I Legal framework for collective bargaining

The role and legal nature of collective bargaining and collective agreements vary in different legal systems. This diversity relates to different kinds of industrial relations models and their particular historical contexts. In many countries, industrial relations are in process of evolving.

The legal framework for national collective bargaining models consists of several elements that affect the legal status of agreements. Not only the legal definition of a collective agreement and the parties thereto but also the regulatory approach of such agreements and their overall role in labour market regulation deserve attention. It is important to pay attention to both bargaining processes and collective agreements as regulators of substantive terms of employment and pay heed to the industrial relations context.

a) Please explain the legal framework for collective bargaining, including the scope and definition of a collective agreement as well as the parties and their powers, in your country. Is the right to collective bargaining included in the constitution of your country? What is the international regulatory framework for collective bargaining in your country?

b) Please explain the overall role of collective agreements in shaping the content of the employment relationship and in relation to state legislation. What subjects are typically agreed in collective agreements? What is the status of collective bargaining in regulating labour market issues and conditions of employment in your country? Do collective agreements set out minimum conditions of employment and in what way does this take place? Is it possible to deviate from mandatory legislation via collective agreements?

c) Is a system of universally applicable (erga omnes effect) collective agreements in place in your country and if so how does this system function? What is the legal framework of the system? What is the practical relevance of this system in your country; is it generally used?

d) Explain the conditions for the validity of a collective agreement.

e) What are the legal effects of a collective agreement?

f) How is enforcement of collective agreements carried out in your country? What is the role of labour courts or comparable judicial bodies in collective bargaining processes and in interpretation of collective agreements?
II Decentralization and centralization of collective bargaining

Different collective bargaining systems use different levels of collective bargaining, which also affects parties to collective agreements, contents of agreements as well as their legal effects. In recent decades, we have witnessed a gradual shift towards more local level (e.g. enterprise level) bargaining in many countries. In some countries, centralized models of collective bargaining have been increasingly replaced by more or less decentralized models, whereas in others the national level plays a key role in collective bargaining. There are also differences in relation to the organization and coordination of decentralized and centralized models applied. The role which individual states may have adopted as regulators can also have an influence on these characteristics.

h) Please give a brief overview of the historical background to collective bargaining in your country in terms of different levels of bargaining and their relevance. How has the evolution of trade unions and employer organizations affected collective bargaining practices in your country?

i) Is there any linkage between collective bargaining and employee participation (employee information and consultation, national works councils system or comparable system, etc.) in your system?

j) On what levels (e.g. national, sector, branch, enterprise) are collective agreements concluded in your country? What kind of bargaining powers exist on different levels? Please explain major development trends from the point of view of decentralization and centralization of collective bargaining and characteristics of the regulatory framework that relate to this development.

k) If local level collective agreements exist in your system, how do local level agreements and their parties differ from those signed at upper levels? What kind of conditions of employment can be agreed upon via local level collective agreements? Please also explain whether local level agreements are based on authorization given in an upper level collective agreement or elsewhere and whether they can deviate, for example, from conditions of employment set out in national level collective agreements or mandatory legislation.

III National collective bargaining models and globalization of the economy

Collective bargaining is increasingly affected by globalization of the economy as collective bargaining agendas reflect economic circumstances in various ways.

In several countries, traditional collective bargaining has confronted pressure caused by drastic changes in the economic situation. Flexibility of labour market regulation is often called for in order to better adapt to economic changes and changes in market conditions, which also affects collective bargaining.
In Europe, European Union law illustrates complex regulatory developments caused by European economic integration and challenging fundamental labour rights protection provided, for example, by the ILO fundamental labour rights conventions. In the Viking and Laval cases (C-438/05 and C-341/05), the European Court of Justice handed down controversial judgments that demonstrate a tension between the right to collective bargaining – or the right to strike – and EU economic freedoms. In some countries, the fundamental rights nature of collective bargaining has been put to a test through direct state intervention aiming at better coping with a worsening state economy. From a broader normative perspective, in several countries there appears to be a tension between two different regimes, the labour law regime and the market law regime, and this tension also reaches the fundamental rights dimension of the right to collective bargaining.

a) Against this background, you are asked to assess the status of the right to collective bargaining in your country and the protection this right enjoys. How does your national collective agreements system deal with present challenges to the labour market?

b) Has there been any change in the status and regulation of collective agreements deriving from attempts to increase labour market flexibility? Has an increase of various forms of atypical work affected collective agreements? Please give information about legislative initiatives or case law etc that is relevant to these questions.

c) Please assess the impact of globalization of the economy on collective bargaining and collective agreements as regulatory tools in your country.

IV Transnational dimension of collective bargaining

Labour mobility and the increasing role of multinational companies have emphasized the relevance of the level of transnational collective bargaining and broadened the spectrum of contractual arrangements that relate to a transnational normative setting in the field of labour law. Simultaneously, difficult legal questions have arisen, starting from what can be considered a transnational collective agreement.

Transnational collective agreements can refer to different kinds of cross-border agreement. They can be agreements concluded at national level and that deal with cross-border employment (e.g. posting of workers). Increasingly often, however, the term transnational agreement refers to agreements concluded between multinational companies and a party representing the personnel of the companies, for example, an international trade union organization or a European Works Council. In broad terms, transnational agreements can also refer, for example, to international (or global) framework agreements concluded between individual companies and global union federations in order to ensure that the company respects certain labour standards in all the countries where it operates, or other kinds of contractual arrangement in a multilateral context. Transnational agreements can also be viewed as a part of companies’ corporate social responsibility (CSR) strategies. They have sometimes been linked to various soft law instruments that different international organizations, such as the ILO and OECD, have made to promote better compliance by multinational companies with fundamental labour rights.

a) Has your country any experience of collective bargaining and transnational collective agreements that regulate cross-border employment? Please explain the regulatory
framework for and content of such transnational collective agreements in your country and the definition of transnational agreements employed.

b) Has your country any experience about transnational company-level agreements? If your answer is positive, please explain what kind of legal questions they have given rise to and what is the purpose and content of the agreements signed upon within multinational companies. Please describe major challenges that relate to making agreements within multinational companies and their enforcement.

c) Has there been any development in linking collective bargaining or collective agreements to corporate social responsibility? Is there any discussion or regulatory development that would link collective bargaining to the regulatory frame set out by various soft law instruments concerning multinational companies?