies.

Different types of arrangements can be used to implement such a strategy. For example, these can utilize traditional types of transactions such as transfers, mergers or absorptions of undertakings or parts thereof, the legal effects of which are in general well established under the law addressing employment relations. However, they can also be accomplished through other forms of partnership whose consequences are not as well defined and are less easily dealt with by the labour law, let alone the law in general. Such arrangements include enterprises working in a network, outsourcing of production or stages of production, contracting-out services, operating as a holding company or controlling activities through franchise licensing. Loans of manpower between juridically distinct companies and the supply of labour by temporary work enterprises can also be part of this strategy. The phrase *externalization of operations* may be used as a means of referring to contracting-out arrangements between enterprises for the production of products or portions of products, or the provision of services, while *externalization of manpower* may be used as a means of

referring to arrangements for supplying the producing or serving enterprise only with labour.

The term “productive decentralization” which one could also call “organizational decentralization of the undertaking” covers the above-mentioned phenomena. It is proposed to discuss the impact of productive decentralization strategies on both individual and collective labour relations.

Problems to be examined from this viewpoint are two-fold. On the one hand, at stake is the protection of workers of the affiliated subsidiary or partner enterprise of a principal (parent) company. While they are not employees of the latter their employment security and frequently also their terms and conditions of employment are affected by strategic choices made by the parent company. The legislation, regulations and case law of certain countries have developed the concept of the *group of enterprises* which makes it possible to define the legal concept of *unity of enterprise* when the relations between the principal company and its *partners* are very close (for example when the former actually controls the latter). However, this concept, which is not universal, has limits. In addition, its legal effects vary considerably based on the particular legal form of the relationship between the principal company and its partner/subsidiary enterprises.

The second type of problem relates to the organization of collective labour relations within the framework of a productive decentralization strategy. An important question to be examined here is what organizing and representational strategies are available to workers’ organizations that deal with companies that have adopted a productive decentralization strategy. Can they organize the whole of the workforce employed by the different partners/subsidiaries of the principal/parent companies? Can they be represented at the level of the principal/parent company, and if they can, through which organs and according to which rules? How do they organize collective bargaining? When different workers’ organizations represent different segments of the decentralized structure, are they able to organize joint actions vis a vis the principal/parent company and its partner companies?

## QUESTIONS

### 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?

### 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.

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

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?
- 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?
- 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?

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?
- 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;
  - ii. Industries or activities for which the supply of temporary workers is forbidden;
  - iii. Is it mandatory in your country that TWAs be licensed? If it is, under which conditions are licenses issued?
  - 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?
  - v. Is the despatching of a temporary worker subject to time limitations?
  - vi. What other restrictions are there on the use of temporary workers?
  - vii. How are the temporary workers' wages and other conditions of employment determined?
  - viii. Under which conditions may a user enterprise be held liable for the obligations of a TWA vis a vis the dispatched employees?
  - 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?
  - x. Please indicate the sanctions envisaged by the legislation of your country for the illegal use of temporary workers.
- 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.

## 6. Franchising

- a. If available, please provide some general information on franchising regulation and practice in your country.
- 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.
- c. What is the legal position of the franchisee's employees? Can they be also 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;
- 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;
- c. are there in your country trade unions which represent the whole of the workers of a group of companies or of several enterprises working in close partnership;
- 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;

e. have you had strikes or other forms of collective action 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.

\*\*\*\*\*