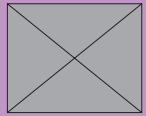


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# IDENTIFYING, PREVENTING AND TACKLING TRADE UNION DISCRIMINATION



The ESEC's deliberations on trade union discrimination follow on from the opinion it submitted in May 2016 on the development of the social dialogue culture, which had pinpointed protection of staff representatives' involvement as the key to constructive and balanced social dialogue. One of the recommendations of this opinion was to document the current situation regarding trade union discrimination in France on the basis of a periodic report grounded, in particular, on the expertise of the Defender of Rights. The main gist of this recommendation was taken on board in Article 30 of the Act of 8 August 2016. Drafted through a partnership with the Defender of Rights, this opinion is a first step towards this legislative obligation for public information on trade union discrimination and its trends.

Development of social dialogue as a means of improving social relations, contributing to economic performance and furthering social progress is contingent upon the promotion of these stakeholders' involvement. And yet such plans are still too often thwarted by discriminatory practices that are part of widespread forms of negative perception among socioeconomic stakeholders and across the whole of society.

The roots of the stigma surrounding trade unionism in France run deep in the history of industrial relations. The State's role and late recognition of the freedom of association also have something to do with it. A proportion of employers still

*"Discrimination cannot be treated as if it were a separate room in the apartment of social dialogue."*

Jacques Kheliff

consider the unionisation of employees to be incompatible with their businesses' economic purpose. A fairly critical view of staff representation persists among the public. Paradoxically, opinion surveys reveal significant support for social dialogue.

In the workplace itself, trade union discrimination is fanned by the conflicting perception of social relations and negative stereotypes put across in society. But it can also stem from the restrictions that arise when exercising mandates. In this case it is mostly unintentional, resulting from the failure to consider the needs for social dialogue in the way a business or public service is organised.

Trade union discrimination can take a range of forms and does not just materialise through unjustified stalling of careers. It can sometimes resemble overtly repressive practices.

The existing legal framework is highly protective of staff representation in theory. And yet the legislation and its application in practice do not line up. Trade unionists experience a strong sense



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of discrimination, particularly when they are exercising important mandates in their workplace. The reality of trade union discrimination is difficult to determine, however, since proportionally few cases actually reach the courts or Defender of Rights.

## THE ESEC'S RECOMMENDATIONS

The ESEC believes that violations of trade union rights are primarily cultural in nature and that the main efforts to prevent and tackle discrimination in this regard must be aimed at improving social dialogue stakeholders' practices as well as the way industrial relations are represented society-wide.

- ✎ **To raise the profile and strengthen the legitimacy of trade union representatives**
  - initiate talks with the employers' and employees' trade union organisations with a view to improving the participation rates in industrial elections as a measure of representativeness;
  - organise media campaigns to promote trade unionism and trade union involvement;
  - inform new employees about social dialogue and the legitimacy of trade union involvement when they first join the business;
  - enhance the existence of regional interbranch joint commissions by facilitating access for micro-business employees and employers;
  - encourage businesses to include the theme of trade union discrimination in their CSR policy;
  - inform business founders and those taking over businesses, via consular chambers, about the merits of joining an industrial organisation.
- ✎ **To take the need for employee representation and social dialogue on board in the way work is organised**
  - foster dialogue with line managers on the conditions for exercising mandates and organising work.
- ✎ **To make it easier to exercise mandates and ensure the continuity of staff representatives' careers**
  - extend the interview at the start of the mandate to all staff representatives, no matter how many delegation hours they are allocated;
  - encourage contractual procedures for validating skills acquired during mandates;
  - guarantee that professional skills are maintained during mandates through vocational training schemes defined within a strategic workforce planning (GPEC) agreement;
  - promote to businesses and operators of continuing professional development the trade union skills framework drawn up on the basis of work conducted by the Association for Adult Vocational Training (AFPA) and the social partners;
  - set up within the civil service a proper HR guidance and career path management scheme for officials who want to invest in trade unionism.
- ✎ **To make the criminal justice policy more effective in terms of discrimination**
  - support the Ministry of Justice's initiatives aimed at applying the European principle of proportionate, effective and dissuasive sanctions.
- ✎ **To improve statistical monitoring of discriminations**
  - entrust to the National Statistics Council (CNIS) a mission on the subject that includes the civil service;
  - publish statistics at regular intervals on authorisations to dismiss protected employees;
  - systematically record a complete list of disputes bearing on trade union discrimination in the Ministry of Justice's database JURICA.
- ✎ **To address the risks of discrimination in businesses and industrial sectors**
  - invite businesses to add indicators to the social report or economic and social database (BDES) for assessing the earnings of employees and trade union representatives, by age group, so as to detect any discrepancies in career development and pay, and look for the cause;
  - invite the sectoral social partners to set up a procedure, via a specific collective agreement clause, bearing on mediation to prevent legal disputes.