

The position of employees on the Czech labour market and measures to promote collective bargaining.

SUMMARY

The position of employees in the labour market is influenced by the quality of social dialogue. The promotion of collective bargaining and the position of employee representatives are among the core values of a functioning labour market, achieving fair working conditions, decent and fair remuneration for work.

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Social dialogue; social partnership; digitalization; technological change; competence of employees; competence of employee representatives; digital forms of negotiation; electronic communication; basic documents; participatory rights; collective bargaining; collective agreement; decent work; employee representative; trade union; working conditions; conditions of trade union activity; trade union pluralism, Economic and Social Agreement Council; European Pillar of Social Rights

Legal framework and relevant legal standards:

Resolution of the Presidium of the Czech National Council No. 2/1993 Sb., on the proclamation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic ("Charter")

Act No. 89/2012 Sb., the Civil Code ("Civil Code")

Act No. 262/2006 Sb., the Labour Code

Act No. 2/1991 Sb., on Collective Bargaining

ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize

ILO Convention No. 98 concerning the Right to Organize and Collective Bargaining

ILO Convention No. 144 concerning Tripartite Agreements

ILO Convention No. 154 concerning the Promotion of Collective Bargaining

European Social Charter

European Pillar of Social Rights

Directive of the European Parliament and of the Council on minimum wages and the promotion of collective bargaining



Directive of the European Parliament and of the Council on the improvement of working conditions at work through platforms

Directive of the European Parliament and of the Council reinforcing the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms

Treaty on the Functioning of the European Union

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1 Introduction, focus and general remarks

The social dialogue, or the consequences of its quality and effective management, have a priority impact on employees, but in essence they also affect the social conditions of other persons, both in terms of the employee's income (e.g., in the context of the family's discretionary income) and in terms of the formation of social ties and further functioning within society (e.g., the impact on old-age security in the form of a retirement pension, etc.).

This text deals with issues related to the status of employees, the exercise of participatory rights and the impact of social dialogue on the shaping of own (not only) working conditions. The text focuses more closely on issues related to the role of the social partners, the internal organizational structure and the expected forms of cooperation and the conduct of collective bargaining and collective agreements.

The content of the text does not examine different groups of employees, although these should also be considered in the context of the labour market (e.g., in terms of content variability related to the classification of employees in the salary or private sector; or the division in terms of age, health status, or care for family members, etc.), but focuses primarily on the overall relevance of the applicability of social dialogue in reflecting both the challenges associated with the development of the socio-economic environment, and the comprehensive benefits and effectiveness of social dialogue, collective bargaining and collective agreements. The collective agreement is seen in the text as one of the basic tools that can contribute to guaranteeing appropriate working conditions and a factual reflection of the changing needs of employees, regardless of their nature, marital status or other factors.

The ambition of the compiler was not to present an economic study presenting statistical and economic data (here the space is left for further analyses within the project), but rather to point out the importance of collective bargaining, social dialogue and social partnership as a basic tool for achieving fair working conditions, even in the reality of the digital world, remote work performance and the gradual abandonment of the physically group-integrated form of work performance.

In the context of the terms of reference of the study, this is a fairly broad objective. Social dialogue and collective bargaining should be seen as an important tool in shaping the modern labour market. *Collective bargaining is an important tool for adapting the labour market, and in particular employees, to new challenges, as it contributes to eliminating the negative effects of changes in the nature and conditions of work. The impact of collective bargaining in the Czech Republic has different effects on different groups of employees. Measures negotiated in collective agreements can affect the nature of work of employees differently across all groups.*

The effective exercise of participatory rights - the conduct of social dialogue - is also perceived by the European legislator (or the EU Member States) as a fundamental instrument for achieving fair working conditions for all categories of employees. It is a tool that can be used to respond very effectively to new challenges related to the development of the labour market or the impact of various crises, etc. In effect, social dialogue, regardless of the nature of the "employee", is thus seen as an essential part of the creation of a functioning labour market.¹

The study looks at social dialogue and collective bargaining through the lens of the legal guarantee of the access of employee representatives to the standardization of working conditions and the representation of employee interests. Trade unions play an important role in ensuring decent and dignified working conditions. They need to cope with emerging trends in order to fulfil their role effectively.²

The status of employees changes over time. Similarly, the perception of the nature of the contractual relationships under which dependent work is performed (and the question of the extent to which one can speak of a typical employee needs to be addressed, see the discussions conducted towards platform workers). In relation to the understanding of the subjects of labour law, the perception of the position of employee representatives, the

¹ EP. Fact Sheets on the European Union. Social dialogue. [2025]. [online]. Dostupné z: <https://www.europarl.europa.eu/factsheets/en/sheet/58/social-dialogue>

² EPSU, How Trade Unions Can Use Collective Bargaining to Uphold and Improve Working Conditions in the Context of the Digital Transformation of Public Services. Report on the conference. Berlin, 2018.

importance of social dialogue and the functionality of collective bargaining are evolving. On the one hand, the degree of individualization of social relations and the extent of autonomy of the will target individuality (i.e., the employees, who take care of their own affairs in the best possible way), but at the same time it also opens up a great deal of space for the exercise of participatory rights and the activity of employee representatives. The following will highlight the growing perceived importance of collective bargaining as a fundamental tool for standardizing employees' working conditions, also in light of the growing debates regarding the perception of the concept of "employee", i.e. the definition of personal competence.

In fact, we have to reckon with the evolution that is faced with the definition of platform work and platform³ employee, the definition of dependent work, as well as the evolution in the perception of the definition of employee and the extension of the possibilities of collective bargaining also to some self-employed persons, precisely in connection with the change in the nature of the activity and, above all, the introduction of new modern trends. All this is in connection with the consideration of the possibilities of effective implementation of participatory rights by individual employees and employee representatives.

Labour law, as well as its integral part - collective labour law - evolves over time and must reflect changing social demands. However, in promoting social dialogue and collective bargaining as a central tool for the harmonious achievement of fair pay and decent working conditions, there are practical problems and challenges to be faced in maximizing the potential of collective bargaining. This is the case, for example, in connection with the solution of the definition of the scope of collective agreements (the circle of persons to whom they apply and whose conditions of work they regulate), or obstacles to effective collective bargaining in connection with the legal failure to address the situation of plurality of trade

³ ILO. Extending social security to workers in the platform economy. [2025]. [online]. Dostupné z: <https://www.social-protection.org/gimi/Emodule.action;jsessionid=ZE9Zg7W196yUMQCPfO5s2yM3fUYtHFWMNgu1QRd7DmDaDG3o3Q9!1393577045?id=127>

unions, etc., changing forms of communication and an expanded circle of potential addressees.

The present study, reflecting the assignment, deals with the evaluation of the above aspects and offers not only a brief description of the situations mentioned, but also outlines possible solutions.

In any case, it can be concluded that the reflection on the ways of not only internal communication and the possibility of effective exercise of participatory rights, as well as the reflection on the role of social partners and their position in collective bargaining and ensuring fair working conditions, are and will be topical and deserve attention from the legislator.⁴

However, the basic reason why individuals take on the status of employee is simple - it is to raise funds to cover costs on living. The labour market is undergoing constant evolution. Labour demand and supply rates vary in sinusoids over time. At times, labour demand prevails (e.g., following the post-COVID period in the tertiary food service sector when employee shortages emerge), and at other times labour supply prevails. The employment or employability rate of people of working age varies from stage to stage. The shape of the labour market determines the shape of one's own working conditions. The labour market is a market like any other. The significance of the labour market lies in the distinct and special commodity (although it must be admitted that the International Labour Organization, for example, has long insisted that labour is not a commodity) of which the human being is the fundamental carrier. The regulation of the conditions for the performance of dependent work, as a special subject of social relations, results from a number of labour law norms and is influenced by the basic supporting ideas of the entire labour law, primarily its functions - the protective function and, where appropriate, the organizational function.

⁴ The text of the study conceptually builds on and expands the previously elaborated issues of the Role of Collective Bargaining in Ensuring Working Conditions including Fair Remuneration for Work (ASO 2021) and the Role of Social Partners in Establishing Fair Working Conditions including Minimum Wages through Collective Bargaining and Collective Agreements (2023).

The protective function of labour law aims precisely with regard to the special aspect of labour law - the carrier of the commodity and the performer of dependent work - at the employee, as a natural person to ensure decent working conditions (e.g., fair wages), opportunities to reconcile family and working life and respect for the special nature of the carrier of the subject matter of regulation. The description seems rather complex, but the opposite is true. The labour market and the labour sector in general cannot be imagined without people - employees. People are an integral part of the labour market, without which the labour market could not function. However, as technology, the socio-economic situation (e.g., the impact of the COVID-19 pandemic) and the associated demands of employers evolve, the labour market itself is logically evolving. Labour law must respond optimally to developments so that the changing interests of the parties to the legal relationship (employees and employers) are sufficiently protected. The essence of mutual cooperation between the social partners, but also of the mutual relationship between the employee and the employer, has been, is and will be a good level of communication, which constitutes the basic point of social dialogue and which extremely influences the personal framework of social dialogue (i.e., the ability of the parties to understand each other determined by the individual participants and their character traits).

The current social developments, including the consequences of the COVID-19 pandemic or the war conflict in Ukraine, and the mobility of the Ukrainian workforce bring with them a number of challenges to which the labour market must respond. However, a response cannot be expected only from the legislator.

The regulation of working conditions affects all persons who perform dependent work. From the point of view of territorial application and the principle of private international law regulation, Czech norms apply generally also to employees (definition according to the concept of dependent work contained in the Labour Code⁵). Regulation according to the place

⁵ Ust. § 2 zákona č. 262/2006 Sb., zákoník práce

of work (*lex loci actus*)⁶ is used in particular to determine the law applicable to the assessment of the employment contract and, in fact, to determine the conditions of performance of dependent work in an employment relationship or in one of the other basic employment relationships based on agreements on work performed outside the employment relationship. In the context of international arrangements, rules arising from both primary and secondary EU law also apply (see, for example, directives reflecting both platform work and rules on the elimination of pay inequalities, etc.⁷).

From the point of view of effectively ensuring fair working conditions, it is not possible to distinguish between different categories of employees *a priori*, although the actual adjustment of working conditions must take account of the facts.

Trade unions and social dialogue and collective bargaining also play an important role. In collective agreements, trade unions should strive to ensure that social protection is guaranteed for employees regardless of their status, e.g., by making use of these calls to ensure that the maximum benefit is drawn from them for employees.⁸ One of the major challenges in terms of the focus of the study is the ability and possibilities of communication between trade unions and employees to fulfil the prerequisite of successful achievement of decent working conditions to the maximum extent possible. It is not only a matter of linguistic understanding, but also of being able to transfer and explain specific patterns of behaviour typical of the region, and finally of finding appropriate ways of reflecting not only the nature

⁶ Oxford Reference. Lex loci actus. [2025]. [online]. Dostupné z: <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100103410>

⁷ Směrnice Evropského parlamentu a Rady (EU) 2023/970 ze dne 10. května 2023, kterou se posiluje uplatňování zásady stejné odměny mužů a žen za stejnou práci nebo práci stejné hodnoty prostřednictvím transparentnosti odměňování a mechanismů prosazování. [2025]. *eur.-lex.europa.eu* [online]. Dostupné z: <https://eur-lex.europa.eu/legal-content/cs/ALL/?uri=CELEX:32023L0970>

⁸ HORECKÝ. Jan. Nové trendy podporující roli a význam kolektivního vyjednávání - Role kolektivního vyjednávání v době rostoucí digitalizace práce. Odborná studie. Právní institut. 2020. s. 6. Dostupné z: https://ipodpora.odborny.info/soubory/uploads/Nov%C3%A9_trendy_podporuj%C3%ADc%C3%AD_rol%C3%AD_a_v.pdf

of the activity itself, but also the technical parameters and resources available to the participants in industrial relations and social dialogue.

Collective bargaining and collective agreements should reflect workers' demands and guarantee fair working conditions, including minimum and decent wages.

Social partnership and social dialogue, or its integral *executive* component in the form of collective bargaining, are essential tools for achieving fair working conditions and decent and dignified work in the modern world of work. The role of collective bargaining is growing. Although collective labour relations are among the original relations already at the creation of the labour law itself (collective regulation of working conditions with the cooperation of employee representatives, which has been present in the Czech environment in various variations practically all the time since the delimitation of the labour law sector - e.g., in the form of works councils introduced in 1945⁹, and although they also appeared as an integral and determining component of employment and economic relations during the socialist era (the Revolutionary Trade Union Movement participated in the creation of the economic plan, etc.), they have become particularly important in the present context of respect for the economic and social model of the European Union. The social model of the European Union is an integral part of the European labour market and the economic market of the individual Member States. It expresses consideration and support for the employee factor (the person of the employee), the dignity of work and appropriate working conditions, all while maintaining the efficiency of the implementation of work activities. The exercise of participatory rights is one of the essential preconditions for a functioning social model.

The distinctive features of the European Social Model clearly emphasise the right of workers, whatever the form, type and actual form of employment, to effective representation of their interests and to communication rights in all their forms. The result is to ensure an equal and

⁹ Dekret presidenta republiky č. 104/1945 Sb., o závodních a podnikových radách. Dostupné z: <https://www.zakonyprolidi.cz/cs/1945-104>

just society, end poverty and low wages, guarantee basic human rights, provide basic services and an income that enables decent living conditions. The means to achieve the objective are, for example, fundamental social rights, including the right to freely form employee representatives, the right to strike or protection against termination of employment. Social protection and social dialogue, with the right to conclude collective agreements through legally and statutorily recognised channels, as well as the regulation of basic working conditions and occupational health and safety, working time or leave, are its central themes.¹⁰

Employee participation in the corporate agenda is becoming an important part of creating a fair European social and working environment.

Social dialogue and collective bargaining are influenced by both internal and external factors. External factors that are relevant for achieving positive results of social dialogue and collective bargaining include, with regard to the focus of the study, e.g., the extent of employee representatives who are entitled to collective bargaining, as well as the extent to which parties can exercise their autonomy in negotiating appropriate working conditions (the possibility of deviating from the primary parameters of working conditions set by law and legislation). The modern requirements of the work being done (the effects of digitalization and robotization of work - here it is important to be aware of the developments associated with globalization and the increased use of platform work, for example) are also an important aspect, as is the potential of the membership base and the extent to which coalition law is applied. The internal factor is based on the applicability and reflection of external factors. The essential component must be seen in the possibilities of communication, since the parameters for its effective implementation can be determined by external influences (e.g., plurality of employee representatives or existing legal norms and defined space for communication), as well as internal influences, such as the organizational setup of information exchange, the ability to exercise legally guaranteed participatory rights and the competence of empathy and mutual

¹⁰ ETUC, The European Social Model [2007]. [online]. Dostupné z: <http://www.etuc.org/a/2771>

understanding. Setting up internal communication processes is an important prerequisite for effective representation opportunities. Employee representatives must ensure that functional procedures are in place, for example, when voting on changes to working conditions, discussing collective adjustments to working hours, or the possibility of dealing with employee complaints and then addressing their grievances with the employer.

The study looks at the status of employees, reflecting new challenges of the labour market, effective conditions for the implementation of social dialogue. Thus, it indirectly focuses on the possibilities of involving employees and their representatives in resolving issues within the framework of collective bargaining and their actual involvement in decision-making processes or the organizational agenda, which in its complexity corresponds to the conditions for an effective and fair social dialogue.

Collective bargaining, by its nature, is an essential legal tool to achieve improved fair working conditions, including wage. Collective bargaining should result in a state of social reconciliation under conditions of socio-economic optimum. Collective agreements will bring more social security for employees (in particular the guarantee of a decent wage) and a less conflict-ridden environment for employers (satisfied employees). Collective agreements also contain rules for mutual communication.

Promoting collective bargaining in the future must be a fundamental policy of nation states not only at European (global) level but also within their own national labour markets. Social partnership is one of the central motives for the possibility of achieving fair working conditions or decent pay. Setting rules for effective communication is an essential requirement for successful social dialogue. Employee representatives routinely set central objectives in their programmes that aim specifically to ensure fair working conditions. It is no different in the case of the Association of Independent Trade Unions or the largest trade union headquarters in the Czech Republic, the Czech-Moravian Confederation of Trade Unions (CMCTU). In its programme, it directly sets itself the task of preventing the adoption of laws that would allow the dismissal of employees from their jobs without giving a statutory reason, or direct and

indirect discrimination or targeting of employees and workers regardless of their real status (see, for example, the reflection of self-employed persons without employees and platform employees). It also emphasises the consistent implementation of the European social partners' agreements on combating harassment or the exposure of employees to psychological or physical violence and stress at work or the general impact of digitalization. CMCTU will respond to the challenges and impacts of economic changes related to restructuring, and to the renewal of the economy in the post-contraction period, the development of the green economy and new information and communication technologies (digitalization, robotization, artificial intelligence, etc.), which lead to the emergence and use of new forms of work. Trade unions will have to respond adequately to the negative impacts of this new agenda on the labour market, working conditions, social dialogue and the sustainability of social systems, and will therefore demand that the government adopt an appropriate strategy to minimise these negative impacts and come up with their own proposals and solutions.¹¹

Turbulent social and technological developments bring with them a range of new opportunities, conditions and factors that influence the shape of the World of Work. Decent working conditions, decent pay, a healthy working environment and reconciliation of family and working life are becoming more and more integral parts of the labour market. Modern trends and changes open up new challenges and opportunities not only for the main actors on the labour market (employers and employees), but also for employee representatives, primarily trade unions. Above all, the increasing use of digitalization of work, as well as the pushing to the forefront of artificial intelligence or algorithmic work management, brings with it necessary changes in working conditions and expectations (requirements related to the performance of the employee's work) of employers, which new employees must meet and to

¹¹ Program ČMKOS na období 2023-2026, s. 140

which they must certify for the sustainability of their employment contract, or to enter into an employment relationship. It is no different in the field of collective labour relations.

Trade unions and other workers' representatives, whose main interest lies in protecting the economic and social interests of workers (in accordance with Article 27 of the Charter of Fundamental Rights and Freedoms), are often exposed to new challenges and needs in their established conservative approaches, as they have to adapt to current trends and, where appropriate, to the demands of their members (both existing and potential), and to push their competences further towards modern trends. The impact of digitalization and the increased virtuality of the world and social relations has resulted in an increase in work activities and ways of doing work, where employees are no longer physically grouped together in one workplace, but where work is often done from different locations and through online/remote access. Telecommuting in *home office* mode, flexible working hours and the use of new technologies etc. are becoming a common part of working life.

Changing forms and ways of doing work, legal evaluation and the nature of the person perceived by the legal system as an employee, brings changes in communication between employers and employees, as well as between employees themselves and finally employers, employees and employee representatives. There must necessarily be acceptance of formal changes in the ways of communicating and dealing with the day-to-day agenda, including by the union. The wide range of participatory powers of employee representatives no longer need to be exercised only in person, in the workplace and in direct physical interaction between the employer and employee representatives, or between employees and employee representatives. In modern times, a number of remote tools such as emails, *chat* platforms, or programs and software can be used to enable not only remote communication but also remote and online work performance.

Quality performance in representing employees requires not only sufficient conviction in the need to promote better working conditions, but also mastered communication skills in whatever form and shape they need. Trade unions need to respond to trends flexibly and

quickly in order to consider halting the decline in union density and the importance of employee representation. At the same time, it is necessary for the union leaders, officials and active members themselves, who are responsible for communication with the membership and employees, to deepen their competences. The ability to work in a digital environment also affects the outcomes and effectiveness of social dialogue and collective bargaining. Not only the actual communication with the employer, but also with the employees, who need to have a number of things explained to them in collective bargaining and social dialogue (e.g., in *Zoom* meetings) or their opinion sought (e.g., through online voting/polling), so that in collective bargaining the employee representatives have the necessary knowledge of the specific demands of the employees and are able to transmit, interpret and explain them to the employer for enforcement.

Collective bargaining takes a combined form, with physical negotiations and written exchanges of opinions and amendments interspersed. The competence of the social partners in handling documents is a basic prerequisite for successful negotiations. For example, you need the ability to use comments and revisions in a document, or to remotely connect to a single shared document. Sending an already annotated draft with a reflection of the social partner's comments, however, in a non-revised mode and without marking the changes or drawing attention to them, constitutes a major disruption of cooperation in the conduct of social dialogue and may lead to its freezing.

The study is based on the basic task and directs the consideration of the status of workers, the protection of their economic and social rights, the implementation of participatory rights and social dialogue, which are also influenced by the changing conditions of real work performance. One of the essential factors (as mentioned earlier) is the gradual physical alienation, or the attenuation of the real physical relationship between the employee and the employer in the context of the increase in the level of digitalization. Digitalization also affects the exercise of participatory rights. It is therefore necessary to perceive its impact on the possibilities of conducting social dialogue and taking into account the competences of the

social partners, or trade union members and employees, or the forms of mutual interaction influenced by digitalization and modern technologies.

The influence of new trends must be acknowledged. Digitalization and artificial intelligence are increasingly intertwined with the world of work. However, the crucial place of employee representatives in guaranteeing decent working conditions is not being lost. The participation of employee representatives not only in collective bargaining, but in the wider exercise of participatory rights, remains a constant challenge for the trade union movement.¹²

The implicit aim of the study is to identify opportunities to involve employees or their representatives in resolving issues in collective bargaining and thus prevent the negative impacts of misconstrued working conditions. The most common way for employees to get involved is by submitting suggestions to union representatives, attending meetings of union representatives in person, and expressing their opinions through polls or surveys.

Modern trends in the labour market and the focus of the study condition the expected outcomes, but also the procedures and steps that lead to the fulfilment of the objectives. The study does not aim to create a complete summary material containing a range of quantitative and statistical evaluations and results, but rather aims to describe the legal possibilities of the announced way of communication and implementation of participatory rights, including in the internal dimension of social dialogue. Representing the interests of workers is a critical issue for an effective labour market. The study therefore includes a broader description of the basic parameters of participatory rights (both their definition and structure, and the actual conditions for conducting social dialogue, collective bargaining and concluding a collective agreement), and where it can be expected and considered significant, comments and *de lege ferenda* proposals so that the desired requirement of effective negotiations in the new and modern contactless and digital age is met.

¹² Viz např. HORECKÝ, Jan. *Manuál pro management dat a algoritmů*. Praha: ČMKOS. 2022. s. 1

Social dialogue, the participatory rights of workers' representatives, the promotion of economic and social interests and the achievement of fair working conditions are among the activities that are essential to ensure a decent and dignified labour market.

1.1 The changing nature of employee rights advocacy as a result of new trends - digitalization

The enforceability of workers' rights and the means of claiming them, as well as the means of establishing harmonious, fair and decent working conditions, are closely related to the form of social dialogue in the context of a changing environment. In conducting social dialogue, the social partners must respond to new challenges that affect not only the scope of the discussions but also the effectiveness of collective bargaining. Modern developments in society and the economic market also affect the area of labour law and the working conditions of employees. Modern processes and technology bring new demands on both employees and employers. Both parties to the contractual relationship must jointly seek ways to adapt to technical and technological developments. Digitalization also poses challenges for collective bargaining itself. As seen during the restrictions of the COVID-19 pandemic, the social partners were faced with the new reality of changing the form of social dialogue. From one day to the next, face-to-face physical contact has turned into virtual, remote, online contact. The digitalization of work is thus reflected not only in the changed demands of employees, but also in the shape and form of collective bargaining.

Social dialogue and collective bargaining cannot remain immune to changes. If collective bargaining and social dialogue is an important and integral part of the labour market, if it is one of the basic approaches to shaping working conditions, it must move with the times. Collective labour relations must reflect the new requirements and opportunities brought about by digitalization and the overall industrial revolution 0.4. In relation to the potential of collective bargaining as a tool for achieving fair working conditions, including decent and fair wages, it is necessary to consider the factors that influence and condition the social dialogue and collective bargaining process itself.

The modern world of work, under the influence of digitalization and robotization of activities, provides a new and broad space for the exercise of participatory rights. Employers, as well as employee representatives, must reflect and respect the new trends in social dialogue. The impacts of digitalization are subsequently becoming a policy driver for both employers (and their representatives) and the trade union movement. In the national environment, the central representatives of employees - the Association of Independent Trade Unions, and above all the Czech-Moravian Confederation of Trade Unions, which reflects the new challenges associated with digitalization and robotization in its activities both at the national level within the Council for Economic and Social Agreement - Tripartite, and through its active inclusion in the structures of the supranational employee representative - the European Trade Union Confederation.¹³ In the programme of the Czech-Moravian Confederation of Trade Unions, the accentuation of the effects and impacts of digitalization is an important part of the programme.

Digitalization and new forms of work bring both positives and negatives. As their findings from the International Labour Organization show, it appears that while modern forms of work and the use of new and modern communication technologies, for example in the context of balancing work and family life, bring a number of positives. However, at the same time, they lead to a blurring of the separation and boundaries between work and personal life.¹⁴ Here is an opportunity for social dialogue and the trade union movement to make its activities more attractive, grow membership and increase the mandate of expression in strengthening fair working conditions. The subject of consideration (see below) becomes the provision of working conditions for platform employees as well as for employees mainly using remote communication possibilities.

¹³ National Trade Union Organizations (Listo of Members Organizations). [online]. etuc.org [cit. 2021-25-05]. Dostupné z: <https://www.etuc.org/en/national-trade-union-confederations-list-member-organisations>

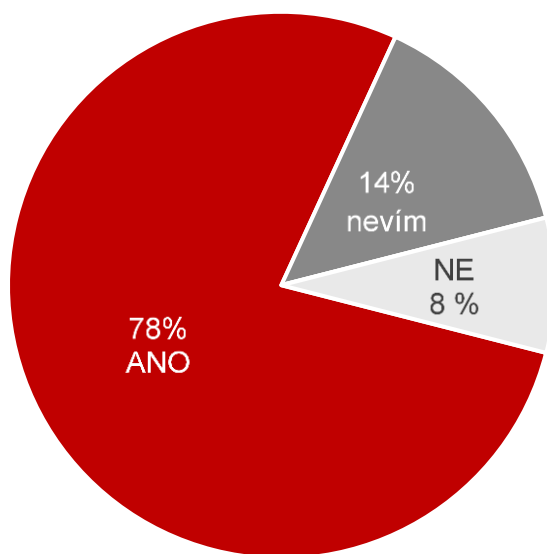
¹⁴ ILO. Executive summary. Working anytime, anywhere: The effects on the world of work. [online]. ilo.org [cit. 2021-28-05]. Dostupné z: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_544151.pdf

Employees' perceptions of the results of employee representatives' activities play a significant role in addressing the issues of the relationship between collective bargaining, the digitalization and robotization of work, the level of the membership base, the activities of trade unions and the achievement of fair working conditions. Reflecting the changing conditions of the labour market due to digitalization and robotization is considered an important area of trade union activity by the majority of employees.

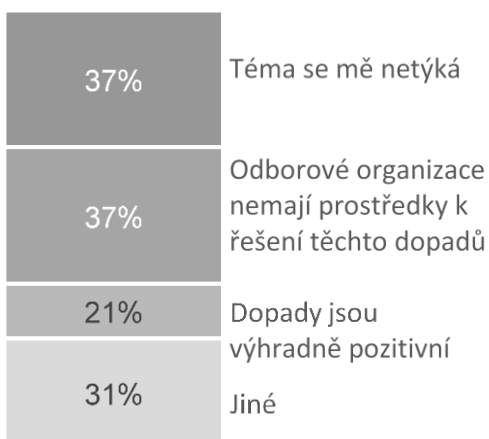
Figure: The role of trade unions in the age of digitalization and robotization¹⁵

¹⁵ HUSAŘÍKOVÁ, Ludmila. NESRSTOVÁ, Markéta. Role a význam kolektivního vyjednávání v době 4. průmyslové revoluce. TREXIMA. 2020. s. 8. Dostupné z: https://ipodpora.odbory.info/soubory/uploads/ASO_pr%C5%AFzkum_Role_a_v%C3%BDznam_KV.pdf

Považujete řešení dopadů digitalizace a robotizace za důležitou oblast zájmu odborových organizací?



Z jakého důvodu nepovažujete toto téma za důležité?



Do you consider addressing the impact of digitalization and robotics to be an important area of concern for trade unions?

78 % YES, 8 % NO, 14 % DON'T KNOW

For what reason do you not consider this topic important?

37 % The topic does not concern me

37 % Trade unions do not have the means to address these impacts

21 % The impacts are solely positive

31 % Other

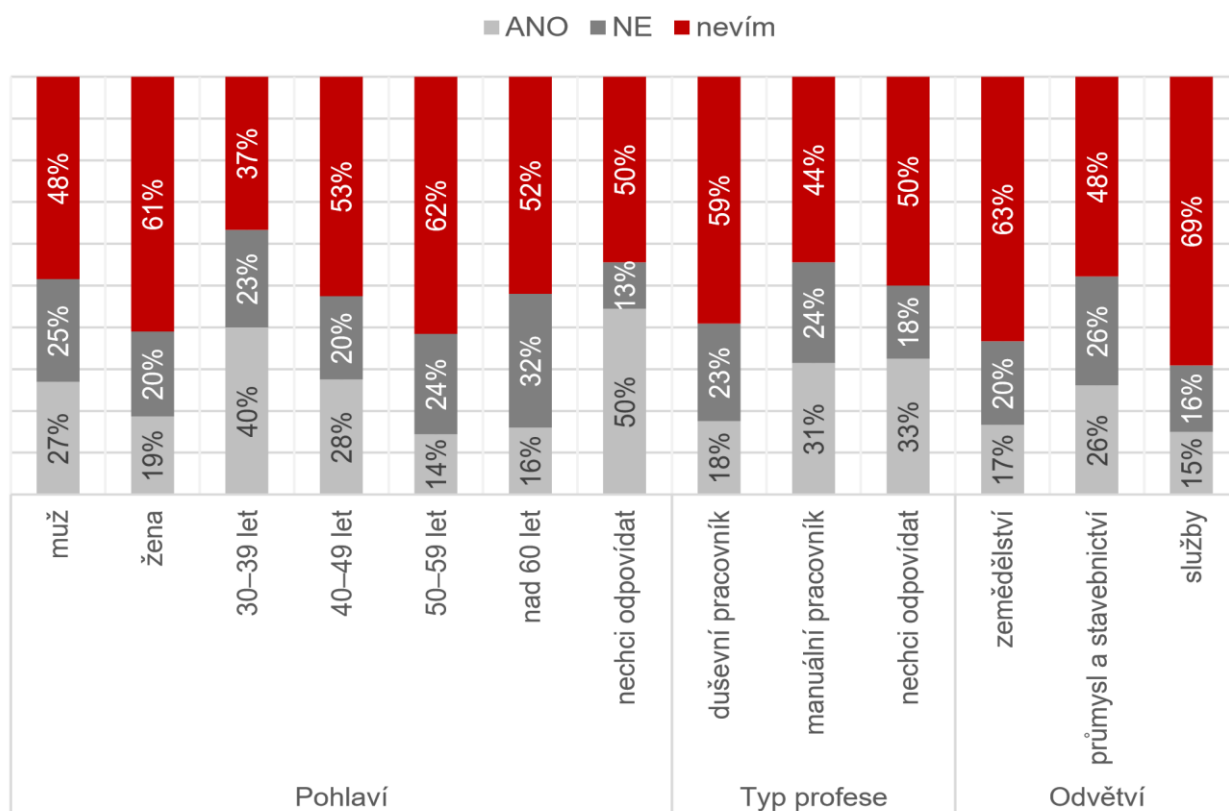
The figure shows the level of attention given to the impact of digitalization and robotics as an important area of concern for trade unions. In the vast majority of cases (78%), the topic is considered important and should be addressed by trade unions. 14% of respondents do not know whether addressing impacts should be the responsibility of trade unions and 8% say it should not. As part of the survey, these respondents were asked why they thought this topic should not be an important part of the activities of industry organizations. The most frequent responses were that the topic of digitalization and robotization does not concern them (37%),

that trade unions do not have the means to deal with these impacts (37%), or that they believe the impacts of these changes are only positive (21%).

Figure: Trade union activity on the future of employees' work¹⁶

¹⁶ Tamtéž.

Je podle Vás aktivita odborových organizací v otázce digitalizace a budoucnosti práce dostatečná?



In your opinion, is the activity of the trade union organizations on this issue of digitalization and the future of work sufficient?

YES,
 NO,
 DON'T KNOW,



Gender: MEN, WOMEN, years: 30-39 years, 40-49 years, 50-59 years, above 60, I don't want to answer,

Type of profession: intellectual worker, manual worker, I don't want to answer,

Industry: agriculture, industry and construction, services

The role of the social partners in addressing the impact of digitalization and robotization of work is manifested in a broader context. First of all, it is possible to trace analytical work by which workers' representatives try not only to identify possible threats, but also to offer solutions and set out the main points that should lead to decent and fair working conditions. For example, if we are talking about the impact of digitalization towards reducing the physical performance of work directly at the workplace and moving towards more flexible ways of working, e.g., working from home or from any location (just in conjunction with the use of modern communication technologies), we can mention the challenges associated with *telework*. In the social dialogue environment, social partners should take into account important elements and initiatives when addressing the conditions for teleworking that will lead to a socially responsible transition to more flexible forms of work. It is fundamental that the right to associate and form trade unions, as well as the right to collective bargaining, cannot be denied to employees (or their representatives) on the sole ground that they are not performing their work in normal conditions, but through remote communication or in a digital environment.

Social partners must therefore feel and reflect the changing nature of employees (definition), precisely in the context of changes in the conditions of work. For the effective exercise of participatory rights, there is therefore no choice but to consistently and carefully examine and adapt their role for the effective exercise of the representation of employees' interests even in changing labour market conditions.

In countries with a well-developed and functional social dialogue, communication between the social partners is one of the fundamental ways to deal effectively with the consequences of digitalization and other challenges. Modern trends do not only concern the requirements

to change the nature of the social partners (i.e., to move to a virtual - online form of cooperation; or to reflect the consequences of crises). A crucial agenda that the social partners should address in order to promote effective collective bargaining is undoubtedly the area of education. Information, knowledge and education in general support the effectiveness of employee representation, not only because of the awareness of the employer, but also of the employee representatives and the employees themselves. The social partners play an important role in setting rules and objectives. They are important, for example, in identifying areas where retraining, reteaching and increasing the share of education and skills in handling new technologies should be the primary focus without losing their position and relevance in the labour market and society.¹⁷ Collective bargaining can also be used in the context of preventing unemployment. In relation to retraining and its impact on collective bargaining, it can be deduced that this is an important factor that should not be taken lightly by conscious social partners, quite the contrary. The question of retraining does not have to be answered only in terms of the fulfilment of active employment policy in relation to unemployed persons. On the contrary. The changing trend of the labour market (especially in the wake of digitalization) has negative consequences for trade union association and consequently for the strength of trade unions (see the relevant chapter on *trade union density*). When an employee loses his or her job, it is common to resign from the trade union or to cancel membership in the trade union, since the trade union itself links membership in its constitution to the duration of the employment relationship with the employer.

The promotion and effectiveness of collective bargaining depends on the information and education not only of the social partners, but above all of the individuals concerned. The social partners' objectives of promoting more effective collective bargaining should therefore certainly include raising employee awareness, education in general and, where appropriate, the deepening and improvement of skills (which will lead to the permanence of employment

¹⁷ OECD. *Going Digital in Sweden_OECD Reviews of Digital Transformation*. [online]. *oecd.org* [cit. 2025-28-04]. Dostupné z: <https://www.oecd.org/sweden/going-digital-in-sweden.pdf>

relationships and thus union membership). The reflection of modern and situationally appropriate ways of communication and transfer of information to employees significantly determines the level of effect achieved by the use of participatory rights.

The agenda of raising the educational attainment of individuals in the labour market in the contemporary world of work is one of the central tools to establish a *culture of the world of work*¹⁸, and thus also to promote the relevance and effectiveness of social dialogue.

2 Definition of basic terms

The study aims to debate issues related to the status, social dialogue and the exercise of employees' participatory rights. The issue of the status of social partners, collective bargaining, the possibility of exercising participatory rights, resolving the range of addressees of the impact of collective bargaining and setting up frameworks for social dialogue and communication within the internal organisational structure and externally. For further interpretation, it is therefore important to define the basic concepts - also in a broader context - that the text of the study then deals with and that are the subject of the analytical focus.

2.1 Social dialogue

Social dialogue does not have a legal definition in the Czech Republic (it is not defined terminologically in any legislation). What is certain is that the terms social dialogue and collective bargaining cannot be confused. Collective bargaining is a somewhat narrower concept than social dialogue itself. While social dialogue can be understood as any negotiation between employee representatives and the employer on all issues related to work (and social issues - e.g., in the case of reconciliation of family and work life linked to the provision of a number of benefits, such as employee kindergarten, subsidized meals for family members, or

¹⁸ ŠVEC. Marek, *Kultúra sveta práce formy výkonu závislej práce*. FES: Bratislava, 2013. 75 s. ISBN 978-80-89149-27-8.

recreational allowances, etc.), collective bargaining already has its own definition, as it is a formalized process of social dialogue aimed at concluding a collective agreement.

Social dialogue can also be broadly defined, for example, as “*bargaining, consultations, joint actions, discussions and information sharing between employers and employees*”¹⁹. A well-functioning social dialogue is a key tool for shaping working conditions, involving a range of different actors at different levels. It strikes a balance between the interests of workers and employers and contributes to economic competitiveness and social cohesion.

At the national level, social dialogue is based on the right of all employees to join trade unions, or to elect, establish and become a member of one of the forms of employee representatives provided for by law²⁰. At the supranational level, social dialogue is primarily understood as the negotiations of the European social partners with the aim of regulating the social rights and working conditions of employees within the European economic market. Social dialogue is an essential element of the European social model. It enables the social partners (management and workers' representatives) to actively contribute to the development of European social and employment policy, including through agreements, and derives its legal basis from the wording of Articles 151 to 156 of the Treaty on the Functioning of the European Union.

Trade unions are the primary representative of employees, which participates in shaping the working conditions of the employer's employees through social dialogue and collective bargaining. A trade union has a number of powers to conduct social dialogue, as well as to carry out the actual activities of a trade union at the employer. The differentiation of the scope of trade union rights will vary with respect to the levels at which, and the activities of which, a trade union can carry out social dialogue (e.g., the enterprise level, where collective

¹⁹ EUROFOND. Sociální dialog. [online]. [eurofoun.europa.eu](https://www.eurofound.europa.eu/cs/topic/social-dialogue) [cit. 2025-16-06]. Dostupné z: <https://www.eurofound.europa.eu/cs/topic/social-dialogue>

²⁰ HORECKÝ, Jan. STRÁNSKÝ, Jaroslav. *Sociální dialog a jeho účastníci*. In JUDr. Dana Hrabcová, Ph.D. Sborník příspěvků z mezinárodní vědecké konference Pracovní právo 2011 na téma Sociální dialog. 1. vydání. Brno: Masarykova univerzita, 2011. s. 27 – 41.

agreements are concluded at the enterprise level; sectoral social dialogue, where collective agreements of a higher level are concluded, in some cases with extended scope; national social dialogue, conducted in the Council for Economic and Social Agreements, with an impact on working conditions throughout the Czech Republic, e.g., setting the level of the minimum wage).

2.2 Participatory rights

Participatory rights are a set of rights of employees or employee representatives that are aimed at the implementation of opinions, interests and ideas of employees towards the employer. The scope and range of participatory rights are regulated by legislation (in particular the Labour Code), which presupposes that the employee himself is sufficient for communication with the employee. At the same time, however, the participatory rights of individual employees can be transferred to employee representatives (typically a trade union).

The basic establishment of participatory rights in the Czech Republic is based on the provisions of Section 276 of the Labour Code. Here, we can look for an answer to the basic question posed in the introduction of the study, which was directed to the possibilities of exercising the right to information and consultation, or the possibilities of getting into the process, and whether such a right is granted to employees at all.

Employees in a basic employment relationship (employment relationship and legal relationships based on an agreement to perform work and an agreement to perform work outside the employment relationship) have the right to information and consultation. Information and consultation are typical examples of participatory rights, even in a harmonised labour market.²¹

²¹ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community. [online]. Eur-Lex. Dostupné z: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=cellar%3Af2bc5eea-9cc4-4f56-889d-3cc4c5ee5927#>

In terms of the objectives of the study, the main focus in practice should be on further specification of how the right to information and consultation can actually be exercised. While the general framework is provided for in the Czech legal order, it leaves sufficient room for the social partners, both externally and within their internal structure, to adopt autonomous measures and procedures that will make the possibilities of access and exchange of information more effective.

The Labour Code leaves wide scope for the autonomous exercise of participatory rights.

The employer is obliged to inform and negotiate with employees directly if the employer does not have a trade union, works council or occupational safety and health representative ("employee representatives"). If the employer has more than one employee representative, the employer shall be obliged to fulfil the obligations towards all employee representatives unless they agree between themselves and the employer on another way of cooperation. Information and consultation of employees shall be at a level appropriate to the subject matter of the negotiations, taking into account the authority and competence of the employee representatives and the level of management.

In the context of the objectives of the study, the basic roles of active employee representatives at the employer include setting the conditions for mutual communication and the ways in which it will take place. The Labour Code obliges the employer to provide information of a certain quality (i.e., with regard to the level of management). In practice, however, there is a misunderstanding about the level and quality of information provided. The ideal means of setting the terms of mutual communication, whether in the digital age or in an established physical form, is the collective agreement (see below). The parties may set out in the collective agreement more precisely how information is to be communicated, at which levels and in which bodies employee representatives are to be represented, at what intervals information is to be exchanged, and so on. The collective agreement may also establish more detailed rules for the technical provision of the actual exercise of participatory rights, as the employer has a

legal obligation to participate in the possibility of fulfilling the basic obligations of employee representatives.

The basic tool for setting up an effective use of participatory rights is the collective agreement.

The methods, scope and form of the implementation of participatory rights correspond to the level of competence of the social partners and employee representatives in particular. Following on from the previous section, which dealt with education as one of the basic parameters of quality social dialogue, it can be stressed that competence and capacity building are currently among the most important factors to focus on when negotiating the content of collective agreements, and which have a positive impact on the quality of social dialogue.²²

The range of information that employers provide, and are supposed to provide, to employee representatives can vary quite a bit between a general quality to a specific, particular quality. The announced differentiation of the quality of information is then also the basis for its actual transmission to employee representatives, or the possibility of further informing employees as such. In particular, the category of confidential information must also be reflected and accepted by the employee representatives in terms of further handling. Confidential information means information the disclosure of which may jeopardise or damage the employer's business or violate the legitimate interests of the employer or employees. Information that the employer is obliged to disclose, discuss or publish in accordance with the legal regulations (if a certain legal norm requires the employer to do so, e.g. information on salaries cannot be kept secret - e.g., information on salaries of employees paid from public funds is provided in principle pursuant to Section 8b of Act No.106/1999 Sb., on free access to information. The obliged entity shall not provide information on the salary of an employee

²² EUROFOUND (2020), Capacity building for effective social dialogue in the European Union, Publications Office of the European Union, Luxembourg. Dostupné z: <https://www.eurofound.europa.eu/publications/report/2020/capacity-building-for-effective-social-dialogue-in-the-european-union>

provided from public funds (Section 8b of Act No.106/1999 Sb., on free access to information) only exceptionally, if this person participates only indirectly and in an insignificant way in the substance of the obliged entity's own activities and at the same time no specific doubts arise as to whether public funds are spent economically in connection with the remuneration of this person.²³ The employer is not obliged to provide or discuss information about facts protected under special legal regulations. Members of the trade union, the works council and the occupational health and safety representative are obliged to maintain the confidentiality of information that has been expressly provided to them in confidence. This obligation shall continue even after they have left office. The same rules apply to experts brought in by employee representatives.

If the employer requires confidentiality of information that has been disclosed as confidential, employee representatives may seek a court determination that the information has been designated as confidential without reasonable cause. If the employer fails to provide the information, the employees' representatives can ask the court to rule that the employer is obliged to provide the information.

The set-up of the internal and external communication platform should be appropriate to the employer's circumstances so that the legal obligation of both the employer and the employee representatives to pass on information to the employees is met. Employee representatives (in light of the above) cannot bring to public attention all the information they hold, but consideration must be given to its appropriate use and compliance with the statutory provisions. It is common for information to be conveyed in summary form, i.e., conclusions and basic ideas. Employee representatives are required to inform employees at all workplaces in an appropriate manner about their activities and the content and conclusions of the information and discussion with the employer. Also, the setting of the internal information organisational structure can and should be the content of the collective agreement or mutual

²³ Rozsudek Nejvyššího správního soudu ze dne 22. října 2014, sp. zn. 8 As 55P/2012-62.

agreement between the employer and the employees' representatives in order to ensure a smooth transfer of information and to eliminate possible conflicts regarding misunderstandings of the mutual position and obligations of the social partners.

The employer has a duty to cooperate closely with the trade union and other employee representatives. The provision of information cannot be prevented by simple references to an assessment of its nature as a business secret, etc. Employee representatives are entitled to judicial protection to request information.

Negotiations between the employer and the trade union and other employee representatives can also be triggered by complaints from individual employees against the employer in relation to working conditions. The employer is obliged to discuss with the employee or, at the employee's request, with the trade union or works council or the representative for occupational safety and health at work a complaint from an employee about the exercise of rights and obligations arising from labour relations. Again, the appropriate procedure for dealing with employee grievances can be set out in an agreement with the trade union and the employer, or in a collective agreement.

Participatory rights can be exercised through employee representatives. However, from the point of view of the applicability of the broadest scope of protection, it is advisable to choose the trade union organisation which, under the conditions of the Czech Republic, has the broadest powers and specific status, especially with regard to the possibility of collective bargaining.

In the Czech context, the trade union represents the central representative of employees in social dialogue. Social dialogue may be understood as all negotiations between an employer, a group of employers or one or more employers' organisations on the one hand and one or more organisations on the other, the purpose of which is to determine the terms and conditions of employment, to regulate relations between employers and workers or to regulate relations between employers and their organisations and one or more workers'

organisations. A central element of social dialogue is therefore the ability to communicate, transmit, receive and evaluate information.

The basic definition of social dialogue also defines the basic rights of a trade union (i.e., the range of participatory rights). A trade union has, first of all, the right to

- information,
- discussion,
- co-decision and
- checking the working conditions of the employer.

The specific right of a trade union, which belongs only to it and to no other employee representative, is the right to collective bargaining and to conclude a collective agreement.

2.2.1 Right to information

The right to information is a fundamental right of a trade union. Information means the provision of the necessary data from which the status of the fact to be notified can be clearly established or, where appropriate, an opinion can be taken on it. The employer must provide the information in sufficient time and in a suitable manner to enable the employees to consider it, or prepare for the discussion and express their views before the measure is implemented.

A fundamental prerequisite for the fulfilment of the right to information is a functioning social dialogue and a real ability to transmit information in the required quality and scope. Neither the Labour Code nor other legal regulations directly define what the formal aspect of communication should look like. This opens up a crucial space for negotiation by the trade union, which can specify the conditions for the provision of information, its scope, quality, frequency of repetition, etc. in informal relations with the employer, as well as in the content of the collective agreement. The rules negotiated in the collective agreement will subsequently become binding for both parties, will be predictable for the parties and will

clearly contribute to the cultivation of social dialogue and to increasing the level of positive perception of trade union officials.

Employees (trade unions) have the right to request additional information and explanations before taking action. Employees (trade unions) also have the right to request a face-to-face meeting with the employer at the appropriate level of management according to the nature of the case. The employer, employees and employee representatives are obliged to cooperate and act in accordance with their legitimate interests.

A trade union is entitled to information in two forms. The trade union has the right to information on individual employee issues (delegated right to information). Employees may elect employee representatives to exercise their right to information. If it does so, the employer is obliged to fulfil the information obligation (which it must otherwise fulfil towards individual employees) towards the trade union as the employees' representative.

Trade unions exercise the right to information on behalf of employees in a number of areas. The employer is obliged to inform the employee through the trade union of

- a) the economic and financial situation of the employer and its likely development,
- b) the employer's activities, their likely development, their environmental consequences and its environmental measures,
- c) the legal status of the employer and its changes, the internal organisation and the person authorised to act for the employer in employment relations, the predominant activity of the employer as indicated by the Classification of Economic Activities code and the changes in the employer's subject of activity,
- d) basic issues of working conditions and their changes,
- e) matters to the extent necessary to comply with the duty to consult,
- f) measures taken by the employer to ensure equal treatment of male and female employees and to prevent discrimination,
- g) the offer of vacancies of indefinite duration that would be suitable for the further placement of employees working for the employer under a fixed-term contract,

- h) health and safety at work.
- i) matters within the scope of the agreement establishing the European Works Council or other agreed procedure for information and consultation at transnational level.
- j) In addition to the right to information that the trade union draws on behalf of the employees, the trade union is also entitled to information specifically intended only for it (no other employee representative), e.g. information on the development of wages and salaries, their components, etc.
- k) The Labour Code guarantees a trade union the right to information about
- l) the development of wages or salaries, the average wage or salary and its individual components, including a breakdown by occupational group, unless otherwise agreed,
- m) matters that the employer is obliged to inform individual employees about (see above)
- n) In addition to the directly defined rights to information, the trade union is entitled, for example, to information on newly created jobs within deadlines agreed with the trade union in advance.

2.2.2 Right to discussion

Similar to the right to information, the right to discussion, i.e., the exchange of views with the aim of reaching consensus and maintaining social harmony, also belongs to the trade union. The trade union draws a right to information derived from the right of individual employees and, in addition, the trade union is entitled to a hearing addressed as much to it as to the specific representative of the employees.

Negotiation means negotiations between the employer and the employees, exchanging views and explanations with a view to reaching a consensus. The employer is obliged to ensure that the consultation takes place in sufficient time and in an appropriate manner to enable the employees (trade unions) to express their views on the basis of the information provided and for the employer to take them into account before the employer's intentions are implemented. Employees (trade unions) have the right to receive a reasoned response to their position at the discussion.

Employees (trade unions) have the right to request additional information and explanations before taking action. Employees (trade unions) also have the right to request a face-to-face meeting with the employer at the appropriate level of management according to the nature of the case. The employer, employees and employee representatives are obliged to cooperate and act in accordance with their legitimate interests.

The employer is obliged to discuss with the trade union

- o) economic situation of the employer,
- p) amount of work and work pace,
- q) changes in the organisation of work,
- r) system for rewarding and evaluating employees,
- s) system of training and education for employees,
- t) measures to create conditions for the employment of natural persons, especially minors, persons caring for a child under 15 years of age and natural persons with disabilities, including essential matters of care for employees, measures to improve work hygiene and the working environment, and the organisation of the social, cultural and physical education needs of employees,
- u) other measures for more staff,
- v) matters where the right to a hearing is vested in individual employees.
- w) The employer must therefore also discuss with the trade union
- x) the likely economic development of the employer,
- y) the employer's intended structural changes, rationalisation or organisational measures, measures affecting employment, in particular measures relating to collective redundancies,
- z) the most recent status and structure of the workforce, the likely development of the employer's workforce, and the basic issues of working conditions and changes to them,
- aa) the changes in the employer's entity, i.e. transfer of rights and obligations and transfer of rights and obligations under the employment relationship,

bb) health and safety at work,

cc) matters to the extent provided for in the agreement establishing the European Works Council or under another agreed procedure for information and consultation at supranational level or to the extent provided for in section 297(5), i.e. on the organisational structure of the employer and its economic and financial situation; on the probable development of activities, production and sales, and to discuss the probable development of employment, investments and substantial changes in work organisation and technology, the dissolution or winding-up of the employer, the transfer of the employer or part of its activities, its reasons, its substantial consequences and the measures to be taken in respect of the employees; collective redundancies, their reasons, the number, structure and conditions for determining the employees to be terminated and the benefits to be provided to the employees in addition to those arising from the legislation.

The questions relating to the obligation to discuss the employer's likely economic development, the employer's intended structural changes, its rationalisation or organisational measures, measures affecting employment, in particular measures relating to collective redundancies, and the employer's most recent staffing levels and structure, the employer's likely employment development, basic issues of working conditions and changes thereto, apply to employers with at least 10 employees.

The employer is also obliged to discuss with the trade union the measures concerning

- a) transferring the employee to another job outside the type of work agreed in the employment contract (for transfers that are to last more than 21 days),
- b) termination or immediate termination of the employee's employment,
- c) mass redundancies. The employer is also obliged to send a report to the relevant branch of the Labour Office on the results of negotiations with the trade union on measures aimed at preventing or limiting mass redundancies or mitigating their effects. If the employer did not discuss the collective redundancy with the trade union,

the collective redundancy would not be invalid for this reason, but the employer would not have fulfilled the prerequisite of delivering the report on the discussion (it would not have discussed it at all) and the employment of the employees who were dismissed would therefore not have ended earlier than 30 days after the delivery of the information - after supplementing this information (additional discussion with the trade union) - to the relevant regional branch of the Labour Office.

- d) Collective adjustments of working time. The employer is obliged to discuss in advance with the trade union the measures concerning collective adjustment of working hours, overtime work, the possibility of ordering work on rest days and night work with regard to occupational safety and health.
- e) setting a regular payout date,
- f) determination of collective leave. The employer may determine, in agreement with the trade union, the use of collective leave only if this is necessary for operational reasons. If the employer also has a works council, an agreement with the trade union is not sufficient, but the consent of the works council is also required.
- g) discussing the amount of indemnification. In the case where the employee is obliged to compensate the employer for material damage, the trade union has the right to discuss the determination of the amount of compensation (serves as a preventive measure and at the same time protects the employee).
- h) discussion of draft legislation. Draft laws and other draft legislation concerning important interests of workers, in particular economic, production, labour, wage, cultural and social conditions, shall be discussed with the relevant trade union organisations and the relevant employers' organisations.
- i) determination of unexcused absences. The employer determines whether the absence is unexcused absenteeism in consultation with the trade union.

The list of negotiating rights may be extended by agreement in the collective agreement.

2.2.3 Common to the right to information and discussion

The right to information and the right to discussion share a fundamental characteristic. In the context of the subject of the study, it can be seen in practical terms as the way, form, content or paths leading to their implementation. The first question to ask is how the right to information and discussion (as well as other participatory rights) can be implemented and communicated both in interaction with the employer and towards the employees. In any case, it is important to reflect and respect the competences and possibilities offered and available to the social partners and employee representatives.

The common element of the right to information and discussion can also be seen in the consequences of the employer's failure to comply with the obligation to inform or discuss. It is important to note that the rights of employee representatives are matched by the employer's obligations or the internal responsibilities of employee representatives towards the employees themselves. In the event of a breach of duty, the employer commits an offence (administrative offence) in the area of cooperation between the employer and the body acting on behalf of the employee. Such a violation exposes the employee to the threat of a sanction of up to CZK 200,000 from the Labour Inspectorate. Formally, the Labour Code thus presents a legal sanction that can be imposed even at the initiative of a trade union when an employer resigns from its duties or fails to fulfil them. The legal threat of sanctions can be an auxiliary argument for negotiating the conditions for the real participation of employee representatives (i.e., when setting the content of collective agreements, for example, the employer may be obliged to actively participate in creating and ensuring the conditions for the activities of employee representatives and their embedding in the collective agreement). On the other hand, it must be admitted that a legal act (intention) which the employer carries out without prior consultation or information of the trade union will not suffer from any defect, i.e. it will become effective. A practical example is the employer's communication with union officials following the termination of an employee's employment by the employer. Union officials and members often believe that an employer's failure to discuss an employee's termination or immediate termination will result in the termination or immediate termination being invalid.

It is not the case. Failure to hold a discussion shall not affect the effects of termination or immediate cancellation. The only breaches occurred in the employer's fulfilment of its duty and the employee representatives' entitlement to informational interaction.

2.3 Right to co-decision and synergy

The right to co-decision is one of the strongest rights of a trade union to influence the running of an employer. At present, the Labour Code gives trade unions the right to co-decision on only a few matters. The exercise of the right to co-decision is conditional on effective social dialogue and, in some cases, on the employer's own actions. Failure to obtain the consent of the trade union invalidates the employer's actions by law. A trade union can cause unpleasant consequences for the employer by its slowness or slowness to act. It is therefore also in the employer's interest that the platform used to exercise the right of codetermination meets these requirements and provides it with a sufficient degree of exercise of the power of disposal²⁴.

At present, the employer is bound by the prior consent of the trade union when taking steps to consider the issuance of work rules, the scheduling of collective leave, or the intention to terminate the employment relationship with a member of the trade union body by termination of employment (or even one year after the end of their term of office). The union also co-decides the introduction of a 'partial unemployment' and 'kurzarbeit' scheme as a means of dealing with temporary residual demand for employer-produced products.

In cases where the employer also has a works council, it is not sufficient to have the consent of the works council, nor an agreement with the trade union, but the consent of the works council is often required (e.g., collective leave). This is a very important element that needs to be reflected in the setup of the internal and external communication platform. Although trade

²⁴ HORECKÝ, Jan. Dispoziční pravomoc zaměstnavatele (Dispositional competence of employer). 1st ed. Praha: Wolters Kluwer ČR, a. s., 2019. s. 7.

unions enjoy a privileged position, other types of employee representatives cannot be ignored and should be invited to take action where appropriate.

The co-decision of the trade union has a major impact on the employer's actions. In contrast to the employer's failure to inform the trade union or to comply with the consultation obligation, which has no effect on the employer's legal conduct and intention, conduct for which the employer does not have the prior consent of the trade union will be considered absolutely null and void. If the trade union's consent is lacking, the legal action is absolutely invalid.

The setup of mutual communication procedures between the employer and employee representatives should be predictable. As always, the arrangements in the collective agreement can be seen as the ideal platform.

Mutual cooperation between employee and employer representatives requires an active approach from both sides. The Labour Code foresees a number of situations in which mutual cooperation is required, whether it is the exercise of the right to information, consultation or co-decision. These need not always be relatively abstract categories defined by law, but also more concrete specifications that can be appropriately regulated in collective agreements. As far as the highest level of interaction is concerned, the legal order of the Czech Republic requires the cooperation of employee representatives with the employer as a prerequisite for the further procedure of concluding an agreement (not the conclusion of a collective agreement). These are a number of cases.

2.3.1.1 Agreement on other arrangements for fixed-term employment

If the employer has a trade union, the introduction of different rules for the negotiation of fixed-term employment is subject to agreement with the trade union. The written agreement between the trade union and the employer must include

- a) further specification of the reasons for serious operational reasons,

- b) the rules on other employer's procedure for concluding and renewing fixed-term employment,
- c) the range of the employer's employees who will be affected by the different procedure,
- d) the period for which the agreement is concluded.

2.3.1.2 consent to the resignation or immediate termination of an officer

The trade union has the right to co-decide the unilateral termination of an employee's employment by the employer. In the case of a member of a trade union body who works for the employer during his/her term of office and within 1 year after its termination, the employer must seek the prior consent of the trade union organisation for the termination or immediate termination of the employment relationship. Prior consent shall also be deemed to have been given if the trade union has not refused in writing to give its consent to the employer within 15 days of being requested to do so by the employer.

If the employer did not have the relevant consent, the termination would be absolutely invalid. Only a court could substitute the missing consent of the trade union in any court proceedings (if it would be unfair to require the employer to continue to employ the employee).

In relation to the possibility of having variant forms of employee representatives and obtaining information on the basis of different channels, it is also possible to think about conducting social dialogue with quasi-entities (i.e., not directly with the trade union) or the works council, etc. In the context of globalisation and the increasing importance of transnational information, the European Works Council is also becoming a suitable platform for information. It should be noted, however, that the protection against termination of employment applies

only to acting trade union officials, whereas any other type of employee representative is excluded from the protection and is not subject to the protective provisions.²⁵

2.3.1.3 *Agreement to introduce partial unemployment*

If the employer has a trade union, the introduction of the partial unemployment scheme is subject to prior agreement with the trade union. If an employer cannot assign an employee to work within the scope of the weekly working time because of temporary restrictions on the sales of its products or restrictions on the demand for its services (partial unemployment), it may, in agreement with the trade union, introduce a *partial unemployment* scheme. Trade unions may negotiate in the agreement for employees a higher compensation of average earnings than the statutory 60%.

2.3.1.4 *Agreement on the introduction of the "kurzarbeit" - partial unemployment allowance*

The employer can apply for an allowance from the active employment policy during the period of partial unemployment. There is no legal entitlement to the allowance, but the Labour Office decides on the basis of the application for its allocation after prior approval by the Government. The mandatory elements of the application are an agreement with the trade union and the introduction of partial unemployment, with the employee being entitled to at least 70% of average earnings for the duration of the partial unemployment.

2.3.1.5 *Introduction of a working time account*

If the employer wishes to introduce unequal working time in the form of a working time account, it is subject to the agreement of the trade union to this procedure and the introduction of the account. Consent must be expressed in a collective agreement (i.e., the introduction of a working time account can only be introduced by collective agreement - if the employer has a trade union). Also, only with the agreement of the trade union - the collective agreement can provide for a applicable period of up to 52 weeks. Only if agreed in the collective agreement may overtime work worked in the working time account in a

²⁵ Rozsudek Nejvyššího soudu ČR ze dne 6. března 2017, sp. zn. č. 21 Cdo 398/2016.

compensatory period agreed in the collective agreement, which shall not exceed a maximum of 52 consecutive weeks, to a maximum of 120 hours be counted towards working time only in the immediately following compensatory period.

2.3.1.6 Co-decision on the Cultural and Social Needs Fund

The trade union has the right to co-determine with the employer the allocation to the Cultural and Social Needs Fund (in the case of employers who compulsorily create it - the budgetary sphere). The trade union can set out in the collective agreement with the employer the rules of use and the various benefits for which the social and cultural needs fund can be used Setting rules for interaction is also an essential point for a functional social dialogue.

2.3.1.7 Cooperation in the investigation of an accident at work

The trade union is also to represent the employee in the investigation and assessment of the situation in which the accident occurred - the work injury. The trade union shall have the right to participate in the investigation of the circumstances of the occurrence of the work injury and in the clarification and determination of the causes of the work injury and occupational disease. This is to prevent unilateral assessment of the accident process by the employer and for the benefit of the employer.

2.3.2 Right of control

The trade union, as the employees' representative, is not only to participate in the creation of working conditions (conclusion of collective agreements) at the employer, but also to check whether the working conditions comply with the agreed and legal parameters. Trade unions ensure compliance with the Labour Code, the Employment Act, occupational safety and health legislation and other labour law regulations.

Trade unions have the right to exercise control over the occupational safety and health status of individual employers. The employer is obliged to allow the trade union to carry out the inspection and for this purpose to

- a) ensure that the employer's compliance with its obligations to ensure occupational safety and health and to ensure that it consistently creates conditions for safe and healthy work,
- b) ensure that employers' workplaces and facilities for employees can be regularly inspected and employers' management of personal protective equipment can be monitored,
- c) ensure that the employer's investigation of work-related accidents can be verified,
- d) provide opportunities to participate in the investigation of the causes of occupational accidents and diseases and, where appropriate, to clarify them,
- e) allow to participate in meetings on occupational health and safety issues.

The costs incurred in the performance of occupational safety and health inspections, including the costs of training to improve the qualifications of union occupational safety inspectors responsible for such inspections, are covered by the State on the basis of an agreement with the trade union. The costs of OSH inspections include the training of occupational safety and health inspectors.

2.4 Employee

The central concept for assessing the scope and possibility of action by employee representatives and the effective impact of social dialogue is the definition of the employee. By the nature of things, if we conservatively attribute the right to collective bargaining and employees, it must necessarily be defined who the law considers to be employees and to whom the law then grants, albeit indirectly through the use of coalition law, the ability to bargain collectively. Currently, there is a broader debate related to the understanding of the concept of employee - in terms of the exercise of participatory rights. Discussions conducted at the transnational level (see the following chapters, e.g., the agenda of participatory rights and platform workers), which deal with the concept of employees, are increasingly permeating the Czech legal environment. In the context of diverse national regulations, it is necessary to draw on possible qualifiers and to associate the concept of employee primarily

with the provision of social protection - i.e., rather than insisting on a rigid definition of the concept of employee, it is appropriate to consider the provision of fair working conditions and decent work.²⁶

The Czech legal system, namely the Labour Code, defines an employee as a person who performs dependent work for another in a basic employment relationship. Dependent work is then defined as work that is performed by an employee in relation to the employer in a relationship of superiority (employer) and subordination (employee), on behalf of the employer, under the direction of the employer and solely by the employee personally.

Dependent work, with regard to the determination of appropriate and fair working conditions for employees, is to be performed for remuneration, i.e. for a wage, salary or remuneration from an agreement on work performed outside the employment relationship, at the employer's expense, under the employer's responsibility, during working hours and at the employer's workplace or at another agreed location (i.e., teleworking under Section 317 of the Labour Code).

It is important here that dependent work may be performed only in one of the basic employment relationships, which are the employment relationship and legal relationships based on one of the agreements on work performed outside the employment relationship (i.e., e.g., agreement on the performance of work or agreement on work activity), or in another similar relationship under special legislation (i.e., e.g., in the relationship of a member of the security forces²⁷, or a civil employee²⁸ in a service relationship).

²⁶ ETUC. A Fairer Labour Market for Europe: an ETUC vision. 2019. [online]. etuc.org [cit. 2025-29-04]. Dostupné z: https://www.etuc.org/system/files/document/file2019-04/A%20Fairer%20Labour%20Market%20for%20Europe%20_%20an%20ETUC%20Vision%20%28Resolution%209.pdf

²⁷ Zákon č. 361/2003 Sb., o služebním poměru příslušníků bezpečnostních sborů

²⁸ Zákon č. 234/2014 Sb., o státní službě

The above-mentioned definition brings us back to the beginning of the study, i.e., to the initial question of defining the personal scope of both the protective function of labour law (i.e., to whom labour law applies) and the possibility of exercising participatory rights.

Through the lens of the study, and the application of participatory rights, the different nature and status of employees must be seen first and foremost to set the content of collective agreements. The distinguishing factor may be, for example, their sectoral affiliation, primarily the budget (so-called salary) sector, vs. the wage (private) sector. The distinction has its essence in the level of autonomy of the parties' will, e.g., in the context of employee remuneration. While private sector employers are limited only by minimum wage scales, public sector employers (those who remunerate employees by salary) are limited by both statutory scales and guaranteed pay.²⁹

Similarly, the character of the employee with regard to his health, age, gender may also be a distinguishing element. The Labour Code, of course, while perceiving the prohibition of discriminatory conduct, allows for different and preferential treatment of certain groups of employees. These are typically juvenile employees, employees with disabilities, female employees, pregnant women and mothers after childbirth, parents caring for children and persons caring for dependent persons, juvenile employees³⁰.

To complete the content (scope) of the concept of employee, it is now necessary to reflect the status of self-employed persons economically dependent on the employer, or platform workers³¹ (see the relevant part of the analysis).

The appropriate setting of criteria for assessing an employee is crucial for the further activities of employee representatives and the exercise of participatory rights. It is necessary to

²⁹ Ust. § 112 zákoníku práce

³⁰ Blíže viz ust. § 237 a násl. zákoníku práce

³¹ Recital 17 Směrnice Evropského parlamentu a Rady (EU) 2024/2831 ze dne 23. října 2024 o zlepšení pracovních podmínek při práci prostřednictvím platformy [online]. Dostupné z: <https://eur-lex.europa.eu/legal-content/CS/ALL/?uri=CELEX:32024L2831>

perceive the gradual development and changing needs of the labour market, including in the activities of trade unions.

3 Conditions for the operation of a trade union at the employer

The basic conditions for a well-functioning social dialogue include the existence of strong and independent trade unions and employers' organisations with access to relevant information necessary for participation in social dialogue and respect for the fundamental rights of freedom of association and collective bargaining.³²

The trade union, as well as the employer, are in their mutual relations move in an environment defined primarily by the Labour Code and other labour law regulations, such as Act No. 2/1991 Sb., on collective bargaining (regulates the procedure for concluding a collective agreement), Government Regulation No. 567/2006 Sb, on the Government Decree on the minimum wage, on the lowest levels of the guaranteed wage, on the definition of a difficult working environment and on the amount of wage supplement for work in a difficult working environment, Government Decree No. 341/2017 Sb., on salary ratios of employees in public services and administration (defines the basic limits for collective bargaining on wages and salary and conditions of remuneration) and a number of others. In addition to the purely labour law regulations, consideration must be given to, for example, Act No. 89/2012 Sb., the Civil Code (defining the legal nature of a trade union) and, above all, constitutional laws such as Constitutional Act No. 2/1993 Sb, on the promulgation of the Charter of Fundamental Rights and Freedoms (guaranteeing, for example, the right to strike), and, of course, international regulations such as International Labour Organisation Convention No. 87 (essential for defining the right to freedom of association and organisation to advocate and promote the improvement of economic, social and working conditions), or Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

³² Recital 21, op. cit.

Information and consultation of employee representatives, which are regulated at Union level under Directive 2002/14/EC, are key to promoting effective social dialogue.

Other, more specified, conditions for the operation of the trade union at the employer may be specified in the collective agreement (e.g., material support for the trade union's activities; method of communication; accessibility to the employer's bodies).

The basic conditions for the operation of a trade union at an employer are regulated by the Labour Code (Act No. 262/2006 Sb.). As it follows from the wording of Section 1(1)(b) of the Labour Code, the Labour Code also regulates legal relations of a collective nature and the promotion of mutual negotiations between trade unions and employers' organisations. Legal relations of a collective nature and the support of mutual negotiations between trade unions and employers' organisations, which are related to the performance of dependent work, are considered to be labour relations.

The definition of collective relations - the relationship between the employer and the trade union - as a labour law relationship is very important, e.g., because of the subsidiary (supporting) application of the Civil Code to regulate the relationship between the trade union and the employer. It is always the case that the rules contained in the Civil Code apply to labour relations, i.e. also to relations between a trade union and an employer concerning, for example, the right to information and discussion, or the right to collective bargaining, the Labour Code applies first and only if the necessary rules cannot be found in the Labour Code, then the Civil Code.

Compliance with the employer's obligation cannot be enforced by means of a contractual penalty. The definition of collective relations as labour relations implies, for example, the prohibition of contractual penalties. Collective agreements sometimes contain rules according to which the employer must pay a certain contractual penalty to the trade union for a breach of its obligations towards the trade union or for a breach of its general obligations (e.g., in the matter of negotiating the scheduling of working time according to the rules agreed in the collective agreement) (or vice versa). According to the Labour Code, this is an unenforceable

performance and a violation of the law. The contractual penalty cannot be used as a condition for the implementation of the agreed manner and extent of mutual communication (including the possible filling of positions in the employer's bodies, etc.).

3.1 Formation of a trade union and the moment of authorisation by the employer

The trade union is established as a legal person *sui generis* on the day following the date of delivery of the information on the establishment of the trade union to the competent registration court (regardless of the registration in the relevant public register of legal and natural persons). It is necessary to consistently distinguish from the moment of the formation of a trade union the moment when the employer's rights and the trade union organisation are established, i.e. the moment from which the trade union organisation can exercise all its rights (the right to information and consultation, co-determination, control rights, etc.) and when the employer is obliged to communicate with the trade union organisation and respect it as a partner in social dialogue.

A trade union can be formed without having to be operating with even one single employer. It will exist as a legal entity. However, as an employee representative of a particular employer, only after the statutory conditions of competence have been met.

In order for a trade union (an existing legal entity) to operate with an employer, it must meet two basic conditions.

- 1) It must include at least 3 employees of the employer who will also be members of the trade union
- 2) It must notify the employer that they meet the employer's conditions of employment

The conditions for the operation of a trade union at the employer are explicitly stated in the Labour Code in Section 286. Trade unions are entitled to act in labour relations, including collective bargaining, under the conditions laid down by law or agreed in a collective agreement.

The employer must know who is the person entitled to negotiate, i.e. with whom it should communicate in the first place and to whom the protection of a trade union official against unilateral termination of employment by the employer may apply (i.e., it should know the negotiating bodies and, in the case of active trade union activity, the persons concerned). The trade union is obliged to identify the competent authorities. The body designated by the statutes of the trade union shall act for the trade union. A trade union may also be established through a trade union. It is then necessary to specify in the statutes, and notify the employer, whether the "basic" trade union has its own authorisation, i.e. whether it can act on its own behalf.

3.1.1 Legal conditions of operation

The Labour Code establishes the basic condition for a trade union to operate as follows. A trade union operates at the employer and has the right to act only if it is **authorised** to do so **under the statutes** and at least **3 of its members are employed by the employer**; only a trade union or its affiliated organisation may bargain collectively and conclude collective agreements under these conditions if it is authorised to do so by the statutes of the trade union.

The rights of a trade union with an employer shall commence on the day following the date on which it notifies the employer that it meets the conditions for membership (i.e., it has at least 3 employees of the employer concerned as members). If the trade union ceases to fulfil the conditions of its competence, it is obliged to notify the employer without undue delay. The notification of the loss of the conditions for legal action does not need to be made by a special procedure (e.g., notarial deed), but a simple written notification, e.g., to the employer's mailroom, is sufficient.

The rules for meeting the scope requirement were added by a flexible amendment to the Labour Code that any notarial certification is at the employer's expense. If the employer so requests, the trade union shall be obliged to prove that the minimum number of members employed by the employer is met; the employer shall provide the necessary cooperation. If

the trade union fails to prove compliance with this condition in any other way, it shall provide the necessary assistance to a notary public appointed and paid for by the employer for the purpose of certifying compliance with this condition and making a notarial record of such certification.³³

The authority to negotiate with the employer must derive from the basic document - the union's statutes. It is not a condition for a trade union to be active with an employer that a new trade union is always formed. One trade union can be active with several employers. The only prerequisite for extending the scope of one trade union to several employers is that it must have at least three employees (members) of the particular employer concerned.

3.1.1.1 The right only of employees in employment????

From the perspective of fulfilling the objectives of the study, it is necessary to debate the understanding of the concept of employee, or the legal definition of only a certain group of employees who can condition the active activity of a trade union at the employer. The debate should be conducted first of all on the condition of the employment relationship, since it is only one of the forms of the basic employment relationship for the performance of dependent activity.

Participation rights are broadly applicable and apply to all employees of an employer. The specific difference lies in the possibility of establishing a trade union and linking its activities to the employer. The Labour Code defines as a basic rule for the operation of a trade union in an employer's workplace that at least three members of the trade union must be employed by the employer. The minimum number of persons (3) is perceived by the practice as indisputable, causing virtually no application problems. However, the situation is different in relation to the interpretation of "employees under an employment relationship", since in addition to employees under an employment relationship, a number of employees (or

³³ Bod 44 zákona č. 120/2005 Sb., kterým se mění zákon č. 262/2006 Sb., zákoník práce (flexibilní novela zákoníku práce).

exclusively only employees) hired under one of the agreements on work performed outside the employment relationship may also perform activities for the employer.

Employees in an employment relationship are to be understood as employees who work for the employer under one of the agreements for work carried out under a work performance agreement or a work activity agreement!

Although in the methodological interpretations of the Ministry of Labour and Social Affairs, as well as in professional journals, the opinion often appears that the activity of a trade union at an employer can only be derived from the employees in the **employment relationship** (and unfortunately it is often understood in this way by trade unionists themselves), this is not the case. The right to trade union association belongs to everyone, i.e. every employee, including employees working for an employer on the basis of an agreement to perform a job or an agreement to perform work. Any other interpretation would be contrary to international conventions and the Charter of Fundamental Rights and Freedoms. Article 27 of the Charter of Fundamental Rights and Freedoms states that everyone has the right to freely associate with others for the protection of their economic and social interests. Similarly, ILO Convention No. 87, on association, guarantees the right to association to all "workers", i.e. it does not distinguish between types of workers and applies universally to all.

In addition to international conventions and the Charter of Fundamental Rights and Freedoms, the possibility of establishing a trade union and ensuring its activity at the employer only by non-employees (contract workers) can be derived from the Labour Code itself. Section 77(2) of the Labour Code contains a rule according to which employees working for an employer under one of the agreements on work performed outside the employment relationship are subject to all the rules for employees employed by the employer under an employment relationship, except for certain enumerated areas. "Agreement workers" are not covered by the regulations (transfer to another job and reassignment, temporary assignment, severance pay, working hours and rest periods; however, the performance of work may not exceed 12 hours in any 24 consecutive hours, obstacles to work on the part of the employee, leave,

termination of employment, remuneration ("agreement remuneration"), except for the minimum wage, and travel compensation). The possibility of being protected by a trade union and thus exercising the right to information and consultation or co-determination and to engage in social dialogue is excluded in the provision in question. Employees in an employment relationship, in the context of the rules for establishing the scope of the employer's trade union, must also be understood as employees who perform work for the employer on the basis of an agreement to perform a job or an agreement to perform work.

3.1.1.2 Authorisation according to the statutes

A trade union must have the authority to act (represent employees) established in its constitution in order to act and represent employees. The entitlement may be expressly agreed, or it may arise from the general description of the activity and purpose of the existence (establishment) of the trade union at the employer. While one trade union may be established to defend the social and cultural interests of employees at a particular employer (as a basic trade union), it may also be active at other employers, either immediately or in the future. The right to represent its members and to act for the employer is therefore to be set out in general terms and need not be specified by a specific list of employers with whom the trade union is to act. The basic documents of a trade union are quite rigid - permanent in nature and cannot be changed easily in most cases. Therefore, employers cannot require a trade union to prove its authority under the statutes by requiring the employer concerned to be named in the statutes.

A mere general authorization of the trade union in the statutes is sufficient to establish the competence and ability to act (represent employees) of the trade union with the employer. The statutes need not contain a list of employers with whom the trade union may act and act.

Because of the possibilities of internal and external communication and management, it is also good to consider the possibility of remote (distance) negotiations, e.g., online, in the statutes. The competences of the individual bodies and the internal governance arrangements should

be included in the statutes in the given context. Alternatively, reference may be made to the elaborated election or rules of procedure of the individual trade union bodies.

The rights arising from the statutes apply to all forms of conduct (unless otherwise specified). However, it is not possible to specify directly in the union's statutes how the employer must provide information and data, as this would oblige a third party. Nor is it possible under the statute to require presence in the employer's organ. All of this would have to come from a collective agreement or be provided by the employer.

The authority arising from the statute may be directed not only to employees (in the classical sense) but also to other persons. A trade union, as a *sui generis* legal entity, may represent and act for persons who do not meet the historical perception of the term employee, if it so determines in its constitution. For example, nothing prevents the statutes from establishing the right to membership of non-employees. Naturally, the actual exercise of participatory rights will then be subject to a test of legality - i.e., the exercise of only what the law allows.

3.1.1.3 *Moment of establishing operation - notification*

The Labour Code defines the moment when the right to operate with an employer arises quite precisely. The trade union's rights with the employer shall commence on the day following the day on which it notifies the employer of its operation with the employer; if the trade union ceases to fulfil these conditions, it shall notify the employer without undue delay.

From the moment a trade union starts to operate with an employer, it acquires the right to information and consultation, etc., as well as the right to secure material conditions for the exercise of trade union activities, or the right to protection from termination of employment for trade union officials.

The complex of participatory rights of the employee representative at the employer arises from the moment the conditions of service are met.

The Labour Code does not require any specific form of notification by the trade union to the employer of the fulfilment of the terms of operation. The trade union may notify the employer

of the fulfilment of the statutory conditions through an authorised person or its authorised body (see the designation of the acting body in the statutes) orally or by written letter, by delivery to a data repository or by simple email. In any case, the provision of information should be demonstrable, so it is recommended to deliver the notice e.g., to the employer's mailroom, or to a data repository, or in front of witnesses. If possible, a record of the delivery of the information may be made or the employer's acknowledgement of receipt of the document.

The delivery of information on the fulfilment of the conditions of operation should be demonstrable by the trade union. A simple stamp from the employer's mailroom (the place where it is normally delivered to the employer) is sufficient to prove this. A written form is always recommended.

Some employers commit unfair practices when they terminate the employment relationship with the chairperson or other members of the trade union after notifying the employer that the conditions for the trade union's operation have been met. In a potential dispute over an invalid termination of employment, proof of service of the notice has a significant impact (the employer can be held to have treated the employee unequally on the basis of union membership). As the right of the trade union to act with the employer does not arise until the day after service (a calendar day, not after 24 hours), the employer can be served with the notice in the evening (service is also possible outside working hours - so it is completely irrelevant here), thus avoiding negative effects and practices of the employer (e.g., attempted termination of the employment of the trade union official).

In any dispute over the employer's failure to fulfil its obligations to the trade union, the burden of proof will be on the trade union. The employer must prove that the employer has received information about the fulfilment of the conditions of operation.

However, the demonstrable provision of information *on the fulfilment of the conditions for the operation of a trade union with the employer* must not be confused with the

demonstration of the fulfilment of the conditions - i.e., the demonstration that at least three members of the trade union are also employees of the employer.

3.1.1.4 *Demonstrating compliance with the minimum number*

The trade union must provide the employer with proof that it meets the conditions for membership. However, the trade union **does not have to** prove to the employer that it meets these conditions. The employer cannot require the trade union to provide a list of its members, even for the purpose of verifying the truth of the trade union's allegations.

Trade union membership is part of the employee's personal data. In addition, Section 316(4) of the Labour Code enumerates so-called discriminatory questions, i.e. questions that the employer should not ask employees at all and cannot require them to answer, e.g., under threat of termination or reduction of remuneration, etc.

If a trade union is formed at an employer and has at least 3 members and at the same time an employee of the employer established as acting bodies at the employer (e.g., chairman, vice-chairman and collective negotiator, or person responsible for occupational health and safety inspections), the employer may disclose at least the names of these three employees in connection with the designation of contact persons and authorized bodies. There is no reason to inform the employer about the other members, the trade union will operate even if the condition of at least 3 employees and members is met.

Trade union officials or a trade union body that is authorised to act on behalf of the trade union in matters of employee representation (e.g., collective bargaining) do not have to be employed by the employer at all. It can be economically completely independent of it (from the point of view of the members it will often be a so-called *classified membership*). In such a case, it is very difficult for the employer to find out about the employees who are affiliated to the union.

The trade union may ask the employer to make deductions from membership fees in agreement with the employees. For this purpose, the employer must be provided with a list

of names of employees or agreements - permission of employees to make deductions from wages or salary. The commitment can be appropriately negotiated in a collective agreement or other specific agreement.

Proving the conditions of operation is not a legal obligation of the trade union (despite the contradictory opinions of the MLSA). However, in order to develop social dialogue, a trade union can be expected (especially where there is no secret membership) to demonstrate to the employer the conditions of operation. There are various ways of demonstrating compliance with the conditions of operation. The trade union may (with the consent of the employees concerned) submit three names of members = employees, another possibility is to make an affidavit of the chairman of the trade union (person authorised to act for the trade union). Compliance with the conditions can also be demonstrated by submitting a notarial deed certifying the fact.

The mere submission of a notification of the fulfilment of the conditions of competence is sufficient to authorise the operation of a trade union at the employer. If the employer is reluctant to comply with the obligations even after receiving a notice from the trade union about the fulfilment of the conditions of operation, or refuses to negotiate and conduct social dialogue with the trade union, it is possible to bring *an action* against the employer *for performance*, i.e. to demand compliance with the employer's obligations through the courts. However, the union would have to prove its right in any court case.

If the employer fails to act after receiving a notice of operation, it may cause damage to the union. The trade union is then entitled to compensation for any property damage caused by the employer's inaction. The trade union then has the right to claim compensation from the employer, including through the courts.

Judicial enforcement of the recognition of an employer's trade union competence significantly undermines the social partnership. Where possible, trade unions are advised not to stubbornly insist on their right to "we do not have to prove anything" but to make concessions and demonstrate compliance with the conditions of operation.

An employer who does not communicate with the trade union the day after the notification is delivered and does not perceive it as a legitimate social partner is not only threatened with sanctions in the form of an obligation to compensate for material (or even non-material) damage caused to the trade union (or even to employees), but also with the threat of the impact of public law sanctions. An employer who violates its obligations in the area of cooperation with a trade union may be fined by the Labour Inspectorate, pursuant to Sections 10 and 23 of Act No. 251/2005 Sb., on Labour Inspection, up to CZK 200,000 for each individual violation.

3.1.1.5 *Loss of conditions of operation*

A common phenomenon of trade unionism in the Czech Republic is the decline of the membership base. In the event that there is such a loss of members that the trade union, which has been acting for the employer, loses its conditions of operation, i.e. does not associate at least 3 employees of the employer, it must notify the employer of the loss of its conditions of operations without undue delay. Compliance with the notification obligation is also relevant, for example, in the field of collective bargaining. If it is proved that a trade union which has entered into a collective agreement with an employer did not comply with the conditions of operation with the employer, then the terms of the collective agreement could not apply to the employees, with *ex tunc* effects, i.e. from that time onwards. Since any benefits to which the employees should be entitled under the collective agreement and which were paid to them, including the increase in wage rates, cannot be claimed back from the employees (employees are protected against unjust enrichment by the so-called good faith), the trade union concerned would have to be liable to the employer for the resulting material damage. The employer could recover the quantifiable financial loss (the sum of the amounts paid in benefits and increased wages or allowances) from the union in court.

It is therefore essential that the trade union and the employer agree on procedures for notifying the fact of compliance with the condition of the minimum number of employees of the employer, which may be contained in the collective agreement or may be formulated as

one of the obligations of a trade union member who is a member of a certain body through which it exercises the right to information, consultation, etc., in agreement with the employer.

The trade union is obliged to notify the employer in an appropriate form of the fact that it does not meet the conditions of operation. Otherwise, it may be liable for damages incurred by the employer as a result of the improper exercise of participatory rights.

The trade union will also be obliged to compensate the employer for damage incurred in connection with the fulfilment of the obligation to provide material conditions for the performance of the trade union's activities.

The fundamental impact of non-compliance with the conditions of operation will be the loss of the right of employee representatives and the loss of the employer's obligation towards the trade union to negotiate and reflect the exercise of participatory rights.

3.1.2 Right to secure the conditions for trade union activity

Trade unions are *sui generis* legal entities, which are financed primarily by membership fees. Social dialogue plays an important role in shaping working conditions, which is why the legislator grants trade unions the right to have the employer materially guarantee the conditions for the performance of trade union work. However, the Labour Code does not contain a specific definition of either financial or material support for the activity. Nor does it contain a clear rule for the dismissal of trade union officials. It contains only general rules according to which the employer must ensure the conditions for the exercise of trade union activity.

3.1.2.1 Material support

The employer is obliged to create, at its own expense, the conditions for the proper performance of the activities of the employee representatives, in particular to provide them with rooms with the necessary equipment to the extent appropriate to its operational possibilities, to cover the necessary maintenance and technical operation costs and the costs of the necessary documentation.

The Labour Code does not provide for a precise list of assets or funds that the employer is obliged to provide to the trade union. In the context of securing material and other conditions for the exercise of trade union activity, there is a wide scope for collective bargaining. Trade unions may negotiate in collective agreements with the employer examples or a list of what the employer is specifically obliged to provide to the trade union.

In general terms, trade unions can demand, for example, the provision of a room for regular trade union meetings (training, etc.), access to a photocopier, computer, internet, bulletin board and telephone. Trade unions may sue the employer for the provision of benefits to ensure trade union activities. However, union officials should carefully consider the extent to which the employer is able to provide the conditions. Moreover, in the case of a plurality of trade unions, a problematic situation arises where the employer has to ensure the conditions for all trade unions to carry out their activities (which increases the cost and complexity). The employer is obliged to provide security with regard to its operational possibilities. While trade unions may seek an increase in benefits, the situation must always be approached judiciously.

In the case of a plurality of trade unions, the rule is that no employee representatives can be favoured in their rights and that an employer cannot treat one trade union more favourably than another without justification. However, this does not mean that all trade unions are entitled to the same performance.

In performing its obligations, the employer should take into account, in particular, the size of the employee representative in question, its justifiable relevant needs, the number of members represented, the actual purpose for which it was established, the form and extent of its involvement with the employer and its participation in the employment relationship, as well as the extent of its reliance on the employer's creation of conditions. The subjective perception of the union by the employees themselves will also be important. Determining the popularity of a trade union among employees will be particularly relevant in the case of a plurality of trade unions where the employees define by their declaration which representative or trade union they want to be represented by (even if they are not members).

A collective agreement may define a more detailed scope of material provision. A trade union may also negotiate the position of a "released officer" in the collective agreement for the purpose of carrying out its activities.

3.1.2.2 Financial security - release of officials

The Labour Code does not contain a clear rule that would ensure regular contributions to the union or the release of an employee - a member of a trade union - as an officer. On the other hand, it does not prohibit the possibility of this being agreed in a collective agreement. The trade union may agree with the employer in the collective agreement to release the employee, including with compensation for average earnings.

The Slovak Labour Code contains a rule according to which trade union officials are entitled to leave with pay, always based on a certain number of employees. The Czech Labour Code does not explicitly contain a similar rule, but allows the trade union to negotiate the rule with the employer.

Although the Czech Labour Code does not directly provide for the right of trade unions to release a trade union official in the same way as the Slovak Labour Code, it does provide some guarantee. Trade unions may (both in and out of collective bargaining) rely on Section 203 of the Labour Code. The performance of the activities of a trade union official is classifiable as an obstacle to work on the part of the employee due to another act in the general interest. Employees shall be entitled to leave of absence for other work in the general interest with a salary or wage compensation equal to the average earnings in the case of a member of a trade union body.

The rule on the release of the employee representative for trade union activities or for the activities of the employee representative is also of fundamental importance in the exercise of participatory rights. The collective agreement may stipulate the conditions for the transfer of information and the right of employee representatives to be part of decision-making bodies, committees, etc. At the same time, however, it is good to bear in mind that not always and not every activity of an employee representative will necessarily be assessed as performance

of work and covered by a wage claim. If it is an activity carried out outside the employee's working hours, it is not an obstacle to work. The collective agreement can therefore appropriately negotiate not only the right of employee representatives to be part of the employer's decision-making activities and body, but also the extent of the so-called release, or the fact that the meeting and participation of the employee representative in the consultative body is considered to be the performance of work and the time spent there as working time. The recognition of trade union officials' activities as work activities, or time spent exercising participatory rights as working time, conditions their effective exercise and implementation.

In requiring compliance with an obstacle to work (release of an officer), a union may approach the request or enforcement of a claim by preparing a list of the union officer's activities. In order to maintain the level of social dialogue and to justify the obstacle (release of the employee), it is important that the release is justified and based on actual action (i.e., that it is justified). The release is justified in cases where the official performs activities specified in the law or agreed upon in a collective agreement (such as participating in collective bargaining; participating in an investigation of an industrial accident, if the person in charge; negotiating the dismissal and immediate termination of employment of employees; negotiating the amount of property damage, etc.

Where officials carry out activities directly related to the representation of employees, they shall be entitled to compensation for wages or salary.

If a trade union official, or any other member of the trade union, performs activities not directly related to the representation of employees, this will, to the extent necessary, be an excusable obstacle at work, for which, however, no compensation for wages or salary is payable. Other activities that are excused but for which employees are not entitled to earnings compensation include, for example, attendance at internal organizational matters such as conventions; management meetings (governing bodies), attendance at conference events,

demonstrations, and fairs, etc. However, it is also possible to agree in the collective agreement on the compensation of earnings in the case of participation in these events.

Employees are entitled to time off work to perform the activities of a trade union official. If there is an obstacle, the working time shall be deducted from the working time pool as if the employee were working, even in the case of flexible working time. If the employee has flexible working hours, the employee's "worked" hours are counted even outside the *basic part of the* flexible working time (up to a maximum of the average length of the shift).

In relation to the exercise of participatory rights, Slovak legislation offers employee representatives not only general obstacles to work where the employer is legally obliged to negotiate with them (e.g., during an accident investigation), but also in a general framework. Employee representatives may take time off for trade union activities to the extent provided for in the Labour Code and based on the number of employees represented.

Pursuant to Section 240(3) of the Slovak Labour Code³⁴, the legally guaranteed scope of release of an officer of the body of a trade union operating in the employer is established in relation to the number of represented employees (i.e., employees of the employer). The employer shall grant a member of a trade union body leave of absence with pay for the activities of the trade union organisation for a period agreed between the employer and the trade union organisation. In the absence of such an agreement, the employer shall grant the members of the trade union body of the active trade union organisation time off from work for their activities with wage or salary compensation per month in an aggregate amount determined as the product of the average number of employees working for the employer during the previous calendar year and a time allocation of 15 minutes (i.e., in effect, the trade union official has 15 minutes of time per employee per month - automatically by law). If the employer is a new employer who had no employees in the previous year, the number of employees is based on the number of employees on the last day of the calendar month

³⁴ Zákon č. 311/2011 Z. z. Zákonník práce.

preceding the calendar month in which the leave with wage or salary compensation is granted. The Slovak legislator also thought about the variant where the employer would have, for example, a plurality of trade unions (or employee representatives in general). The total amount of leave is then divided between them on the basis of their agreement, which must be communicated to the employer. In the absence of an agreement, an arbitrator designated by the employees' representatives shall decide on the allocation of leave. They are proportionately pressed to make a determination, since until the determination is made by the arbitrator, the release with back pay under those rules does not apply.

The allocation of release time under the above rules is not addressable by name. The specific allocation to specific officials is decided autonomously by the trade union or trade union body, and the decision must always be communicated to the employer in writing so that the employee's release can be recognised in writing (and disputes over obstacles to work and breaches of the employee's duty to be at the workplace and to work during working hours are avoided).

The allotted and calculated time off for union activity and release time for union activity is legally vested. However, it is not necessary to exhaust all the time. Interestingly, the unused portion is not simply forfeited, but the unused release ratio can be refunded, with specific terms to be agreed in the collective agreement.

The conditions of the employee representative are closely related to the real possibility of fulfilling participatory rights. Again, in the ideal layout of the social dialogue, the collective agreement is offered as an instrument in which, even with reference to the legal obligation of the employer to create conditions for the performance of trade union activities, access to information, or its material provision, can be regulated (this may be, for example, the provision of remote access and computers, copiers, scanners, etc., which are subsequently used for the acquisition of information and its processing).

3.2 Personal competence - who they represent

The scope and level of information to which employee representatives are entitled depends on the entire complex of employees. The employer is obliged to provide information and discuss its actions not only if their effects should affect trade unionists (employees - finally, the employer should not even be aware of such a fact, i.e. that the employee is a trade unionist, unless the employee himself determines so on the basis of a specific reason), but in relation to all employees.

The provision of information cannot be refused on the grounds that the employee is not a trade unionist and is therefore covered by the GDPR, etc.

A trade union represents all employees of the employer in which it operates, whether or not the employees are members. The union therefore acts even for non-unionised employees. As an employer may have more than one trade union, all trade unions act for all employees. The Labour Code sets out more detailed conditions for representation for both trade union members and non-unionised employees.

If the employer has more than one trade union, the trade union of which the employee is a member shall act for the employee in labour relations in relation to individual employees. The trade union with the largest number of members employed by the employer shall act for an employee who is not unionised in employment relations, unless the employee specifies otherwise. A non-unionised employee may designate another trade union as the relevant trade union, or may also exclude any trade union (in a particular case).

Where more than one trade union is active in the employer, the employer shall, in cases involving all or a greater number of employees where this Act or special legislation requires information, consultation, consent or agreement with a trade union, fulfil these obligations in respect of all trade unions, unless it agrees with them on another method of information, consultation or consent

3.3 Trade union pluralism

The employer cannot prevent one or more trade unions from operating. More than one trade union can operate simultaneously in an employer (provided that it meets the conditions for operation). In this case, there is a plurality of trade unions. As it follows from the Charter of Fundamental Rights and Freedoms, trade unions are formed independently of the state. Limiting the number of trade unions is unacceptable, as is favouring certain trade unions in an enterprise or sector.

The employer is obliged to provide information to all trade unions, even if there are more than one of them. It is not possible to choose only one.

The Labour Code addresses trade union plurality only in relation to the exercise of the right to information and consultation (or co-determination). Issues of trade union plurality in the context of collective bargaining are open to resolution (see section 24(2) of the Labour Code).

Trade unions should try to prevent or contractually regulate situations where plurality occurs. The Labour Code, also with regard to the general competence of trade unions, obliges the employer to negotiate with all trade unions in matters of information, consultation and consent. Social dialogue can be significantly impaired when the employer is not obliged to discuss certain issues or only inform the trade union about them, but in matters where consent is required (e.g., the issuance of work rules) the employer must have the consent of all trade unions. If all the trade unions do not agree among themselves, the lack of agreement (unanimous opinion of all the trade unions) causes absolute nullity of the legal act (e.g., the above-mentioned work rules would be completely invalid; the problem may arise especially for employers in the public sector, who are obliged to issue work rules). Trade union plurality, where there is no agreement to address plurality, weakens social dialogue. Trade unions should make every effort to resolve plurality issues contractually.

Trade union pluralism is usually a problematic situation. In order to maintain a good social dialogue, trade unions should try to eliminate pluralism or at least agree on a different procedure (addressing pluralism - defining mutual entitlements).

3.3.1 Trade union pluralism in collective bargaining

An employer may have more than one trade union operating at the same time. Employers cannot favour any one of them, which can have the effect of paralysing collective bargaining.

If an employer has more than one trade union, the employer must negotiate a collective agreement with all the trade unions; the trade unions shall act and negotiate with legal consequences for all employees jointly and in concert, unless they and the employer agree otherwise.

The solution to the plurality situation is based on the majority rule. However, the steps entailed by the amendment to the Labour Code on 1 August 2024 must be fulfilled.³⁵

Trade unions should primarily agree on a unified approach. If the trade unions do not reach an agreement within 30 days of the commencement of negotiations, they must inform the employer without delay. An employer is entitled to conclude a collective agreement with the trade union which has the largest number of members employed by the employer, or with several trade unions which together have the largest number of members employed by the employer, provided that

(a) the employer has published, after the expiry of the time limit set for reaching agreement between the trade unions on the procedure referred to in paragraph 2, in a manner customary in the employer and accessible to all employees, with which trade union or several trade unions it intends to conclude a collective agreement,

(b) a period of 30 days has elapsed since the employer's notification under (a); and

³⁵ Zákon č. 230/2024 Sb., kterým se mění zákon č. 262/2006 Sb., zákoník práce

(c) the employer's tenured employees do not express their disagreement with the procedure set out in the employer's notice in a qualified manner (see next paragraph)

A collective agreement pursuant to the preceding rule may not be concluded if a supermajority of all employees of the employer in employment declare in writing within 30 days of the date of the employer's notification that they do not agree with this procedure for concluding a collective agreement and deliver this declaration to the employer.

If a supermajority of all the employer's employees in employment designate in their declaration a trade union or several trade unions with which a collective agreement should be concluded, the employer is entitled to conclude a collective agreement with that trade union or those several trade unions.

Other trade unions that do not have the largest number of members employed by the employer or have not been designated by a majority of all employees of the employer have the right to be informed of the commencement of negotiations for the conclusion of a collective agreement and the right to discuss the submitted and final draft of the collective agreement with the employer. The employer is obliged to discuss the submitted draft of the collective agreement with the other trade unions without undue delay, but at the latest within 7 days of the commencement of such negotiations. The employer is obliged to discuss the final draft of the collective agreement with the other trade unions before concluding the collective agreement.

If the collective agreement is not concluded within 6 months from the date on which the notice to the employees was given or from the date on which the employer received the employees' statement, the employer's right to conclude a collective agreement under the plurality settlement rules is extinguished.

It is clear from the above text that the decision-making and understanding of the concept of employee is central and crucial to the fulfilment of the condition of resolving plurality or even unblocking collective bargaining.

3.4 Relationship of the trade union to other employee representatives

The trade union is one of the possible representatives of the employees. In addition to the trade union, a *works council* and an *occupational safety and health representative*, or a *European Works Council*, can represent employees with the employer. In terms of representing employees in their right to information and consultation, all employee representatives have equal status. Unlike other forms of employee representation, trade unions have a privileged position only in the area of collective bargaining. The only representative who can conclude a collective agreement on behalf of the employees is the trade union. Since the Labour Code contains a provision according to which a collective agreement cannot be replaced by another agreement, as such an agreement would be disregarded, it is not possible to transfer the right to collective bargaining to other employee representatives either contractually (e.g., by collective election of employees).

The important thing is that all forms of employee representatives can exist side by side - together with one employer. The former regulation, where the existence of a trade union at the employer or the conclusion of a collective agreement automatically meant the termination of the works council, is no longer effective.

Yet, the trade union has historically enjoyed a privileged position. A trade union, unlike other employee representatives, is entitled to, for example, the right to collective bargaining; or the right to negotiate the amount of compensation for property damage caused by the employee to the employer; or the right to negotiate the termination and immediate termination of the employee's employment and the right to co-determine the termination or immediate termination of the employment of an employee who is also a trade union official; or the right to co-determine the issuance of work rules, etc.

In addition, unlike other employee representatives, a trade union has legal personality, i.e. it is a legal person that can act in other legal relations and carry out other activities.

The nature of the trade union as a legal person *sui generis* predestines it to a privileged position among employee representatives. No other form of employee representation can

match it for the scope of its authority. Although the works council also has a special statutory subjectivity under Section 276 of the Labour Code to be a party to litigation concerning the exercise of information and consultation rights, trade unions have a full range of possible ways to enforce the aforementioned participatory rights and to engage in social dialogue through legal action. The quality of the implementation of the right to information and the actual activities of trade unionists in employer bodies and in the implementation of participatory rights are clearly broader and more consistent.

3.5 Participation of employee representatives in supervisory boards

Although the Labour Code defines a number of participatory rights in more detail, it is not possible to draw a clear-cut procedure from it. One of the platforms where employees learn about relevant information is usually the audit committee or the supervisory board. If the employer is an employer where a supervisory board exists (must), and if the employer has more than 500 employees, the employer is also obliged to have one-third of the supervisory board occupied by employee representatives on the basis of Section 448 of the Business Corporations Act. The articles of association may provide for a higher number of supervisory board members elected by the employees, but this number may not be higher than the number of members elected by the general meeting; they may also provide that the employees elect part of the supervisory board members even if the number of employees of the company is lower. The right to elect members of the Supervisory Board was granted only to employees who are in an employment relationship with the company, either directly or, if the election regulations so provide, through electors. Only a natural person who, at the time of the election, is employed by the company or is a *representative or member of the employees' representative* may be elected." However, the Commercial Code has been repealed by the rectification (as of 1 January 2014), so it can no longer be referred to. It has been replaced by general provisions in the Civil Code and the new Business Corporations Act. Union officials often believed that the right to participate in the supervisory board belonged exclusively to the union. However, this is not and has never been the case. Any employee (in

an employment relationship with the employer) could be a member of the Supervisory Board, or any member of the employee representative, i.e., including the Works Council (without any possible connection to a trade union).

The Business Corporation Act does not contain a guaranteed employee representative on the supervisory boards of joint stock companies. Of course, nothing prevents the general meeting of joint-stock and other companies from electing an employee or employee representative as a member of the supervisory board. However, unlike the previous arrangement, employees and their representatives cannot invoke their participation in supervisory boards.

For the involvement of employee representatives on supervisory boards, it is therefore advisable that the right to employee representation on the supervisory board be agreed in the collective agreement. Necessary content must include both the right to participate in the supervisory board and the formulation of the rules of representation and the nomination process, etc. When enshrining the right of participation of employee representatives in the supervisory board in a collective agreement, trade unions may base their decisions on the original wording of the Commercial Code and adapt it to their own needs.

There are still opinions according to which it is not possible to enshrine in a collective agreement the right of employee representatives to participate in supervisory boards, with reference to the mandatory provision of Section 448 of the Business Corporations Act. Nevertheless, the majority opinion favours the autonomy of the parties' will - the freedom to negotiate and regulate their relations. You can also customize your communication method and deadlines.

3.6 Collective bargaining

Collective bargaining is a fundamental tool for trade unions, as representatives of employees, to influence the modification of working conditions at the employer and to create a better working environment and participate in the creation of more favourable working conditions. Collective bargaining is a formalised process of negotiation between a trade union and an employer aimed at concluding a collective agreement.

Collective bargaining and collective agreement, although in fact identical, have formally different designations. The reason for this - and this is significant from the perspective of the analysis - lies in the formal nature of the sector in which the exercise of participatory rights takes place. Collective agreement, as a narrower term, belongs to the results of collective bargaining for civil servants in service. However, in the following, for simplicity, the term collective agreement will be used.

The collective bargaining process is contained in Act No. 2/1991 Sb., on collective bargaining. Other conditions are also contained in the Labour Code, such as the types of collective agreements and some of their requirements.

Participatory rights can be specified in more detail during collective bargaining in connection with the subsequent content of the collective agreement with the employer, or the framework for their application and fulfilment can be agreed.

The basic instrument for guaranteeing the fulfilment of participatory rights is the collective agreement.

3.6.1 Collective agreements

The collective agreement is a source of law in its normative part (i.e., in the part in which it provides for an unspecified group of employees, e.g., the right to 5 weeks of annual leave). Employees may invoke the rights under the collective agreement in the same way as if their rights were guaranteed by the Labour Code, other legislation or the employment contract.

A collective agreement may regulate the rights of employees in labour relations as well as the rights or obligations of the parties to the agreement (i.e. the rights and obligations of the employer towards the trade union, e.g., the means to ensure trade union activities). Provisions in a collective agreement that impose obligations on employees or curtail their rights under this Act shall be disregarded.

From the employees' point of view, the content of the collective agreement may only include favourable working conditions, i.e. the establishment of new rights (e.g., increased meal

allowance; higher annual leave; reduction of the fixed weekly working time; increase in guaranteed wage rates or surcharges, etc.). In any case, the collective agreement cannot impose new obligations on employees (e.g., obligations to take primary compensatory time off for overtime work instead of premium pay; reduction of the time limit within which the employee is to be notified of the working time schedule, e.g., to 3 days, etc.). I.e., the collective agreement may agree on the rights of employee representatives, the possibility of their participation in the company's bodies, or the scope of participatory rights. However, an employee, even in the capacity of a trade union official, cannot be forced to exercise even agreed and granted rights under threat of breach of duty and possible termination of employment or other sanctions.

Participatory rights, even if negotiated in a collective agreement, are entitlements, not obligations. The employer shall not sanction the employee representative (its employees) in any way for failure to exercise or comply with the rights and rules agreed in the collective agreement.

If the employer has a trade union, the collective agreement is the only means by which the employer can introduce, for example, the following under the Labour Code.

- Extended reference period in connection with unequal distribution of working time
- Introduction of a working time account
- Different levels of night work allowances, etc.

The Labour Code stipulates that only the trade union can conclude a collective agreement on behalf of the employee. This gives the trade union (as opposed to the works council and other employee representatives) a privileged position and the right to make binding and enforceable adjustments to working conditions.

From the point of view of the exercise of participatory rights, therefore, forming a trade union and acting as a representative of the employees with the employer seems to be the most ideal

form, since the widest range of participatory rights and, finally, protection of employee representatives can be exercised (see previous section).

Collective relations, i.e. also relations in concluding a collective agreement, are labour relations. Therefore, the Civil Code shall apply to their regulation in the alternative, but only to the extent that it does not contradict the law, good morals, basic principles of labour law and public order.

3.7 Form, content and process of concluding a collective agreement

A collective agreement is a specific type of contract. The Labour Code, or the Civil Service Act, sets out the basic form and content of the agreement, and the Collective Bargaining Act sets out the process for concluding it.

3.7.1 Form

According to the Labour Code, a collective agreement requires a **written** form. If the written form is not followed, the collective agreement will not be taken into account at all. Another specific feature of the collective agreement is the rule that the **signatures of** the parties must be **on the same document** (the collective agreement should therefore be signed on the last page and the signatures of the employer and the employee representative should be made side by side). If the signatures were not on the same document, the collective agreement would not be taken into account (i.e., although there would be a stack of pages full of text, there would be no collective agreement in fact).

In addition to a collective agreement, an agreement on the fulfilment of participatory rights can be considered. However, the collective bargaining rules would not apply. It can also take an informal form. However, the enforceability of the agreement outside of collective agreements will be questionable. The Labour Code stipulates that the collective agreement cannot be replaced by any other agreement. It will therefore be more the result of a general social dialogue based on the fulfilment of mutual trust, a positive personal framework for social dialogue and a gentleman's agreement.

3.7.2 Content

A collective agreement may regulate the rights of employees in labour relations, as well as the rights or obligations of the parties to the agreement. Provisions in a collective agreement that impose obligations on employees or curtail their rights under this Act shall be disregarded.

The actual content of a collective agreement is limited by the autonomy of the parties' will and the legal, economic and personal framework (i.e., the legal limits, economic possibilities and bargaining power of the negotiators). All limits are relevant, but the actual possible content of the agreed working conditions is subject to a legal limit, i.e. a limit on what can be agreed in a collective agreement and to what extent.

In general, the parties may deviate from the Labour Code and other labour regulations if not expressly prohibited by law. Arrangements that violate good morals, public policy or the law relating to the status of persons, including the right to protection of personality, are prohibited. In employment relations, the so-called **minimax** rule applies. A variation of rights or obligations in labour relations shall not be lower or higher than the right or obligation which this Act or a collective agreement provides as the least or the highest permissible.

The minimax rule is based on respect for the legal regulation of working conditions in relation to the situations examined in more detail. It is also influenced by the nature of the employee - primarily the industry they are in, in terms of remuneration. Salary vs. wage and the use of the maximum possible degree of autonomy of the parties' will, which is very limited in the salary sector when it comes to remuneration.

It is not possible to agree in a collective agreement on a longer working week than the maximum stipulated in the Labour Code. However, reduced working hours may be agreed, i.e. performing fewer hours of work per week, but with no impact on pay, leave, etc. On the other hand, it is not possible to undercut the minimum remuneration for work (minimum wage) in a collective agreement.

A collective agreement is the ideal instrument to establish the rules of mutual communication between the employer and the employee representatives (regardless of the form envisaged).

3.7.3 Conclusion process

A collective agreement is an obligation in private law, similar to an employment contract, a lease or a contract of sale. However, the conclusion of a collective agreement is subject to specific procedures and rules that differ from the general contracting under the Civil Code.

The Labour Code refers directly to the Collective Bargaining Act in relation to the conclusion of a collective agreement.

The Act on Collective Bargaining specifically regulates the process of concluding a collective agreement, therefore the general provisions of the Civil Code, which relate to e.g. pre-contractual liability or a future contract (obligation to conclude a new collective agreement), etc., cannot be applied to the conclusion of a collective agreement.

This is practically the only procedural regulation that defines employee participation in a more robust way. The main difference from the definition of the nature of information and discussion is the consequences of non-compliance with the duty to cooperate, where a dispute in the conclusion of a collective agreement may be resolved by a strike or lockout. In fact, with appropriate negotiation, the demands of employee representatives for consistent, effective and complete access to information and for specification of rules of cooperation and employer obligations can be implemented in the collective agreement.

Collective bargaining is initiated by one of the parties submitting a written proposal for a collective agreement to the other party.

The party shall be obliged to reply to the proposal in writing without undue delay, but at the latest within 7 working days, unless a different period is agreed, and to comment on those proposals which it has not accepted.

The parties shall be obliged to deal with each other and to provide any other required cooperation, unless it conflicts with their legitimate interests.

If the collective agreement has been concluded for a fixed term, or if it has been concluded for an indefinite term and the parties have agreed on the possibility of amending it on a certain date, or if the agreement has been terminated, the parties to the collective agreement shall be obliged to commence negotiations for the conclusion of a new collective agreement at least 60 days before the expiry of the existing collective agreement or, where applicable, before the date on which the parties have agreed on the possibility of amending it.

The parties may agree in the collective agreement on the possibility of amending the collective agreement and its scope; such amendment shall be treated as if the collective agreement had been concluded.

The possibility of negotiating a change to a collective agreement should be defined at a specific time (under certain conditions) and in relation to specific provisions. In most cases, it is not advisable to open up the entire collective agreement to change one point.

If the employer does not want to bargain collectively, a mediator may be used to conclude a collective agreement. If the negotiations are not resolved within 20 days of the expiry of the submission of the dispute to the mediator, the negotiations before the mediator shall be deemed unsuccessful and the trade union may initiate proceedings before an arbitrator or proceed to declare a strike (except in occupations where strikes are excluded, e.g. security forces). By the arbitrator's decision, the collective bargaining agreement is concluded.

3.7.4 Trade Union Membership

The quality and level of social dialogue is often linked to the very existence of the social partners and their ability to communicate. From the perspective of collective bargaining and the enshrinement of working conditions in collective agreements, a very important aspect can be observed not only in the authorized body that has the legitimacy to bargain collectively, but also in the civic activity transferred to the membership of the authorized bodies. In the case of the Czech Republic, the so-called *trade union density* is an important factor. However, the level of organization of employees in trade unions, as the basic representatives authorized to bargain collectively, has been declining in the long term. If the goal and potential to

influence social justice, including the achievement of decent pay and working conditions through collective agreements, is to be consistently achieved, it is essential that the trade union mandate to negotiate on behalf of workers is as strong as possible. The strength of the mandate is not more easily assessed in relation to membership (although exceptions can be identified, e.g., in France union membership is not staggering), but trade unions can rely on extensive civic initiative and empathy to address socio-economic employee issues - even without the coherence of union membership, employees participate in events organized by the trade union movement. Although unions in France have one of the lowest statistical levels of density of organization - membership - they play an essential role at both the company, national and sectoral levels³⁶).

Membership in trade unions has shown a long-term downward trend (not only in the Czech Republic). Fewer and fewer workers are becoming union members. Particularly in countries where the level of trade union membership has a significant impact on, for example, the ability to bargain collectively, or is related to the exercise of claims arising from the level of representativeness, the personal affiliation of an employee to an employee representative must be seen as an important element in creating a comfortable environment for the effective conduct of social dialogue and ensuring fair working conditions through employee participation.

The long-term downward trend in union organization is also evident in otherwise socially strong countries where social dialogue has historically been an important instrument for shaping the working environment. Declines can also be seen in Sweden and Denmark. The following figure shows a graphical visualization of the decline in union membership over time.³⁷

³⁶ Five things you need to know about trade unions in France . [online]. *thelocal.fr* [cit. 2025-28-04]. Dostupné z: <https://www.thelocal.fr/20190920/five-things-you-need-to-know-about-trade-unions-in-france/>

³⁷ EUROFOUND AND CEDEFOP (2020), *European Company Survey 2019: Workplace practices unlocking employee potential*, European Company Survey 2019 series, Publications Office of the European Union, Luxembourg. s.113

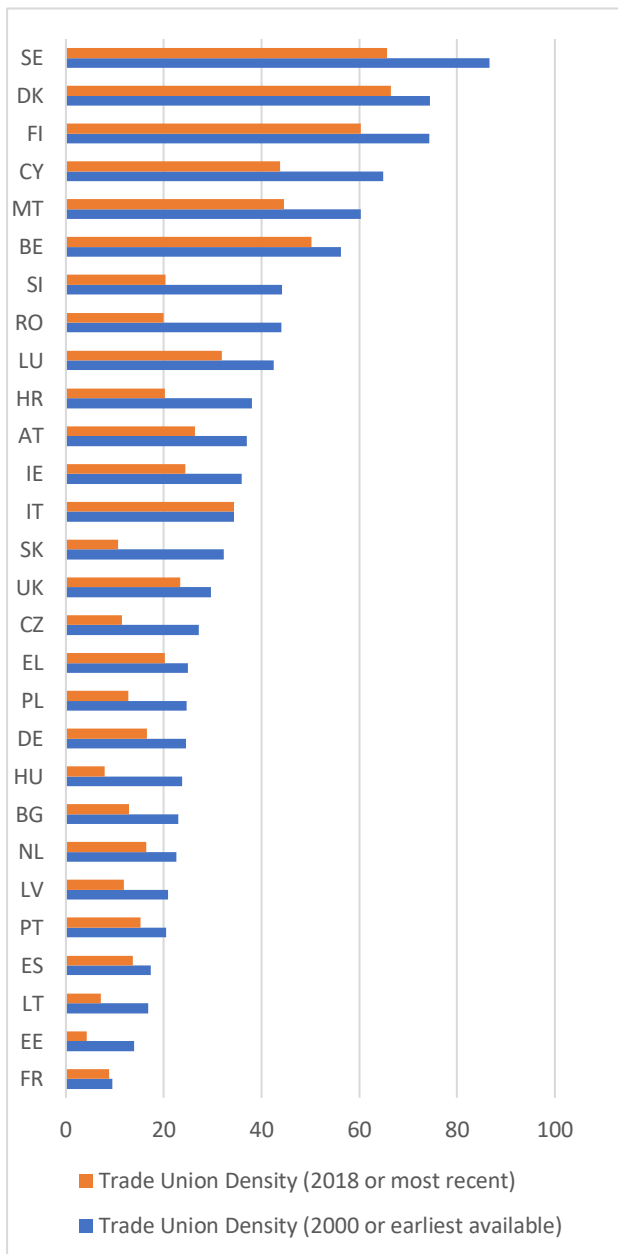


In the Czech Republic, union organization currently oscillates around 10% of the active workforce. In Sweden, on the other hand, the union organization rate is above 80%.

The extent to which participatory rights are exercised and the opportunities to obtain quality information from the employer depend both on the number of employees of the employer and on the strength of the trade union, which is mainly determined by membership.

A trade union is not obliged to comply with an employer's request that the employer ask the trade union for an inventory of trade union members. On the contrary. This would be a requirement of the employer, which is contrary to the GDPR and the Labour Code (Section 316(4)). The employer is obliged to fulfil its obligations towards the trade union from the moment the trade union is active in the employer's organisation (fulfils the conditions of activity, see previous section), regardless of the size of the trade union and the number of its members.

Table: Trade union organization³⁸



Changes in the labour market and collective labour relations are manifested not only in the content of collective bargaining (what can be negotiated), but also in the formal and subject matter. If trade unions are formed from associations of workers, and if their strength is derived from the size of their membership, social dialogue - and above all the position of the trade union - will be affected by the introduction of new forms of employment. Especially precarious forms of employment and platform work are based on the distance from the normal workplace, or the normal performance of work in the social environment of a collective of employees.³⁹ There is social disengagement, which often entails a reduction in union membership.

Internal and external communication becomes more and more important when

flexible forms of employment are used. Platform employees, employees working from a

³⁸ EUROFOUND AND CEDEFOP (2020), *European Company Survey 2019: Workplace practices unlocking employee potential*, European Company Survey 2019 series, Publications Office of the European Union, Luxembourg. s.106

³⁹ Platformové zaměstnávání se vyznačuje vysokou mírou individualizace a nízkou mírou odborové organizovanosti, viz např. BRANCATI, op. cit. s. 3

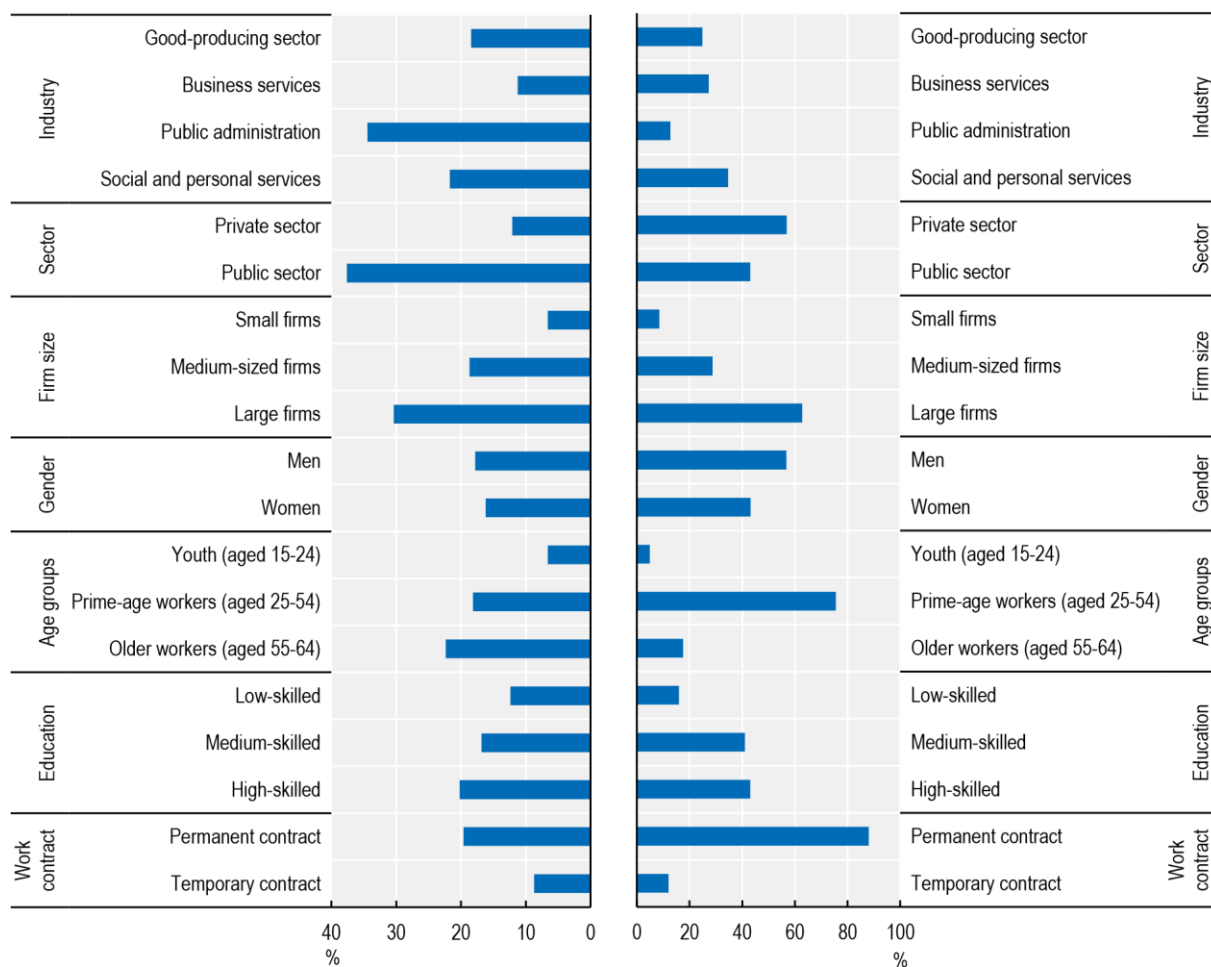
different workplace than the employer's, employees with flexible working hours, often do not stay at a specific location, thus diluting their interaction with other employees. Understandably, the physical transfer of information between employees is also limited, which can lead to an overall weakening of social dialogue and participatory rights (limited information to compare whether or not conditions are equal at the employer). The unwritten duty of employee representatives can be seen as the collection and subsequent dissemination of summary information so that employees have an overview.

The effectiveness of collective bargaining is primarily related to the potential and bargaining power of trade unions. However, this is not the only aspect. As demonstrated by the French example, assessing efficiency in relation to union membership rates can be misleading. In taking into account the fulfilment of the objectives of collective bargaining, the factor of the so-called scope of collective agreements cannot be omitted. The scope of collective agreements is determined by the personal scope of the terms and conditions negotiated. The personal scope of a collective agreement can thus be understood as its specific effects on particular employees without the need for the employee in question to be unionised. If a collective agreement concluded at company, sectoral or higher level applies to all employees, regardless of their affiliation to a trade union, the importance of the collective agreement itself increases. It is therefore not possible to draw a clear equivalence between trade union membership and trade union activity and the achievement of fair working conditions.

The interest of employees to be represented is a crucial factor influencing the results and possibilities of social dialogue. It is primarily about the conditions of operation at the employer, and above all about the strength of the trade union movement so that in any communication and social dialogue it is possible to argue for a mandate not only legal (e.g., in accordance with the Czech legal regulation under Section 286 of the Labour Code and determination on the basis of majority rule). Trade union membership is on a steady downward trend worldwide. One of the challenges associated with digitalization is the

development of activities to make social dialogue more attractive and to recruit new members.

Figure: union organization⁴⁰



Membership in a trade union is not compulsory. However, the benefits negotiated by the union are available to all, which is reflected in union membership. The degree and level of union membership varies and differs according to the occupations and type of work the

⁴⁰ OECD (2019), Negotiating Our Way Up: Collective Bargaining in a Changing World of Work, OECD Publishing, Paris, 2019. s. 30

employee does. In terms of new objectives and modern trends, trade unions can be expected to become more active in social dialogue, also in terms of the use of modern technologies.

Employees with employment contracts and permanent contracts have a higher proportion of union membership, whereas employees with fixed-term contracts have a lower proportion of membership. Similarly, it is evident that lower union organization can be found in smaller companies and in the public sector. In any case, union organization is a major challenge, especially in view of the changing nature of work, greater individualization and the use of the means of the digital revolution (see e.g., platform workers).

3.7.5 Entities authorized to collective bargaining

In the previous sections I have mentioned the importance of trade unions in the exercise of participatory rights and the possibility of exercising them (rights) through other types of employee representatives. It must be emphasized again that although there are multiple employee representatives for a wider range of participatory rights, only the trade union has the right to collective bargaining and a privileged position in the Czech legal environment. The prioritisation of the trade union as the basic representative of employees is in line with the current trend in the European environment, where, for example, the Directive on fair wages and the promotion of collective bargaining explicitly refers to trade unions. Although the discussion and the adopted EPSCO opinions⁴¹, following a more extensive debate, on the recommendations to support the strengthening of social dialogue in Europe suggest the possible involvement of more types of employee representatives, the priority remains to conduct collective bargaining through the trade union.

A fundamental issue of collective bargaining and achieving the possible enshrinement of a fair wage is the definition of the range of entities that are entitled to bargain collectively. The scope of employee representatives and their powers may vary. The Czech legal environment

⁴¹ EPSCO, Proposal for a COUNCIL RECOMMENDATION on strengthening social dialogue in the European Union. [online]. *thelocal.fr* [cit. 2025-06-13]. Dostupné z: <https://data.consilium.europa.eu/doc/document/ST-10542-2023-INIT/en/pdf>

grants trade unions a privileged position and a monopoly for collective bargaining, since the Charter and the Labour Code are based on the assumption that only the trade union is entitled to conclude a collective agreement on behalf of the employee and that any substitution of the collective agreement by other arrangements is considered contrary to the law and different agreements and contracts will not be taken into account.⁴²

In the Czech legal environment, it is possible to identify other participants in social dialogue as foreseen by law (note, not entities authorized for collective bargaining), which are the so-called quasi-subjects⁴³ in the form of a works council, a European works council and a representative for occupational safety and health. However, only trade unions have the right to collective bargaining and the ability to conclude collective agreements.

The extension of the various ways of representing employees' interests is defined by national legislation in its own way, an example being the Austrian and German systems, in which works councils constitute a body which, although not having the right to conclude tariff agreements (but having special powers to enter into company agreements which can intervene in the field of remuneration in specific cases)⁴⁴ and where the activity of employee representatives and the autonomy of the will of the parties are limited.⁴⁵

Considering the role of employee representatives is essential from a collective bargaining perspective. The range of participants in social dialogue is quite broad and the specific entitlements of each form must always be taken into account.

The global trend is to grant the right to collective bargaining, as it corresponds to the Czech legislation, only to trade unions. Debates along the same lines and with the same

⁴² Ustanovení § 22 a § 28 zákoníku práce

⁴³ HORECKÝ, Jan. STRÁNSKÝ, Jaroslav. *Sociální dialog a jeho účastníci*. op.cit. s. 27 – 41.

⁴⁴ V souladu s ustanovením § 77 odst. 3 zákona o podnikové ústavě („betriebsverfassungsgesetz“) se jedná o situaci, kdy tak předvídá výslovně tarifní smlouva, viz Dostupné z: <https://www.mayr-arbeitsrecht.de/blog/betriebsvereinbarung-lohnabsprache/>

⁴⁵ Srov. Bundesarbeitsgericht Urteil vom 11. April 2018, 4 AZR 119/17. Dostupné z: <https://juris.bundesarbeitsgericht.de/cgi-bin/rechtsprechung/document.py?Gericht=bag&Art=pm&Datum=2018&anz=23&pos=5&nr=20968&linked=urt>

considerations have been initiated following the text of the Directive on adequate minimum wages and the promotion of collective bargaining. A union's exclusive authority to bargain collectively minimizes the potential for conflicts of interest between different forms of employee representatives. However, the national legislation and the scope of competence, or the content of what can be covered by collective bargaining, must always be taken into account. For example, compared to the German and Austrian systems, the Czech trade union has a greater degree of participatory rights (which is, however, due to the specificity of the individual systems of employee representation). In the Czech environment, many of the competences of the respective trade union organization belong to the works council in the German and Austrian environment (while in our country the works council has practically no fundamental competences). These include, for example, consents to the installation of surveillance equipment or consent to the introduction of agency employment and the recruitment of temporary agency workers.

3.8 Collective bargaining

Collective bargaining is a closer part of social dialogue. Although collective bargaining and social dialogue are often synonymously confused (usually at the supranational level), a fundamental qualitative difference must be perceived in the national conditions of the Czech Republic. While social dialogue is any communication between social partners on all issues related to the performance of dependent work, collective bargaining is a qualitatively different institution. In contrast to social dialogue, collective bargaining is bound by a number of rules which also result from legal regulations (e.g. Act No. 2/1991 Sb., on Collective Bargaining) and is rather a formalized process of conducting social dialogue aimed at concluding a normative legal act - a collective agreement - which is binding for the contracting parties and, above all, guarantees employees individually enforceable rights through legal (judicial) means.

Collective bargaining has a major impact on conditions at the employer. Achieving fair remuneration for work, decent wages and working conditions and the full and effective

exercise of participatory rights are among the essential objectives of collective bargaining. However, just as collective bargaining affects working conditions at the employer, working conditions at the employer affect collective bargaining itself. It is not only the legal framework of collective bargaining possibilities, i.e., first of all the scope of possible contents of collective agreements (what can be the content of a collective agreement from the legal point of view), but also the economic framework (what can collective agreements contain and regulate from an economically sustainable point of view) and finally the personal framework. In the context of the question of to what extent, in what ways, in what forms and under what conditions to effectively achieve the fulfilment of the ideas and possibilities presented by law for the exercise of participatory rights, it is necessary to reflect on the interdependence with the personal aspect of collective bargaining. In seeking an answer to the question presented, one must abstract from the perception of a personal limit to collective bargaining consisting of the person of the negotiator (the active participant), but rather focus on the employees who constitute the membership base and mandate for the union, and at the same time the non-members - the employee - who are covered by the collective agreement and all of its benefits without having to actively participate. In a work environment with successful social dialogue and a good collective agreement, trade unions often come up against the essence of the scope of the collective agreement in their recruitment activities - the relationship is also to the non-unionised.

In practice, a good collective agreement (CA) becomes a threat to itself, because ...

Negotiated CA benefits apply to all employees!

The attractiveness of union membership is influenced not only by the actual wage arrangements in collective agreements, but also by the general setting of working conditions resulting from other benefits. In internal communications and often externally, the union markets itself in relation to the results of its activities. These are extremely dependent on the effective exercise of participatory rights. By making union membership optional, but the

benefits negotiated in the collective agreement also available to non-members, the focus should be on promoting additional added value. Added value may be perceived, for example, in respecting the employer when dealing with employee complaints about working conditions at the employer, etc.

The above mentioned consideration regarding the subjects of collective bargaining. With regard to the different competences in the different national legal systems, it can be summarised that collective bargaining is predominantly the responsibility of the trade union, while the unifying element of collective bargaining across national legal systems can be seen as being primarily the wage agenda and the exchange of information, discussion and collective bargaining on working conditions relating to employee remuneration. The determination of fair remuneration for work and decent working conditions, including a fair minimum wage, in the collective bargaining process is primarily the responsibility of trade unions.

The attractiveness of membership also grows in relation to the results of collective bargaining with regard not only to setting a fair wage, but also to ensuring the social status of employees with security of tenure track.

The link between the effective use of participatory rights in defending working conditions at an employer and collective bargaining and the level of union membership cannot be easily demonstrated or refuted. However, from the available data on working conditions in employers where a trade union is active and working conditions are co-regulated by collective agreements and employers where collective bargaining is not present (or collective bargaining at company and sectoral level), a certain trend can be observed. In general, employers where social dialogue is perceived as an important tool for achieving social reconciliation and decent working conditions can be found to have higher working conditions than where social dialogue is not promoted.

Strong social dialogue and a strong position of employee representatives and their respect by the employer promotes quality and fair working conditions. Importance can also be attached to the level and extent of trade union activity. Social dialogue and collective bargaining at a

broader - sectoral or regional - level, not only within companies, contributes to fair pay and working conditions. The fight against social dumping and the gradually opening up of scissors in labour costs and remuneration, as well as other aspects of the labour market such as the gender pay gap, can be tackled at a higher level with a broader scope. Higher levels of trade union membership and the consequent power of trade unions and the collective agreements they negotiate have the effect of reconciling the working and social conditions of employees and society in general.

Experience in measuring working conditions and conducting social dialogue shows that trade unions built on a strong membership base and dense coverage and scope are able to negotiate working conditions more universally. The standards then apply to multiple workplaces or entire sectors and regions. Increasing the attractiveness of trade union membership and promoting social dialogue and collective bargaining should become a goal not only of the enterprise social partners but also of national interests.⁴⁶

3.9 Participatory rights in the context of decent working conditions

By exercising participatory rights, employee representatives contribute to the establishment of decent working conditions at the employer. Opportunities to exercise participatory rights, as noted above, often affect the nature and quality of the working environment. In order to be able to conduct a quality social dialogue with the participation of employee representatives and aim at decent working conditions, it is necessary to set a certain quality of information exchange and activity by employee representatives. Achieving decent working conditions (wages; working time arrangements, etc.) are among the main attributes of social dialogue and collective bargaining.

The basic legal documents of the Member States, as well as those of the European Union and supranational entities, contain references to participatory rights, and thus to employers'

⁴⁶ RHINEHART, Lynn. McNICHOLAS, Celine. Collective bargaining beyond the worksite. Economic Policy Institute. [online]. *epi.org* [cit. 2025-28-04]. s. 2. Dostupné z: <https://www.epi.org/publication/collective-bargaining-beyond-the-worksite-how-workers-and-their-unions-build-power-and-set-standards-for-their-industries/>

obligations to listen to them. Their fulfilment, however, is largely related to the socio-economic, political, cultural and social factors of a given Member State. There is a gradual harmonization within the European Union. However, exceptions must be maintained.

Participatory rights are part of the European Pillar of Social Rights when they implicitly feed into the guarantee of decent working conditions (similarly, for example, in the Charter of Fundamental Rights of the European Union⁴⁷). It is one of the foreseen dimensions (i.e., we can talk about a conditional argument in a circle), namely social dialogue, that leads to the achievement of decent working conditions, which include, in addition to remuneration, secure and adaptable employment, information on working conditions and protection in the event of dismissal, social dialogue and employee involvement, work-life balance or a healthy, safe and well-adapted working environment and data protection.⁴⁸

Figure: European Pillar of Social Rights⁴⁹

⁴⁷ Listina základních práv Evropské unie. [online]. *fra.europa.eu* [cit. 2025-28-04]. s. 2. Dostupné z: <https://fra.europa.eu/cs/eu-charter/article/31-slusne-spravedlive-pracovni-podminky>

⁴⁸ Evropský pilíř sociálních práv [online]. *ec.europa.eu* [cit. 2025-28-04]. s. 2. Dostupné z: https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles_cs#kapitola-ii-spravedliv-pracovn-podmnky

⁴⁹ Tamtéž



Modern trends affecting collective bargaining across the developed world and especially within the European economic area are related to changing trends not only in terms of changes in the subject matter of production but also in relation to modern approaches to human resources. The social partners and trade unions (employee leaders) must be involved in creating a harmonious working environment and finding ways to establish and maintain the concept of *decent and dignified work* (globally referred to as the *decent work agenda*). The *decent work agenda* has historically been the responsibility of the social partners and workers' representatives in particular. According to the Director-General, the common future depended on how the ILO and its Member States could cope with the current social demands of the labour market, all within the concept of the decent work challenge.⁵⁰ Decent work is an integral part of the Agenda for Sustainable Development.

⁵⁰ SOMAVIA, Juan. *Report of the Director-General: Decent Work*. International Labour Office Geneva. Dostupné z: <https://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm>

Figure: Decent Work as part of the Agenda for Sustainable Development⁵¹



Decent work becomes an explicit goal and means to achieve a fair labour market and to ensure sustainable development in the future. Particularly in the implementation of labour standards in less developed countries (although the validity of the *Decent Work for All* agenda is universal), decent work is often cited as probably the most powerful concept and effective tool at the disposal of the international community, and one that it has developed over the years, providing unprecedented policy opportunities that can offer effective, proportionate and, above all, efficient responses to the current globalization trend.⁵²

⁵¹ ILO. Decent work and the 2030 Agenda for sustainable development. [online]. *ilo.org* [cit. 2020-28-08]. Dostupné z: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-lisbon/documents/event/wcms_667247.pdf

⁵² REPORT I (A)/ILC 96-2007. Director - General introduction to the International Labour Conference. *Decent work for sustainable development*. International Labour Office: Geneva, s. 2.

In implementing the Decent Work Agenda, the ILO sets out the basic cognitive elements of the potential activity under consideration - work. Not all work can be identified with decent and dignified work. Nor can the concept of decent work be understood to mean only that a person has a right to work, i.e., any work, but work that enables him or her to live in society and meet ordinary needs.

In fact, the concept of decent work is based on the belief that work should be a source of human dignity, family stability, peace and democracy, and the implementation of the concept of decent work rests on four fundamental pillars:

- striving to create enough jobs and employment opportunities while developing the conditions for business,
- guarantee of labour rights (respect for the rights of the employee)
- increasing social protection and
- promoting social dialogue.⁵³

The decent work project, or decent work as such, must be understood in the modern context as a tool for achieving economic and social growth, including sustainable development. Trade unions can make a major contribution to decent work through a number of provisions in collective agreements.

As in the previous case (reference to the European Social Pillar), the importance of social dialogue and the effective use of participatory rights is again emphasised. A common feature can be seen in the clear support and underlining of the importance of social dialogue, on the other hand without a specific and precise definition of its implementation. Again, therefore, collective bargaining and the rules in the concluded collective agreement can be inferred as a basic tool that can lead to the full exercise of participatory rights.

⁵³ GALVAS, Milan a kol. *Pracovní právo*. Brno: Masarykova univerzita, 2012, s. 63.

4 Employee representation and participatory rights not only at national level

Social partnership is not only an element of the construction of national labour markets, but also has an impact on the transnational guarantee of decent working conditions. A clear example is the setting up of the basic functional framework of the European Economic Market, which is based on a functioning *economic and social* model. The economy should not be focused only on the financial calculus, but it is also necessary to evaluate the social consequences, i.e., affecting, for example, the position of individuals not only in society in general, but also in the performance of dependent work. Other factors should also be taken into account (e.g., the current focus on the *green* economy and the environmental context in relation to the *green deal*, while respecting social impacts, e.g., by focusing on increasing people's skills and increasing the adaptability of labour market requirements⁵⁴).

The guarantee of collective bargaining is based, as mentioned above, on a number of supranational legal sources. The participation of employees, or their representatives, in the shaping of working conditions has a history in modern history, when they are given fundamental importance not only by the aforementioned economic and social model of the functioning of the European economic market, i.e., the European Union, but also by the International Labour Organization.

The level of conducting social dialogue in the form of existing results and existing working conditions and the applicability of collective agreements to non-unionised employees are among the factors that influence the continued enforceability of participatory rights and the actual participation of employee representatives in collective bargaining. Factors that influence membership and consequently the level of results achieved also lie in the personnel level and other aspects of the labour market and the real life of employees. The subjective perception of possible obstacles to collective bargaining is one of the important aspects of

⁵⁴ Tisková zpráva. Employment: Commission outlines measures to maximise job opportunities in the green economy. [online]. *Eur-lex.europa.eu* [cit. 2025-28-05]. Dostupné z: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_14_765/IP_14_765_EN.pdf

social dialogue and the development of collective labour relations *for the future*. The study carried out for the purpose of identifying these barriers shows that the limiting factors are also the operational or procedural conditions of trade union activities (e.g., the degree of perceived effectiveness). In fact, it may be a case of insufficient implementation or inadequate regulation of the use of participatory rights.

4.1 Collective bargaining and the International Labour Organization

From the perspective of the International Labour Organization, the application of participatory rights brings benefits not only for the employees themselves, but also for society as a whole. The importance of social dialogue and collective bargaining (whether seen in the broader or narrower sense) in the above view is illustrated by a number of conventions and recommendations of the International Labour Organization.⁵⁵ Both the Conventions and the Recommendations are considered by the transnational community as instruments for the implementation of social (but in fact also economic) policies aimed at achieving not only decent living standards but also decent work and fair working conditions. The recognition of the right to collective bargaining for employee representatives (in the context of the exercise of the right to organize freely) - in the Czech Republic, for trade unions - has brought positive results. Negotiations between workers' representatives and employers are then fairer and more equitable when not only the voice of capital is listened to, but also social (workers' voice) demands. The guaranteed possibility to bargain collectively provides both parties with the opportunity to achieve what is possible in the context of fair working conditions, as well as a fair working environment and minimizing potential disputes or potential costs and economic losses.⁵⁶ The promotion of collective bargaining and social dialogue, which is to be guaranteed not only within the corporate environment itself, but above all by national authorities and

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national legal systems, is enshrined in practically every one of the conventions mentioned (i.e., the social dialogue results in conventions and recommendations as such in a transnational environment, while they themselves enshrine the promise and task of promoting social dialogue and collective bargaining in common practice within national labour markets, etc.). If the debate is about the application of participatory rights, then the importance of international conventions can be sought in a similar way to the instruments of Community law, setting the direction of a positive environment and guaranteeing minimum social standards and highlighting the importance of social dialogue. The importance of collective bargaining (the application of participatory rights) can then be traced, for example, in the last of the International Labour Organization conventions adopted in 2019, which dealt with violence and sexual harassment (not only) in the workplace. In Article 5, States directly commit themselves to respect, promote and implement the fundamental principles and rights of workers, in particular the right to freedom of association and the effective recognition of the right to collective bargaining, and to promote decent work in order to prevent, eliminate and avoid violence and sexual harassment in the workplace and the world of work. Not only the national legal framework (legislation and legal order), but also social dialogue, collective bargaining and collective agreements are to be used to promote the objectives.⁵⁷

Although neither Conventions nor Recommendations are automatically binding, i.e., their binding nature is linked to ratification by individual Member State, they have universal application, particularly with regard to the societal perception, ethics and the nature of the universality of the reach of the ILO's activities.

In the Czech legal environment, the ILO conventions are perceived as the basic standard for shaping the conditions for the performance of dependent work. Nevertheless, the Czech Republic is not a signatory to the whole complex of conventions. The list of conventions

⁵⁷ Úmluva MOP č. 190 o odstranění násilí a obtěžování ve světě práce [online]. *ilo.org* [cit. 2025-27-05]. Dostupné z: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3999810:NO

ratified by the Czech Republic amounts to less than 50%⁵⁸ of the conventions adopted at the ILO⁵⁹. In terms of content, however, the national conditions are generally consistent with the objectives contained in other conventions, while always respecting the importance of collective bargaining and social partnership.

4.2 Participatory rights at European level

The anchoring of social dialogue and collective bargaining is one of the central attributes of the functioning of the economic market and, as already mentioned, at European level. Implementing and supporting the implementation of the social partners' participatory activities at the European level, as well as the parameters of the European legislative process. The harmonization of national labour market regulations and the guarantee of minimum standards by means of primarily secondary EU law (for the Czech legal environment, see e.g., the list of implemented European sources in note 1 of the Labour Code⁶⁰) is based on the negotiations of social partners at both European and national level. The minimum standards contained in the guidelines are negotiated in a transnational social dialogue. The national social partners then contribute to the de facto enshrinement of the European legislator's objectives and ideas in national laws. Subsequently, as in other cases (where there is no implementation), space is left for the social partners' own action at sectoral and company level, where, in particular through collective bargaining, deviations from binding standards can be made and more favourable working conditions guaranteed in collective agreements.

Social dialogue and collective bargaining as fundamental tools for achieving social reconciliation and the full use of the economic and social model of the European economic market are constantly resonating in the activities of the EU institutions themselves, as well as in the results of their work and the objectives and agendas they set. A certain stagnation of

⁵⁸ Úmluvy Mezinárodní organizace práce ratifikované Českou republikou [online]. *mpsv.cz* [cit. 2025-27-05]. Dostupné z: <https://www.mpsv.cz/umluvvy-mop>

⁵⁹ Seznam Úmluv Mezinárodní organizace práce [online]. *ilo.org* [cit. 2025-27-05]. Dostupné z: https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:1785413380302:::P12000_INSTRUMENT_SORT:4

⁶⁰ ÚZ 1466 Zákoník práce. Sagit. ISBN 9788074885051.

the social aspect of this model led to the restart of social dialogue processes in 2016 under the New Start for Social Dialogue agenda⁶¹. The usefulness of social dialogue and collective bargaining as tools for ensuring economic stability (as well as the stability of the market itself) is clear from the evidence that has occurred from the negative effects of the crises. The most resilient markets were those of the Member States where the market economy responded not only to the demands of capital, but also to the demands of workers' representatives. A functioning social dialogue has contributed to maintaining market functionality, job stability and adapting to the current demands of change through short-term agreements between the social partners.⁶²

Building on the New Start for Social Dialogue agenda, the European Social Dialogue builds on another focus and, in effect, a framework instrument, the European Pillar of Social Rights. The promotion of collective bargaining and social dialogue are among the core agendas and are enshrined directly in the text of the document. The implementation and promotion of participatory rights falls within the general orientation of the scope of action of Member States, particularly in the context of achieving decent and serviceable working conditions.⁶³

4.2.1 Agenda of acceptable wages and support for collective bargaining

The promotion of collective bargaining and social dialogue, which applies to all workers, appears in a number of directives aimed at ensuring fair and decent working conditions for workers across modern Europe. In practically all preambles or introductions to the texts of the directives, there is a requirement for Member States to promote social dialogue with the social partners in order to implement the intended agendas (this is the case, for example, in

⁶¹ New start for social dialogue – one year on. [online]. *ec.europa.eu* [cit. 2025-27-05]. Dostupné z: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_16_823/MEMO_16_823_EN.pdf

⁶² A new start for social dialogue – one year after. Luxembourg: Publication Office of the European Union. 2016. s. 4.

⁶³ K významu Evropského pilíře sociálních práv viz text v rámci kapitoly Spravedlivé pracovní podmínky

the implementation of the Directive on reconciliation of family and working life⁶⁴ or the proposal for a Directive on improving working conditions at work through platforms⁶⁵ etc.). The already announced directive on adequate wages and support for collective bargaining, which the Czech Republic, like other countries, should implement within two years (by 2025), seems to be crucial in terms of the application of participatory rights. The text of the Directive has undergone turbulent changes, with significant progress being made as a result of an agreement between the EU Council and the European Parliament negotiators.⁶⁶ The significance of the agreement lies above all in the confirmation of the specificity of social dialogue and collective bargaining, i.e., the direct conclusion of collective agreements, in the determination of fair working conditions and wages, i.e., the achievement of a decent labour market, working and living conditions for employees within the European economic market. From the point of view of the national workers' representatives, the text of the agreement has a major impact in enforcing state guarantees for the implementation of collective bargaining and removing situations where obstacles to collective bargaining appear, which practically completely paralyze the whole process and make it impossible to achieve effective results (see the relevant chapter, in particular the issue of trade union pluralism in collective bargaining).

With regard to the position of the social partners, the promotion of collective bargaining and the achievement of fair working conditions, including the guarantee of a fair wage, the above-mentioned agreement itself provides a basic starting point,

⁶⁴ Čl. 50 Směrnice Evropského Parlamentu a Rady 2019/1158/EU o rovnováze mezi pracovním a soukromým životem rodičů a pečujících osob. [online]. *Eur-lex.europa.eu* [cit. 2025-28-05]. Dostupné z: <https://eur-lex.europa.eu/legal-content/CS/TXT/PDF/?uri=CELEX:32019L1158>

⁶⁵ Čl. 52 Směrnice Evropského Parlamentu a Rady o zlepšení pracovních podmínek při práci prostřednictvím platform [online]. *Eur-lex.europa.eu* [cit. 2025-28-05]. Dostupné z: [file:///C:/Users/104220/Downloads/COM_2021_762_1_EN_ACT%20\(4\).pdf](file:///C:/Users/104220/Downloads/COM_2021_762_1_EN_ACT%20(4).pdf)

⁶⁶ European Commission Press release. Commission welcomes political agreement on adequate minimum wages for workers in the EU. [online]. *ec.europa.eu* [cit. 2025-28-05]. Dostupné z: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_22_3441/IP_22_3441_EN.pdf

- namely better monitoring and enforcement of minimum wage protection (national legislation will have to include institutional arrangements for collecting data on the prevalence of fair wages; access to employees' participatory rights, including the right to strike),
- a framework for setting the updating of legal minimum wages (where Member States will not leave the level of the minimum wage to social partners' agreements, a proper way of indexing minimum wages must be ensured and implemented; however, substantial support is still given to social dialogue),
- promoting and facilitating collective bargaining on wages (in contrast to the original draft framework, the Directive requires that where collective bargaining on wage conditions is not extended to more than 80% of employees in Member States (previously 70%), Member States must draw up an action plan to promote collective bargaining).

The Fair Wages Directive and the promotion of collective bargaining, as well as other sources in general, as can be seen from the text presented so far, still have a common feature. Although it always emphasizes the importance of participatory rights, it does not give a concrete answer to the basic question raised in the study, namely how and where to seek a guarantee of the employer's fulfilment of the participatory rights of employee representatives. The directive points to the need to create an action framework, but even this is not in concrete form (not even at the national level from the MLSA).

Social dialogue at European level plays an essential role in guaranteeing fair socio-economic policies. Given the fact that European social dialogue favours transnational bargaining, a framework for sectoral social dialogue has historically been established. Sectoral social dialogue can more appropriately and accurately reflect the changing labour market requirements in a given sector and can thus create an optimized framework for collective bargaining, taking into account sectoral specificities. As a result of the Commission's decision,

sectoral social dialogue at European level has been formally established. Following Commission Decision 98/500/EC⁶⁷, social dialogue committees are being set up.

4.2.2 Participatory rights and self-employed workers

In the introductory part of the text and in places where attention was paid to the addressees of participatory rights, the agenda of platform workers and the special nature of self-employed persons without employees were mentioned. Collective bargaining and social dialogue are subject to certain debilitating elements at virtually every conceivable level. These include the current trends of increasing the proportion of activities carried out by self-employed workers and the shift away from stable employment relationships (a situation addressed, for example, by the aforementioned proposal for a directive to protect the rights of platform workers). In relation to the agendas pursued, from the point of view of the national legislator, modern practices can be highlighted in the perception of the very categories of employees, or workers and natural persons, to whom the protection arising from the Directive is intended. Inspiration can therefore be found primarily in an awareness of the changing demands of the economic market and the nature and form of those carrying out economic activities. Generally speaking, collective bargaining and collective agreements are beyond the reach of the self-employed as they would conflict with Community law⁶⁸. However, when regulating social and working conditions (i.e. social rights in general), the European legislator was aware of the peculiar position of some self-employed persons, who are close to employees in their form (in general and with regard to national legal systems, which variously define the so-called *self-employed person* and include them under the concept of employee, or completely outside the framework of labour law). Following the case law of the Court of Justice of the European Union, which in its case law has taken into account the objectives of the European Union's social policy, it has been held that certain restrictions on

⁶⁷ Rozhodnutí Komise ze dne 20. května 1998 o zřízení výboru pro kolektivní vyjednávání k podpoře dialogu mezi sociálními partnery na evropské úrovni. Dostupné z: <https://eur-lex.europa.eu/legal-content/CS/TXT/PDF/?uri=CELEX:01998D0500-20130701&qid=1592253281898&from=CS>

⁶⁸ Čl. 101 Smlouvy o fungování o fungování EU

competition contained in collective agreements between representatives of employees and employers are necessary to improve working conditions. They are thus not contrary to Community competition law. In seeking to define the concept of an employee, the Court has drawn on a broader definition and has not focused solely on grammatical interpretation. Under the law-reflected approved scope of collective agreements he also included the so-called fake self-employed⁶⁹ (in the Czech practice we can consider here e.g., illegal employment in the form of schwarz system and economically dependent self-employed persons), who are in fact in a comparable situation as employees.⁷⁰ According to the CJEU's decision, a false self-employed person is a person who

- act under the direction of their employer (the employer), in particular as regards the choice of working hours and the location and content of work activities,
- bears the commercial risks of the employer (contracting authority), i.e., negative economic results are transferred, e.g., in connection with a reduction in remuneration,
- for the duration of the contractual relationship, is integrated into the employer's (contracting authority's) enterprise.

Collective bargaining and social dialogue can therefore be inferred, within a certain framework, also for the self-employed, regardless of their administrative or legal definition and designation. Of course, the above features must be met and it is not possible to apply the protection to the whole area of an otherwise free market. The essence of the impact of the Directive from the point of view of the self-employed without employees and participatory rights is the explicit assurance of the compliance of the concluded agreement with the rules of equal competition and the fact that the above-mentioned groups of employees can also benefit from the protection. On the other hand, however, it must be stated that the scope

⁶⁹ Např. Rozsudek SDEU ze dne 21. září 1999, Albany International BV v. Stichting Bedrijfspensioenfonds Textielindustrie, C-67/96, EU:C:1999:430, bod 60.

⁷⁰ Rozsudek SDEU ze dne 4. prosince 2014, FNV Kunsten Informatie en Media v. Staat der Nederlanden, C-413/13, EU:C:2014:2411, body 30–31.

and enforceability of participatory rights, in particular the right to collective bargaining and the resolution of collective disputes through strikes or lockouts, is very limited or impossible.⁷¹

Collective bargaining may subsequently cover similar areas as for traditional employees. The working conditions of self-employed workers without employees include matters such as remuneration, working hours and working patterns, holidays, leave, the physical premises where the work activity takes place, health and safety, insurance and social security, and the conditions under which a self-employed worker without employees is entitled to stop providing his or her services, for example in response to a breach of an agreement relating to working conditions. However, agreements under which self-employed persons without employees collectively decide not to provide services to specific counterparties, for example because the counterparty is unwilling to enter into an agreement on working conditions, require individual assessment. Such agreements restrict the supply of labour and may therefore raise competition concerns. If it can be shown that such a coordinated refusal to supply labour is necessary and appropriate for the negotiation or conclusion of a collective agreement, it will be treated for the purposes of these guidelines in the same way as the collective agreement to which it is linked (or would be linked if negotiations were unsuccessful).⁷²

The European legislator's approach thus shows a desire to protect those in an employee status, regardless of their formal designation. In particular, persons with an economic dependence on the contracting authority should be able to freely associate to protect their social and economic rights, and the right to collective bargaining should be guaranteed.

⁷¹ HORECKÝ, Jan. *Sondy revue: pro sebevědomé zaměstnance a firemní kulturu*. Praha: Sondy, 2013. s. 29

⁷² Odst. 16 Návrhu pokynů k uplatňování právních předpisů v EU v oblasti hospodářské soutěže. [online]. *ec.europa.eu* [cit. 2025-28-05]. Dostupné z: https://ec.europa.eu/competition-policy/document/download/9c836e4a-29b1-4659-86a4-6946e368d8cb_en

4.2.3 Participatory rights and platform workers (working in the digital age)

Social dialogue is currently reflecting changes in the labour market, and in answering the question of participants in social dialogue, the question arises as to which group of people have participatory rights and who can, for example, exercise the right to collective bargaining. The previous section briefly discussed the relationship to self-employed persons without employees. Specifically, however, the category of so-called platform employees must also be added.

Despite the universal scope of collective agreements, certain groups of persons who would benefit from the protection of collective agreements are excluded. These are mainly so-called platform workers. The category of platform workers is not precisely defined, yet it is crucial for the realization of the idea of a socially just society.

The platform workers' agenda has recently been the focus of intense social dialogue at the transnational level. An example is the European Economic and Social Committee's opinion on fair working conditions in the platform economy.⁷³ In the context of the exercise of participatory rights and the possibility to participate in collective bargaining, the issue of platform employees must first of all be addressed not as self-employed persons but as genuine employees. Treating platform economy activities as dependent work covered by labour law standards would ensure that the protective provisions of labour law apply to all persons in the platform economy. Firstly, the right to fair working conditions guaranteed by collective bargaining and collective agreements could be exercised.

According to studies by Eurofound⁷⁴, work carried out through platforms is intended to be a form of employment relationship that uses an online platform to enable an organisation or

⁷³ Opinion SOC/645 - European Economic and Social Committee - Fair work in the platform economy EESC-2020-01859-AC. Dostupné z: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=PI_EESC%3AEESC-2020-01859-AC&qid=1624825477187 (dále jako „stanovisko EHSV“)

⁷⁴ EUROFOUND. Employment and working conditions of selected types of platform work, Publications Office of the European Union, Luxembourg. (2018), s. 9.

individuals to access other organisations or individuals to solve problems or provide services in return for payment. The most important aspects of working through platforms are:

- Paid work is organised through an online platform;
- takes place with the participation of three parties: the online platform, the client and the worker;
- the goal is to perform specific tasks or solve specific problems;
- the work is outsourced or contracted out;
- activities are divided into tasks;
- services are provided on request.

Capturing platform work and bringing it under the labour law regime will ensure better working conditions for workers. However, it is currently very complicated to clearly determine in which cases platform employees are involved and in which cases only ordinary self-employed persons are involved. The complexity of platform activities, the lack of terminological coverage and the virtual absence of statistical data (more accurate) make it difficult to assess its growth and thus the potential and importance of social dialogue coverage. According to the OECD ⁷⁵, most studies show that work through platforms represents something between 0.5% and 3% of the total workforce. In a group of 16 European countries, only 1.4% of the population aged 16-74 work through a platform as their main occupation (ranging from 0.6% in Finland to 2.7% in the Netherlands)⁷⁶. Around 11% of adults have ever worked through the platform⁷⁷.

⁷⁵ OECD. *Employment Outlook 2019: The Future of Work*. OECD Publishing, Paris, s. 55.

⁷⁶ KILHOFFER, Zachary et. al. *Study to gather evidence on the working conditions of platform workers*, Luxembourg: Publications Office of the European Union, 2019. s. 45.

⁷⁷ Tamtéž, s. 47.

The key point of the whole issue is the identification of platform workers as employees. If the platforms are generally presented as a service supply relationship, neither European nor national regulations allow for the direct application of labour law protection. Thus, workers are considered "self-employed" rather than "employees", which excludes the application of legislation governing the employment relationship (including health and safety), social protection and taxation. While the European Economic and Social Committee (in the following as 'the EESC') believes that there are workers who are genuinely self-employed, it considers that the EU and the Member States need to examine the application of the principle that a platform worker is deemed to be an employee in all respects unless proven otherwise. This would ensure that the interests of those employees whose main income comes from the platforms are protected. However, the EESC believes that workers who are genuinely self-employed should be able to retain this status if they expressly wish to do so. The EESC "believes that, while respecting national competences, a legal framework for workers should be established that precisely defines the relevant employment rules: decent wages and the right to participate in collective bargaining, protection against arbitrary behaviour, the right not to be connected, that digital working hours meet the parameters of dignity, etc."⁷⁸

Ensuring collective bargaining and stronger status for platform workers will increase the union movement's potential to grow its membership base while achieving the fundamental goal of establishing fair working conditions, including pay. The social partners can build on the identified risks inherent in the specific nature of the work. A study by EU-OSHA⁷⁹ shows that working through platforms poses increased physical and social risks, in particular job insecurity and exposure to various risks (road accidents, risks related to chemicals, etc.) and risks associated exclusively with online activity (cyberbullying, posture disorders, visual fatigue and stress caused by a wide range of factors). Risks are also evident in the area of fulfilling the

⁷⁸ EHSV. [Úřední věstník. C 75, 10.3.2017, s. 33](#), odstavec 4.4.2.

⁷⁹ EU-OSHA (2017). Protecting Workers in the Online Platform Economy. *An overview of regulatory and policy developments in the EU*.

protective function of labour law in the context of ensuring safe working conditions. There are also risks of denial of fundamental rights, the right to organize and bargain collectively (secured through independent representatives), insecurity of commitment, low or underpaid wages, increasing intensity of work demands, extreme fragmentation of work on a global scale, and lack of worker participation in social security systems.⁸⁰

The importance for social dialogue and collective bargaining lies in the case law of the Court of Justice of the European Union, which shows a certain degree of acceptance of the existence of collective agreements in connection with the coverage of the working conditions of platform workers. One makes an important exception in the application of European competition law. It follows from the decision (C-67/96, Albany) that if the principle of competition conflicts with social policy, collective agreements of employees do not fall within the scope of competition law. In a further judgment (C-413/13, FNV Kunsten Informatie), the Court confirmed the compatibility of European competition law with collective agreements, holding that self-employed persons were in fact "quasi-self-employed". This is of particular relevance to working through platforms as it allows the quasi-self-employed to be treated as employees⁸¹.

Social dialogue and collective bargaining in platform activities is relatively limited. Complications arise primarily from the assessment of workers as self-employed rather than employees. Bargaining exists in some countries (transport and distribution sectors). Actions taken by platforms focus on addressing criticism of their practices, joining employers' organisations, self-regulation and signing up to codes of conduct, including stopping activities. Actions taken by workers are diverse, include protests and strikes, and are not only found in skilled on-site work platforms, but also in other types of platforms, as in the project launched

⁸⁰ Stanovisko EHSV, *op. cit.* bod 3.2.

⁸¹ KILHOFFER, *op.cit.*, s. 85.

in 2016 by IG Metall, which led to the Frankfurt Declaration in cooperation with Swedish and Austrian unions (Fair Crowd Work, 2016).⁸²

To address the issue of platform workers and to ensure decent work and fair working conditions for them, social dialogue is a very crucial protective institution. Collective bargaining opportunities should also be encouraged and developed in this area. Social dialogue must be strengthened and coherent at all levels. Social dialogue and collective bargaining must play a key role at all relevant levels, with full respect for the autonomy of the social partners, to ensure high quality work in the platform economy.⁸³

4.2.4 Participatory rights and a new model for social dialogue

Social dialogue and collective bargaining are seen as essential ways to achieve a happy society. At the level of the European Union, with the new Presidency, collective bargaining is becoming an issue of concern following the implementation of the New Start initiative for social dialogue at European level and in view of the importance of collective bargaining in guaranteeing working conditions. Social dialogue at European level is intended to help harmonize working conditions across the European labour market. First of all, it should ensure a decent wage (including the minimum wage). The current President of the European Commission sees collective bargaining as an essential tool for promoting decent pay and decent working conditions, following the introduction of a minimum wage threshold, as a priority. Establishing appropriate minimum wages through social dialogue is the ideal way to set the level in a way that takes account of national specificities and at a level that is consistent with the principles of a fair, just and decent wage.⁸⁴

A typical example of this emphasis is the aforementioned directive on fair pay and the promotion of collective bargaining. Well-functioning collective bargaining on wage setting is

⁸² Bod 5.1.2 Stanoviska EHSV

⁸³ Bod 1.11 Stanovisko EHSV

⁸⁴ Srov. Opening Statement Ursula von der Leyen European Parliament. [online]. *Eur-lex.europa.eu* [cit. 2025-29-04]. Dostupné z: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_4230

an important means of ensuring that workers are protected by an adequate minimum wage. In Member States with a legal minimum wage, collective bargaining supports the overall development of wages and therefore contributes to improving the adequacy of minimum wages. In Member States where protection in the form of a minimum wage is provided exclusively through collective bargaining, its level, as well as the proportion of workers protected by it, is directly determined by the nature of the functioning of the collective bargaining system and the extent to which it is widespread in the country. Strong and well-functioning collective bargaining and the widespread use of sectoral or cross-sectoral collective agreements benefit the culture of the world of work. In the context of the declining prevalence of collective bargaining, it is essential that Member States promote it to facilitate workers' access to minimum wage protection through collective agreements. Member States with a high degree of collective bargaining tend to have a low proportion of low-wage workers and a high minimum wage. In Member States with a small proportion of low-wage earners, the rate of collective bargaining coverage exceeds 70%. Similarly, in most Member States where the minimum wage is high relative to the median wage, the rate of collective bargaining penetration is above 70%. All Member States should be encouraged to promote collective bargaining, but where it is not widespread to that extent, they should, in consultation and/or agreement with the social partners, establish a framework for mediation procedures and institutional arrangements that create the conditions for collective bargaining, or strengthen such a framework where it already exists. This framework should be established by law or tripartite agreement.

The emphasis placed on the importance of participatory rights stems from Article 4 of the Directive, which explicitly sets out the general obligations of Member States to promote the exercise of participatory rights. In order to achieve a greater extension of collective bargaining, Member States shall, after consulting the social partners, take at least the following measures:

- (a) support the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting at sectoral or cross-sectoral level;
- (b) promote constructive, meaningful and informed wage negotiations between the social partners.

In addition, Member States in which the prevalence of collective bargaining does not reach at least 80% of workers shall establish a framework to create the conditions for collective bargaining, either by law in consultation with or by agreement with the social partners, and shall draw up an action plan to promote collective bargaining. The Action Plan shall be published and communicated to the European Commission.

5 Collective agreement and its importance for employee participation in collective bargaining

Discussions on the possibilities of ensuring participatory rights and the possibility of employee participation in social dialogue or collective bargaining have generally been the subject of the previous discussion from a parametric point of view. Reflecting on the overall content of the submitted text, a clear reflection emerges, which leads to an assessment of the question as still open. Although a number of international documents, as well as the Czech Labour Code, explicitly introduce participatory rights, there is no complete outline of possible procedures and their unambiguous and closed legal guarantees on how to actually implement participatory rights. Although it is possible to draw inspiration from the organisational model of the European social dialogue, the promotion of collective bargaining and the task of creating an action framework for the Member States (the directive on reasonable wages and the promotion of collective bargaining), the literal wording of the enshrinement of the right to information and consultation, or the regulation of collective bargaining in the Labour Code or the Act on Collective Bargaining, the contours of the possibility of participation of employee representatives in collective bargaining are not precisely defined.

From one point of view, this is a weakness, but from another, it is a challenge and an opportunity for employee representatives to create the conditions for exercising participatory rights and participating in collective bargaining in their own image through interaction and social dialogue with the employer.

The terms and conditions of mutual cooperation between employer and trade union in the exercise of participatory rights can, and should, make the content of collective agreements, as they subsequently become binding and clear rules.

The present investigation shows that the terms of cooperation and collaboration between the parties form an integral part of collective agreements, regardless of the sectors they cover or their level.

For example, in Collective Agreements of a higher level, the specification of the mutual cooperation of the parties in the context of the right to information and consultation can be found in approximately 50 percent of cases. Collective agreements of a higher level focus primarily on the specification of the scope and content of the information provided, the specification of the scope and content of the materials that employers adopt in cooperation with the trade union, the material security of the trade union's activities, etc.⁸⁵ The same is true in corporate and public sector contracts.

The collective agreement is the basic instrument for binding regulation of labour relations and working conditions at the employer.

Collective agreements represent the result of formalized social dialogue - collective bargaining. Fair working conditions and fair pay are becoming a frequent and central objective of collective bargaining. Collective agreements may contain obligations of the parties and rights of employees that give them preferential working conditions (e.g., increase in leave; sick leave).

⁸⁵ TREXIMA, *Zpráva o průběhu kolektivního vyjednávání za rok 2022*, Praha. ČMKOS. 2022. s. 9.

Ensuring an effective right to information and consultation can, from the trade union's point of view, be enforceably contained in the text of the collective agreement (of course, other agreements regulating the course of social dialogue between the parties are not excluded).

Taking into account the specifics of the employer's economic activity, the structure of the workforce or general working conditions and the labour market, it may be recommended that collective agreements contain provisions concerning, for example.

- the scope of the information to be provided and the specificity of the data (e.g., in relation to the equality or fair treatment findings, supporting documents relating to the allocation of funds to individual departments or posts)
- the dates by which the employer must provide information of the quality described above
- the dates by which periodic discussions are to take place and the time limits for exchanging opinions, etc., with further specification being possible, e.g., from a negotiated and agreed table to be annexed to the collective agreement, so that it is clear to the employer what information and quality the employee representative is interested in and how to go about processing it
- the distribution of participation of employee representatives in the employer's bodies (e.g., by ratio)
- the release of employee representatives to carry out their activities, both generally (e.g., for internal communication purposes) and according to legal parameters (e.g., to discuss an accident or the amount of compensation for property damage)
- extent of material support (taking into account digitalization)
- the extent to which employee representatives can participate in soft skills training and competence development (including for the digital age)
- the right to make suggestions and the employer's obligation to respond to them within certain time limits and scope

The list of possible arrangements in a collective agreement cannot be precisely defined in advance. The specifics must always be taken into account.

6 Summary

The present study addresses the issue of the employee's position in the modern world of work, participatory rights and the importance of collective bargaining in maintaining a fair and decent labour market or working conditions. In general terms, the form of participatory rights of employees (employee representatives) was presented and the current legal regulation and anchoring of parameters contributing to the effective exercise of participatory rights was outlined.

A fundamental finding emerges from the entire text of the study and its individual parts, whether it is a national or transnational reflection - the participation of employee representatives in collective bargaining is guaranteed in transnational documents as well as in national legislation. This is an undeniable and inalienable social right. At the same time, however, it must be admitted that the relatively clear and strict statement about the legal guarantee exhausted the findings concerning the precise and unambiguous enshrinement of participatory rights.

Although the legislation sometimes goes into more detail and specification, it is by no means a closed question. There is always a large margin of autonomy for the parties to regulate their own conditions for the conduct of social dialogue.

The most appropriate instrument is primarily a collective agreement. Although another form of agreement can be considered, which will be the result of social dialogue and will be mostly a gentleman's agreement (related to the personal framework of social dialogue).

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