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Risks of the impact of economic crisis on social reconciliation and possible solutions within collective bargaining.

ABSTRACT

Labour market is evolving. Labour market and social reconciliation are affected by economic changes due to a number of factors, such as the consequences of the COVID-19 pandemic, limited domestic movement, legitimization of foreign workforce, energy crisis or legislative changes. Risks related to change are a challenge for social dialogue. This also changes the conditions and limits of social dialogue. Risks associated with the platform economy, use of foreign labour or remuneration adjustment can be minimized by using participation rights, social dialogue and an active approach to collective bargaining as the basic means to maintain social reconciliation.

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Social reconciliation; social dialogue; social partnership; working conditions; decent work; participation rights; collective bargaining; collective agreement; employee representative; trade union organization; digitalization; technological change; employee competences; employee representatives' competences; digital forms of negotiations; electronic communication; basic documents; conditions for competences of trade union; plurality of trade unions, Council of Economic and Social Agreement; European Pillar of Social Rights

Legal framework and important legal norms:

Resolution of the Presidium of the Czech National Council No 2/1993 Sb., on the declaration of the Charter of Fundamental Rights and Basic Freedoms as part of the Constitutional Order of the Czech Republic (hereinafter referred to as the 'Charter')

Act No 89/2012 Sb., Civil Code (hereinafter referred to as the 'Civil Code')

Act No 262/2006 Sb., Labour Code

Act No 2/1991 Sb., on collective bargaining

Act No 435/2004 Sb., on employment

Act No 65/2022 Sb., on certain measures relating to the armed conflict within the territory of Ukraine caused by an invasion of the army of the Russian Federation (Lex Ukraine I)

Act No 66/2022 Sb., on measures in the area of employment and social security relating to the armed conflict within the territory of Ukraine caused by an invasion of the army of the Russian Federation (Lex Ukraine II)

Government Regulation No 567/2006 Sb., 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 an extra payment for work in a difficult working environment (hereinafter referred to as the 'Minimum Wage Regulation')

Convention of the International Labour Organization No 87 on Freedom of Association and Protection of the Right to Organise

Convention of the International Labour Organization No 98 on the Right to Organise and Collective Bargaining

Convention of the International Labour Organization No 144 on Tripartite Consultation

Convention of the International Labour Organization No 154 on Collective Bargaining

European Social Charter

European Pillar of Social Rights

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

Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work

Treaty on the Functioning of the European Union

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Table of contents

1 Introduction, focus and general remarks

Social reconciliation is one of the basic attributes of a well-functioning economy and a satisfied society. The conditions for shaping social reconciliation are not immutable. There are legal, economic, geographical, social and other influences that can affect the level of social dialogue and social reconciliation in any direction. The content of the study, which does not seek to be an exhaustive economic or sociological analysis, but rather a practical insight into the realistically functioning employment relationships on the labour market, aims for comprehensible and practical impacts of possible factors in real practice.

The turbulent social and technical development entails a variety of new possibilities, conditions and factors that affect the shape of the world of work. Decent working conditions, decent wages, safe working environment and work-life balance are increasingly becoming integral part of the labour market. Modern trends and changes open up new challenges and opportunities not only for the main entities in the labour market (employers and employees), but also for employees representatives, especially trade unions. The increasingly used digitalization of work in particular, but also the aspect of artificial intelligence or algorithmic work management rising to prominence involve the necessary changes in working conditions and expectations (requirements related to the performance of the employee's work) of employers, which employees must now meet and which must be effective for the sustainability of their employment contract or for entering into an employment relationship. This also applies to collective employment relationships. It is a factor that affects the level of social dialogue and thus the achievement of social reconciliation. Finally, a decisive element is the possibility of digital online negotiations of trade unions not only internally, but also externally, i.e. within the framework of social partnership in negotiations with representatives of employers, ministries and other partners. It concerns company, sectoral as well as society-wide social reconciliation. Regardless of the actual form of work performed.

Trade unions and other employee representatives primarily interested in protecting the economic and social interests of employees (in accordance with Article 27 of the Charter of

Fundamental Rights and Freedoms) and in fact in building social reconciliation in the conditions of socio-economic optimum are often exposed to new challenges and needs in their routine conservative approaches, as they must adapt to current trends and possibly to the requirements of their members (current and potential) and move their competences further towards modern trends. The effect of digitalization and a greater degree of virtuality of the world and social relations results in an increase in work activities and ways of working, when employees are no longer physically grouped in one workplace, but they often work from various places and using online/remote access. Remote work or flexible working hours or the use of new technologies become a common part of working life.

Changing forms and ways of working bring changes in communication between employers and employees and between employees themselves and, finally, employers, employees and employee representatives. Formal changes in communicating and in solving the daily agenda must necessarily be accepted, including by the trade union. A wide range of participation rights of employee representatives can now be exercised not only in person, at the workplace and in direct physical interaction between employer and employee representatives or between employees and employee representatives. A number of modern remote tools can be used, such as emails, chat platforms or programs and software allowing remote communication and remote and online work.

High-quality employee representation requires sufficient conviction about the need to promote better working conditions as well as acquired methods of communication in any form necessary. Trade unions must quickly and flexibly respond to trends in order to think about stopping the decline in trade union density and the importance of employee representation. It is also necessary that trade union representatives, officials and active members who communicate with the membership base and employees deepen their competences. The ability to work in a digital environment affects the outputs and effectiveness of social dialogue and collective bargaining. Not only the communication with the employer, but also with employees who need an explanation of a number of things in collective bargaining and social dialogue (e.g. at *Zoom* meetings) or to obtain their view (e.g. through online voting/surveys)

so that employee representatives have the necessary knowledge of specific employee requirements in collective bargaining and are able to transfer, interpret and explain them to the employer to enforce them.

Collective bargaining takes place in a combined form, mixing physical negotiations and written exchanges of views and amendments. The basic prerequisite for successful negotiations are the competences of the social partners related to working with documents. For example, it is necessary to be able to use comments and revisions in a document or to remotely connect to a shared asset. Sending an annotated draft reflecting the comments of the social partner, but in a non-review mode and without tracking changes or markup, is a fundamental disruption of cooperation in social dialogue and can even freeze it.

The study is based on the basic assignment and direction of considerations of the impact of different factors associated with the current development and consequences of specific situations related to the impact of the COVID-19 pandemic, the compartmentalization of economic relations affecting the group of potential affected persons (platforms; solo self-employed persons; foreigners with temporary protection), even under the changing forms of work and finally digitalization, etc., on the possibilities of social dialogue and taking into account the competences of social partners or trade union members and employees or forms of mutual interaction affected by digitalization and modern technologies, all in the search for ways to ensure and achieve social reconciliation.

It is important to admit the influence of new trends. Digitalization and artificial intelligence are increasingly intertwined with the world of work. But the essential place of employee representatives in guaranteeing decent working conditions does not disappear. Participation of employee representatives not only in collective bargaining, but also in the wider exercise of participation rights is still a permanent task of the trade union movement.[1]

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

The study aims to identify possible solutions associated with various factors affecting the level of social dialogue and social reconciliation achieved at present, as a result of the lingering turbulent changes. Other goals, in the context of the primary issue of social reconciliation, include the possibility of involving employees or their representatives in solving issues within collective bargaining. The most common way of involving employees is to forward their suggestions to trade union representatives; employees can also participate in the meetings of trade union representatives or express their opinion through surveys.

Modern trends in the labour market and the focus of the study determine the expected outputs and the procedures and steps to achieve the objectives. The study does not aim to create an exhaustive summary material containing a range of quantitative and statistical evaluations and results, it aims to describe the legal possibilities of the announced method of communication and the application of participation rights, including in the internal dimension of social dialogue. Representing the interests of employees is a crucial issue of an effective labour market. Therefore, the study includes a broader description of the basic parameters of participation rights (definition and structure; conditions for social dialogue, collective bargaining and concluding a collective agreement) and where it can be expected and considered important, comments and proposals *de lege ferenda* to meet the desired requirement of effective negotiations in the new and modern, contactless and digital era.

The submitted text deals with the issues of the status and role of social partners, internal organizational structure and the expected forms of cooperation, collective bargaining and conclusion of collective agreements. The author's ambition was not to submit an economic study presenting statistical and economic data (leaving space for other analyses within the project), but to point to the importance of collective bargaining, social dialogue and social partnership as a basic tool for achieving fair work, even in the post-Covid and digital world, remote work and gradual abandonment of physically group-comprehensive form of work activity.

The study regards social dialogue and collective bargaining as a legal guarantee of access of employee representatives to standardization of working conditions and representation of employees' interests. Trade unions play an important role in ensuring decent working conditions. They have to cope with upcoming trends to be efficient in performing their tasks.[2]

The status of employees changes over time; so does the perception of the nature of contractual relationships for dependent work (and the issue of the extent to which it is still a typical employee should also be addressed; see discussions directed towards platform workers). The perception of the status of employee representatives, the importance of social dialogue and the functionality of collective bargaining are also developing in connection with the understanding of the subjects to labour law. On the one hand, the degree of individualization of social relations and the extent of autonomy of will aim at individualities (the employee who takes care of his affairs himself and best), on the other hand, they open up a large space for the exercise of participation rights and the activities of employee representatives. The following text pays attention to the growing perceived importance of collective bargaining as a basic tool for standardizing the working conditions of employees, as well as to the development in the perception of the definition of an employee and the extension of collective bargaining opportunities to some self-employed persons in connection with the change in the nature of activity and, above all, the introduction of new, modern trends. All this in connection with considering the possibilities of effective implementation of participation 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 requirements. But there may be practical problems and challenges when promoting social dialogue and collective bargaining as a central tool for harmonious achievement of fair wages and decent working conditions and these must be met while maximizing the potential of collective bargaining. This is the case, for example, with the

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

solution of defining the scope of collective agreements (the group of persons to whom they apply and whose working conditions they regulate) or obstacles to effective collective bargaining following the right not to address the plurality of trade unions, etc., changing forms of communication and an extended range of potential recipients.

Reflecting the assignment, the presented study deals with the evaluation of the above-mentioned aspects and offers a brief description of the aforementioned situations and outlines conceivable solutions.

In any case, it can be stated that the reflections on the effects of modern trends, risk factors resulting from contemporary changes, maintaining the level of social reconciliation and partnership or ways of not only internal communication and the possibility of effective exercise of participation rights and the reflections on the role of social partners and their position in collective bargaining and ensuring fair work are and will be topical and deserve attention from the legislator.[3]

However, the basic reason why natural persons accept the status of employee is simple – it is the effort to obtain financial means to cover the costs of living. The labour market is constantly evolving. The level of demand and supply of labour gradually change in sine waves over time. Labour demand is predominant sometimes (e.g. in connection with the post-COVID period in the tertiary sector of food services, when there are shortages of employees), sometimes labour supply becomes predominant. Employment or employability rate of people of working age varies in individual stages. The form of the labour market is decisive for the form of working conditions. The labour market is a market like any other. The importance of the labour market lies in a different and special commodity (although it must be admitted that, for example, the International Labour Organization has long insisted that labour is not a

[3] Text studie koncepčně systematicky vychází a rozšiřuje již dříve zpracovávanou problematiku Role kolektivního vyjednávání při zajištění pracovních podmínek včetně spravedlivé odměny za práci (ASO 2021) a Role sociálních partnerů při stanovování spravedlivých pracovních podmínek včetně minimálních mezd prostřednictvím kolektivního vyjednávání a uzavírání kolektivních smluv (2023).

commodity) the basic bearer of which is man. The regulation of the conditions for dependent work, as a special subject of social relations, results from a number of labour standards and is affected by the core ideas of the entire labour law, especially by functions – the protective function or the organizational function.

With regard to the special aspect of labour law – the bearer of a commodity and the implementer of dependent work – the employee, as a natural person, the protective function aims to ensure decent working conditions (e.g. fair wages), work-life balance and to respect the special nature of the bearer of the subject matter. The description seems to be quite complex, but the opposite is true in terms of content. It is not possible to imagine the labour market and the labour sector in general without man – an employee. Man is an integral part of the labour market and labour market could not function without man. But the labour market itself is also logically evolving with the evolving progress of technology, the socio-economic situation (e.g. the impact of the COVID-19 pandemic) and the related requirements of the employers. Labour law must respond optimally to developments so that the changing interests of participants in legal relations (employees and employers) are sufficiently protected. The heart of the mutual cooperation of social partners and the mutual relationship between an employee and an employer was, is and will be good communication, constituting the basic point of social dialogue and extremely affecting the personal framework of social dialogue (i.e. the ability of mutual understanding given by individual participants and their character traits).

The current social development, including the consequences of the COVID-19 pandemic or the war in Ukraine and the mobility of Ukrainian workforce, involves a number of challenges and the labour market must respond to them. However, the response cannot be expected only from the legislator. Trade unions, social dialogue and collective bargaining also play an important role here. Trade unions should ensure the guarantee of social protection of employees through collective agreements, e.g. by making the most of those challenges for

employees.[4] The fundamental challenges, from the point of view of the focus of the study, include the ability and possibilities of communication between trade unions and employees to meet the prerequisite for successful achievement of decent working conditions to the maximum possible extent. It is not only about understanding the language, but also the ability to transfer and explain special patterns of behaviour typical of a given region and finding appropriate ways to reflect both the nature of the activity and the technical parameters and means available to participants in employee relations and social dialogue.

Collective bargaining and collective agreements should reflect employees' requirements and guarantee fair work, including minimum and decent wages. It should result in mutual recognition of the need by the entities in the basic employment relationship and the achievement of a satisfied coexistence – that is, social reconciliation.

Social reconciliation is based on a functioning social partnership. Social partnership and social dialogue, or its integral *executive* component in the form of collective bargaining, are an essential tool for achieving fair and decent work in the modern world of work and they are an instrument for eliminating a number of risks related to dependent work (or responding to challenges). The role of collective bargaining is increasingly important. Although collective employment relationships fall into the original relations already during the creation of 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 establishment of the labour sector – e.g. in the form of works councils introduced in 1945)[5] and although they sometimes were an integral and determining component of employment and economic relations in the era of socialism (the Revolutionary Trade Union Movement helped create the economic plan, etc.), its importance is now

[4] 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.odbory.info/soubory/uploads/Nov%C3%A9_trendy_podporuj%C3%ADc%C3%AD_roli_a_v.pdf

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

increasing, especially when respecting the economic and social model of the functioning of the European Union. The European social model constitutes an integral part of both the European labour market and the economic market of individual Member States. It takes into account and supports the employee factor (employee), decent work and appropriate working conditions, all while maintaining the effectiveness of work. The exercise of participation rights is one of the essential prerequisites of a functioning social model.

The characteristic features of the European social model clearly emphasize the right of employees, regardless of the form and type of work, to effective representation of their interests and the right of communication in all its forms. It should ensure a fair and just society, end poverty and low wages, guarantee basic human rights, provide basic services and an income that allows for decent living conditions. The means to achieve the objective include basic social rights, such as the right to employee representation, the right to strike or protection against the termination of employment. Its central themes are social protection and social dialogue with the legitimate conclusion of collective agreements through legal pathways and the regulation of basic working conditions and occupational safety and health, working hours or leave.[6]

Employee participation in the company agenda becomes an important part of establishing a fair European social and working environment.

Social dialogue and collective bargaining are affected by both internal and external factors. External factors that are essential for achieving positive results of social dialogue and collective bargaining include, with regard to the focus of the study, the scope of employee representatives who are entitled to collective bargaining and the scope of possible application of the autonomy of the parties when negotiating appropriate working conditions (possible deviation from the law and the primary parameters of working conditions set by law). Modern requirements for the work performed (impacts of digitalization and robotization of work) and

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

the potential of the membership base and the degree of application of coalition law are also important. The internal factor is based on the applicability and reflection of external factors. The core must be seen in the possibilities of communication, when the parameters for its effective implementation may be affected both externally (e.g. the plurality of employee representatives or the existing legal norm and the defined space for communication) and internally (such as own organizational settings for the exchange of information, the ability to exercise legally guaranteed participation rights and the competence of empathy and mutual understanding). Setting up internal communication processes is an important prerequisite for effective use of representation. Employee representatives must follow functional procedures, e.g. when voting on changes in working conditions, consulting collective regulation of working time or the possibility of resolving employees' motions and subsequently resolving their complaints with the employer.

The study focuses on the possible involvement of employees and their representatives in solving issues within the achievement of social reconciliation using collective bargaining and actual involvement in decision-making processes or organizational agenda, which corresponds to the conditions of effective and fair social dialogue. All this within the search for answers to questions and risks related to changes in economic market conditions.

By its nature, collective bargaining is an essential legal tool for achieving improved fair work, including wages. The result of collective bargaining should be the achievement of social reconciliation under the conditions of socio-economic optimum. The concluded collective agreements will bring more social security for employees (in particular ensuring decent wages) and moderation of conflict environment for the employer (satisfied employees). In addition, collective agreements contain rules for mutual communication.

Promoting collective bargaining must become one of the basic policies of national states in the future, not only at the European (world) level, but also within individual national labour markets. Social partnership is one of the central supporting themes for achieving fair work or decent wages. Setting rules for effective communication is an essential requirement for

successful social dialogue. It is normal for employee representatives to set central goals in their programmes, aimed at ensuring fair work. It is also the case of the Association of Independent Trade Unions or the Czech-Moravian Confederation of Trade Unions, the largest trade union headquarters in the Czech Republic. Its programme directly sets out the task of prevent the adoption of laws that would allow to dismiss employees without giving a statutory reason or direct and indirect discrimination or targeting employees and workers regardless of their real status (e.g., see reflecting solo self-employed persons and platform workers). It also emphasizes the thorough implementation of the agreements of the European social partners related to combating harassment or exposure of employees to psychological or physical violence and stress in the workplace or the general effects of digitalization. The Czech-Moravian Confederation of Trade Unions will respond to the challenges and impacts of economic changes related to restructuring and to the economic recovery after COVID-19, the development of the green economy and new information and communication technologies (digitalization, robotization, artificial intelligence, etc.) leading 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 thus require the government to adopt an appropriate strategy to minimize such negative impacts and come up with its own proposals and solutions.[7]

1.1 Search for solutions to ensure social reconciliation in modern times

Social reconciliation is based on the mutual recognition of social partners, their work, the interests represented and the real conditions under which they are created. An essential factor in securing decent work and working conditions against risks is good enforceability of rights (i.e. one of the central attributes of the sustainability of social partnership). The enforceability of employees' rights, the possibility of their enforcement and the means of setting harmonious, fair and decent working conditions are closely related to the form of

[7] Program ČMKOS na období 2024-2026, s. 140

social dialogue in the context of a changing environment. Social partners must, within social dialogue, respond to new challenges that affect not only the scope of the discussions, but also the effectiveness of collective bargaining. Modern development trends in society and in the economic market also affect the area of labour law and working conditions of employees. Modern procedures and technologies involve new requirements for both employees and employers. Working together, both parties to a contractual relationship must seek ways to adapt to technical and technological developments. Digitalization is a challenge also for collective bargaining. As was evident at the time of the COVID-19 pandemic restrictions, social partners were faced with a new reality of changing the form of social dialogue. Personal physical contact was suddenly transformed into virtual, remote, online contact. Digitalization of work is thus reflected not only in the changed requirements of employees, but also in the form of collective bargaining.

Social dialogue and collective bargaining cannot remain immune to change. 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. As part of collective employment relationships, it is necessary to reflect the new requirements and opportunities brought by digitalization and the Fourth Industrial Revolution. Following the potential of collective bargaining as a tool for achieving fair work, including decent wages, it is necessary to perceive the factors that affect and condition the process of social dialogue and collective bargaining.

That is why social partners must feel and reflect their role also in the changing conditions of the labour market.

Aspects of the digitalization of social dialogue and the environment of shaping social reconciliation must be accentuated in all the challenges of modern times.

1.2 Requirement for effective social dialogue and social reconciliation – education

Countries with developed and functional social dialogue see the communication of social partners as one of the basic ways to face the consequences of crises and economic changes,

both through modern digital trends and using established ways. In any case, digitalization brings accelerated opportunities to face other challenges effectively. Modern trends affect the requirements for changing the nature of social partners (i.e. the transition to a virtual – online form of cooperation; or reflecting the consequences of crises). Education is undoubtedly a fundamental agenda that social partners should address in connection with the promotion of effective collective bargaining. Information, knowledge and education in general promotes the effectiveness of employee representation, not only because of the awareness of the employers, but also of employee representatives and employees themselves. Social partners play an important role in setting rules and goals. They are important in identifying primary areas for re-skilling, retraining and increased share of education and skills for handling new technologies to keep their position and importance in the labour market and in society.[8] Collective bargaining can also be used in connection with the prevention of unemployment. In terms of re-skilling and its impact on collective bargaining, it can be deduced that this is an important factor that should be taken seriously by conscious social partners. The issue of re-skilling does not have to be addressed only from the point of view of fulfilling an active employment policy in relation to the unemployed. On the contrary. The changing trend of the labour market (especially in connection with digitalization) has negative effects on trade union association and, consequently, the power of trade unions (see the relevant chapter on trade union density). When losing a job, it is common to leave a trade union or cancel membership, as membership in a trade union is linked to being employed in trade union's articles of association.

The support and effectiveness of collective bargaining is conditioned by the awareness and education not only of the social partners, but primarily of the natural persons concerned. Social partners supporting greater efficiency of collective bargaining should certainly aim to increase the awareness of employees, general education and, if necessary, deepening and

[8] OECD. *Going Digital in Sweden_OECD Rewiews of Digital Transfortmation*. [online]. *oecd.org* [cit. 2024-28-04]. Dostupné z: https://www.oecd.org/sweden/going-digital-in-sweden.pdf

increasing skills (which will lead to permanent employment and thus permanent membership in a trade union). Reflection of modern and situation-appropriate methods of communication and transfer of information to employees determines, to a significant extent, the level of the achieved effect of the use of participation authorizations.

The agenda of increasing the education of individuals in the labour market in the current world of work is one of the central tools for establishing *culture* for the world of work[9] and thus supporting the importance and effectiveness of social dialogue.

The increased level of interest in educating employees is also related to changes in the labour market. Robotization and digitalization of work bring an increasing number of new challenges to the world of labour law. It is necessary to learn modern procedures, adapt to automation or, in connection with the increased level of robotization, acquire new workflows required for the necessary effect of robotization.

Figure: Satisfaction with the content of collective bargaining in education[10]

In your opinion, does collective bargaining address the following topic to a sufficient degree?
Support for further education and acquisition of new skills
NO
YES
I don't know

[9] ŠVEC. Marek, *Kultúra sveta práce formy výkonu závislej práce*. FES: Bratislava, 2013. 75 s. ISBN 978-80-89149-27-8.
[10] HUSAŘÍKOVÁ, Ludmila. NESRSTOVÁ, Markéta. Role a význam kolektivního vyjednávání v době 4. průmyslové revoluce. TREXIMA. 2020. s. 15.

The attributes of education are essential for the goals of collective bargaining. The perception of taking into account the education agenda (as a response to changing trends in work) by social partners in the content of collective agreements and social dialogue co-determines the attractiveness of trade union association and thus the potential strength of social dialogue.

Not only the effects of crises (the COVID-19 pandemic or the war in Ukraine), but also modern trends related to forms of work and social dialogue are challenges that social partners must reflect and prepare for to achieve effective social dialogue.

Including provisions in collective agreements that explicitly and clearly set out the conditions for possible further personal and personality development for employees and their representatives, e.g. in the context of skills in the digital world, should now be an indisputable fact.

Ensuring social reconciliation in response to changing trends seems to be crucial at the level of education and skills of participants in the labour market. Finally, in terms of perceiving a wide range of risks associated with changing trends, consequences of crises, etc., education is one of the core elements of a positive approach to solving not only existing but also possible situations and challenges in the future.

2 Definition of basic concepts

The study aims to discuss issues related to the impacts of changes in the labour market due to various aspects of economic development in response to contemporary (not only) economic factors, in the context of the level of social dialogue and social reconciliation. The main theme is primarily social dialogue at all its levels and modifications, including the possibility of exercising participation rights of employees. The issue of the status of social partners, collective bargaining, the possibility of exercising participation rights, solving the group of recipients of the effects of collective bargaining and setting up frameworks for social dialogue and communication in the internal organizational structure and externally.

Therefore, it is important for further interpretation to define the basic concepts – even in a broader context – used in the text of the study and being the subject of analytical focus.

2.1 Social reconciliation

Social reconciliation, for the sake of simplicity, can be understood as a situation in which the economic market is in a non-conflict, harmonious setting of its entities, primarily social partners. Social reconciliation, or achieving and maintaining social reconciliation, is one of the basic goals of social dialogue. In fact, social reconciliation can be understood as a balance between the requirements of social partners, when neither of the partners in this relationship considers themselves oppressed and discriminated against in terms of their interests. It is also a situation where the employer is satisfied with the current situation and 'pays' and employees are satisfied with their conditions and work without conflicts. The primary prerequisite for the functioning and maintenance of social reconciliation is the classic legal principle that has dominated the legal area since the beginning of law, i.e. the principle *pacta sunt servanda*, meaning that the parties will comply with the conditions agreed upon.

Another description of the concept of social reconciliation can be found in the definition according to which '*social reconciliation is an expression of a harmony of certain social relations in society as a whole, or in individual employers, when the action of purposefully created mechanisms of social self-regulation causes that objectively emerging disputes between the social groups concerned are continuously solved in social communication processes and do not grow into undesirable conflicts*'.[11]

Thus, the essence of social reconciliation consists in setting up such conditions of the labour market that lead to positive results in dependent work, meeting the employer's legitimate interests in an environment governed by decent working conditions.

In the context of the study and the evaluation or reflection of risks, it is necessary to perceive social reconciliation primarily from the point of view of personnel targeting, more broadly,

[11] Galvas, M., Kolektivní pracovní právo České republiky (úvahy a východiska), Brno: MU, 2001, str. 79

not only to employees in the conservative sense, but also to potential new categories (typical of platform work).

The concept of social reconciliation is closely related to the concept of *socio-economic optimum*. Imagine it as a point moving in time which expresses, on the one hand, the tolerable level of requirements and, on the other hand, their 'painless' fulfilment. In simple terms, all social partners should be affected by the socio-economic optimum and should realize whether and to what extent their requirements are reasonable and achievable in relation to the current economic situation of their 'opponent'. The synthesis of the two elements results in the creation of a positive and productive working environment in which employees perform pre-agreed and high-quality work, and if necessary, something extra, and are, based on the agreement, satisfactorily rewarded or even motivated in some form from the range of bonus rewards. Similarly to social reconciliation, the content of socio-economic optimum is constant, that is, unchanging. In their final character, both socio-economic optimum and social reconciliation reflect the changing conditions of the labour market and the limits of social dialogue.

2.2 Social dialogue

Social dialogue, or understanding the content of the concept, does not have a legal definition in the Czech Republic (it is not defined in any of the laws). The concept of social dialogue must certainly not be confused with that of collective bargaining. Collective bargaining is a somewhat narrower concept than social dialogue. While social dialogue can be understood as any negotiations between employee representatives and the employer on all issues related to work (even social – e.g. provision of a number of benefits, such as a kindergarten for employees' children, subsidized meals for family members or recreation allowances, etc. in relation to work-life balance), collective bargaining is already defined when it comes to a formalized process of social dialogue, the purpose of which is to conclude a collective agreement.

Social dialogue can also be generally defined as '*negotiations, consultations, joint actions, discussions and information-sharing involving employers and workers. Well-functioning social dialogue is a key tool in shaping working conditions, involving a variety of actors at various levels. It balances the interests of workers and employers and contributes to both economic competitiveness and social cohesion.'*[12]

Social dialogue at the national level is based on the right of all employees to associate in trade unions or to elect, establish and become a member of one of the forms of employee representation laid down in law[13]. Social dialogue at the transnational level primarily means the negotiations of the European social partners aimed at regulating social rights and working conditions of employees within the European economic market. Social dialogue is the cornerstone of the European social model. It enables the social partners (company management and employee representatives) to actively contribute to the shaping 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 fundamental representative of employees and participate in shaping the working conditions of employees at the employer through social dialogue and collective bargaining. Trade union is authorized to social dialogue and to carry out its activities with employer. The range of trade union's rights will vary with regard to the levels at which and the activities in which it can implement social dialogue (for example, the company level, when collective corporate agreements are concluded; or the sectoral social dialogue, when higher-level collective agreements are concluded, in some cases with extended scope; national social

[12] EUROFOND. Sociální dialog. [online]. *eurofoun.europa.eu* [cit. 2024-16-06]. Dostupné z: https://www.eurofound.europa.eu/cs/topic/social-dialogue

[13] 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.

dialogue, conducted in the Council of Economic and Social Agreement, with an impact on working conditions throughout the Czech Republic, e.g. setting the level of minimum wage).

2.3 Participation rights

Participation rights are a summary of the authorizations of employees or employee representatives, which lead to the application of views, interests and ideas by employees towards the employer. The scope of participation rights is regulated by law (especially the Labour Code) when it primarily anticipates that employees themselves are enough for the communication with the employee. But the participation rights of individual employees can also be transferred to employee representatives (typically a trade union).

Participation rights in the Czech Republic are protected by the provisions of Section 276 of the Labour Code. This part contains an answer to the basic question asked at the beginning of the study, which led to the possibilities of exercising the right to be informed and consulted or to the possibilities of getting into the process and whether such a right is good for employees.

Employees in a basic employment relationship (employment and legal relationships based on an agreement to complete a job and an agreement to perform work outside employment relationship) have the right to be informed and consulted. Information and consulting are typical examples of participation rights in the harmonized labour market.[14]

In terms of the objectives of the study, it is necessary to focus primarily on further specification of how the right to be informed and consulted can be effectively exercised. On the one hand, the general framework of the legal order of the Czech Republic provides for sufficient space for the autonomous adoption of measures and procedures that will make the possibilities of access and exchange of information more effective and, on the other hand, it leaves such sufficient space to social partners both externally and within their internal structures.

[14] 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#

The Labour Code leaves a wide discretion for the autonomous exercise of participation rights.

Employer is obliged to inform and deal with the employees directly if there is no trade Union, works council or health and safety representatives (hereinafter referred to as the 'employee representatives'). If there are more employee representatives active at the employer, the employer is obliged to comply with the obligations towards all employee representatives, unless they agree between themselves and the employer on another way of cooperation. Informing and consulting employees takes place at a level appropriate to the subject of the negotiations with regard to the authorization and competence of employee representatives and the level of management.

The basic tasks of active employee representatives at the employer within the objectives of the study include setting the conditions for mutual communication and how it will take place. The Labour Code requires employers to provide information of a certain quality (i.e. with regard to the level of management). In reality, however, there is a misunderstanding as to the level and quality of the information provided. The ideal means for setting the conditions for mutual communication, whether in the digital or physical form, is a collective agreement (see below). The parties to a collective agreement may specify more precisely how information is to be transferred, at what levels and in what bodies employee representatives are to be represented, at what time intervals information is to be exchanged, etc. A collective agreement may also establish more detailed rules for the technical security of the real exercise of participation rights because the employer is under a legal obligation to participate in fulfilling the basic obligations of employee representatives.

The basic tool for an effective use of participation rights is a collective agreement.

The methods, scope and form of implementation of participation rights correspond to the level of competences of social partners and employee representatives in particular. Following the previous part, which focused on education as one of the basic parameters of high-quality social dialogue, it may be pointed out that competences and capacity building are currently

one of the most important factors that must be addressed when negotiating the content of collective agreements and that have a positive effect on the quality of social dialogue.[15]

The range of information that employer provides to employee representatives and is to provide may vary, from the quality of a general nature to a special, specific quality. The announced differentiation of the quality of information also determines their real transfer to employee representatives or the possibility of informing employees as such. Primarily the confidential information category must be reflected and accepted by employee representatives also from the point of view of further handling. Confidential information is information the provision of which may endanger or damage the activities of the employer or violate the legitimate interests of the employer or employees. Confidential information is not information that the employer is obliged to disclose, discuss or publish in accordance with the law (if a certain legal norm imposes it, e.g. information on salaries cannot be withheld – information on salaries paid from public funds is provided pursuant to Section 8b of Act No 106/1999 Sb., on free access to information). Person subject to duty may not provide information on the salary of an employee provided from public funds (Section 8b of Act No 106/1999 Sb., on free access to information) only in exceptional cases, e.g. if this employee participates in the activities of the person subject to duty only indirectly and in an insignificant way and if there are no specific doubts as to whether public funds are spent economically in connection with remuneration for this employee.[16] The employer is not obliged to provide or consult information on facts protected under special legislation. Members of the trade union, works councils and health and safety representatives are obliged to keep the confidentiality of information expressly provided to them as confidential. This obligation continues even after

[15] 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

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

the end of their function. The same rules apply to professionals invited by employee representatives.

If the employer requires confidentiality of information that has been provided as confidential, employee representatives may request the court to determine that the information is confidential without an appropriate reason. If the employer does not provide the information, employee representatives may demand that the court decide that the employer is obliged to provide the information.

Setting up the internal and external communication platform should correspond to the conditions at the employer so that both employer and employee representatives meet the legal obligation regarding the transfer of information to the employee. Employee representatives (with regard to the above) may not disclose all information they have to the public, but their purposeful use and compliance with legislation must be considered. It is common to transfer information in a summarized form (conclusions and basic ideas). Employee representatives are obliged to inform employees at all workplaces about their activities and about the content and conclusions of information and consultation with the employer, in an appropriate manner. Setting up the internal information organizational structure may be, and should be, included in a collective agreement or mutual agreement between the employer and employee representatives in order to ensure the smooth transfer of information and eliminate any conflicts due to misunderstanding the mutual status and obligations of social partners.

The employer is obliged to cooperate closely with trade union and other employee representation. The provision of information cannot be prevented by simple references to the assessment of its nature as a trade secret, etc. Employee representatives may use judicial protection to request the provision of information.

The employer and trade union and other employee representatives can also negotiate on the ground of complaints of individual employees against the employer in relation to working conditions. The employer is obliged to consult employee's complaint about the exercise of the

rights and obligations arising from the employment relationships with employee or, at employee's request, a trade union or works council or safety and health representative. An appropriate procedure for resolving employee complaints can again be agreed on between trade union and employer or in a collective agreement.

Participation rights can be exercised through employee representatives. With regard to the applicability of the widest scope of protection, it is appropriate to choose a trade union that has the broadest authorization within the conditions of the Czech Republic and a specific position, especially when it comes to collective bargaining.

In Czech conditions, a trade union represents the central employee representative in social dialogue. Social dialogue may also mean all negotiations between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more workers' organizations, on the other, in order to determine working conditions and terms of employment, regulate relations between employers and workers, regulate relations between employers or their organizations and a workers' organization or workers' organizations. Therefore, the central element of social dialogue is to understand the ability to communicate, transfer, receive and evaluate information.

In addition, the basic definition of social dialogue defines the basic rights of trade unions (i.e. the range of participation rights). Most importantly, a trade union has the right to

- information;
- consultation;
- co-decision;
- inspect working conditions at the employer.

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

2.3.1 right to information

The right to information is a basic right of trade unions. Information means the provision of the necessary data from which it is possible to clearly determine the status of the reported fact or to comment on it. The employer is obliged to provide information sufficiently in advance and in a suitable manner so that employees can assess it or prepare for the consultation and express their view before the implementation of the measure.

The fundamental prerequisite for complying with the right to information is a functioning social dialogue and a real ability to transfer information in the required quality and scope. Neither the Labour Code nor other laws directly define the formal aspect of communication in a precise and specific manner. It creates room for trade union negotiations, which can protect the conditions for providing information, their scope, quality, frequency of repetition, etc. both in informal relations with the employer and in the content of a collective agreement. The rules agreed in a collective agreement will subsequently become binding on both parties, will be predictable for the parties and will clearly contribute to the cultivation of social dialogue and an increased intensity of the positive perception of trade union officials.

Employees (trade unions) have the right to request additional information and explanations before the implementation of the measure. Employees (trade unions) also have the right to request personal meetings with the employer at the appropriate level of management according to the nature of the matter. The employer, employees and employee representatives are obliged to cooperate and act in accordance with their legitimate interests.

Trade unions have the right to information, in two forms. Trade unions have the right to information concerning the issues of individual employees (transferred right to information). Employees may choose employee representatives to exercise the right to information. If they do so, the employer is obliged to implement the information obligation (which it must otherwise fulfil towards individual employees) towards the trade union as employee representatives.

Trade unions use 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 about

a. the economic and financial situation of the employer and its probable development;
b. the activities of the employer, their probable development, their consequences for the environment and its ecological measures;
c. the legal status of the employer and its changes, internal organization and the person authorized to act on behalf of the employer in employment relationships on the main activity of the employer marked with the code of the classification of economic activities and changes in the subject of the employer's activities;
d. basic issues of working conditions and their changes;
e. matters to the extent specified for complying with the duty of consultation;
f. measures by which the employer ensures equal treatment of employees and the prevention of discrimination;
g. the offer of vacancies for an indefinite period, which would be suitable for further employment of employees working for the employer in a fixed-term employment relationship;
h. occupational safety and health;
i. matters to the extent specified in the agreement establishing the European Works Council or on the basis of another agreed procedure for information and consultation at the supranational level.

In addition to the right to information that the trade union uses on behalf of employees, it also has the right to information specifically intended only for it (no other employee representative), such as information on the development of wages and salaries, their components, etc.

The Labour Code guarantees the trade union the right to information on

a. the development of wages or salaries, the average wage or salary and its individual components, including a breakdown by individual occupational groups, unless otherwise agreed;
b. matters about which the employer is obliged to inform individual employees (see above);

In addition to the directly defined rights to information, the trade union also has the right to information on newly created jobs within the time limits agreed in advance with the trade union.

2.3.2 right to consultation

Similarly to the right to information, the trade union also has the right to consultation, i.e. to exchange views to reach an agreement and maintain social reconciliation. The trade union uses the right to information derived from the right of individual employees and, in addition, it has the right to consultation as a specific employee representative.

Consultation means a discussion between the employer and employees, an exchange of views and explanations with the aim of reaching an agreement. The employer is obliged to arrange the consultation sufficiently in advance and in a suitable manner so that employees (trade unions) can express their views on the basis of the information provided and the employer can take them into account before the implementation of the employer's intentions. The employer is obliged to ensure the consultation sufficiently in advance and in a suitable manner so that the employees can express their opinions on the basis of the information provided and the employer can take them into account before the measures are taken. Employees (trade unions) have the right to receive a reasoned response to their opinion during the consultation.

Employees (trade unions) have the right to request additional information and explanations before the implementation of the measure. Employees (trade unions) also have the right to request personal meetings with the employer at the appropriate level of management according to the nature of the matter. The employer, employees and employee representatives are obliged to cooperate and act in accordance with their legitimate interests.

The employer is obliged to consult the trade union on

a. the economic situation of the employer;
b. workload and work pace;
c. changes in the organization of work;
d. system of remuneration and evaluation of employees;
e. system of training and education of employees;
f. measures to create conditions for the employment of natural persons, in particular minors, persons caring for a child under the age of 15 and natural persons with disabilities, including essential matters of employee care, measures to improve occupational hygiene and the working environment, social, cultural and physical education needs of employees;
g. other measures affecting a larger amount of employees;
h. matters in which individual employees have the right to consultation.

Therefore, the employer must also consult the trade union on

a. probable economic development at the employer;
b. intended structural changes of the employer, its rationalization or organizational measures, measures affecting employment, especially measures in connection with mass redundancies;
c. the latest state and structure of employees, the probable development of employment with the employer, basic issues of working conditions and their changes;
d. changes in the employer's entity, i.e. transfer of rights and obligations from the employment relationship;
e. safety and health protection at work;
f. matters to the extent specified in the agreement establishing the European Works Council or on the basis of another agreed procedure for information and consultation at the supranational level or to the extent specified in Section 297(5), i.e. concerning the organizational structure of the employer and its economic and financial situation;

the probable development of activities, production and sales; consulting the probable development of employment, investments and significant changes in the organization of work and technology, cancellation or termination of the employer, transfer of the employer or part of its activities, its reasons, significant consequences and measures towards employees; mass redundancies, their reasons, numbers, structure and conditions for determining employees for the termination of employment relationship and the benefits to be attributed to employees in addition to the benefits arising from legislation.

The issues related to the obligation to consult the probable economic development at the employer, the intended structural changes of the employer, its rationalization or organizational measures, measures affecting employment, especially measures in connection with mass redundancies and the latest status and structure of employees, the probable development of employment with the employer, the basic issues of working conditions and their changes apply to an employer with at least 10 employees.

The employer is also obliged to consult the trade union on measures relating to

a. the transfer of 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 to the relevant branch of the Labour Office a report with the results of negotiations with a trade union on measures aimed at preventing or limiting mass redundancies or mitigating their impacts. If the employer did not discuss the mass redundancies with a trade union, the mass redundancies would still be valid, but the employer would not meet the presumption of delivering the report on consultation (would not consult at all) and the employment relationships of the employees thus dismissed would therefore not end earlier than 30 days after receiving the information – after completing this information (additional consultation with the trade union) to the relevant regional branch of the Labour Office.

d. collective regulation of working time. The employer is required to consult a trade union in advance on measures regarding collective regulation of working hours, overtime work, the possibility of ordering work on non-working days and night work with regard to health and safety at work.
e. determination of the regular date of payment of wages;
f. organization of collective taking of leave. The employer may, in agreement with the trade union, determine the collective taking of leave only if it is necessary for operational reasons. If there is also a works council at the employer, an agreement with the trade union is not sufficient as the consent of the works council is also required.
g. consulting the amount of compensation for damage. If the employee is obliged to compensate the employer for material damage, the trade union has the right to consult the determination of the amount of compensation (used as a preventive measure and as the protection of the employee).
h. consulting draft legislation. Draft laws and other draft legislation concerning the important interests of workers, in particular the economic, production, working, wage, cultural and social conditions, are consulted with the relevant trade unions and employers' organizations.
i. determination of unexcused absence. The employer determines if it is a case of unexcused missed work after consultation with the trade union.

The list of consulting rights may be extended by agreement in a collective agreement.

2.3.3 applies both to the rights to information and to consultation

The rights to information and to consultation have a common basic feature. Regarding the subject of the study, it can be perceived on a practical level as a method, form, content or ways leading to their implementation. The question must be asked as to how the right to information and consultation (as well as other participation rights) can be implemented and communicated both within the interaction with the employer and towards employees. In any

case, it is necessary to reflect and respect the competences and possibilities offered by social partners and employee representatives.

The common element of the right to information and consultation can also be seen in the consequences of failure to comply with the employer's obligation to inform or consult. It should be noted that the rights of employee representatives correspond to the employer's obligations, or internal responsibility of employee representatives towards the employees themselves. In the event of an infringement of the obligation, the employer commits an (administrative) offense concerning the part of cooperation between the employer and the authority acting on behalf of the employee. The employer is thus exposed to a penalty of up to CZK 200,000 from the labour inspection office. Formally, the Labour Code proposes a legal sanction which can be imposed even at the initiative of the trade union when the employer resigns from its obligations or does not fulfil them. The legal threat of sanctions may be an auxiliary argument for negotiating the conditions for the real participation of employee representatives (e.g. the content of collective agreements may be based on the employer's obligation to actively participate in creating and ensuring the conditions for the activity of employee representatives and their stipulation in the collective agreement). On the other hand, it must be admitted that a legal act (intention) carried out by the employer without consulting or informing the trade union in advance will not be affected by any defect, i.e. it will become effective. A practical example may be the communication between the employer and trade union officials in connection with the termination of employment with the employee by notice from the employer. Trade union officials and members often believe that failure to consult the termination or immediate termination of employment by the employer will result in the invalidity of the termination or immediate termination. But this is not the case. Failure to consult does not affect the effects of termination or immediate termination. It is an infringement only in relation to meeting the employer's obligation and the authorization of employee representatives to be informed.

2.4 Right to co-decision and cooperation

The right to co-decision is one of the most powerful rights of a trade union to influence the employer's activities. The Labour Code currently assigns the right to co-decision to a trade union only in a few matters. The exercise of the right to co-decision determines effective social dialogue and, in some cases, the employer's activity. Not being given trade union's consent legally invalidates the employer's actions. A sluggish or lax approach of a trade union can have unpleasant consequences for the employer. It is therefore also in the interest of the employer that the platform used to implement the right to co-decision corresponds to the given requirements and provides a sufficient degree of exercise of dispositional competence[17].

The employer is now bound by the prior consent of a trade union in relation to the steps that are to be taken to assess the issue of work regulations, schedule of taking collective leave or the intention to terminate the employment with a member of a trade union body (or one year after the end of the member's term of office). The trade union also co-decides on the introduction of the so-called partial unemployment and '*Kurzarbeit*' as a tool to address the temporary lack of demand for products produced by an employer.

If there is a works council at the employer, a mere consent or an agreement with a trade union is not sufficient as the consent of the works council is often required (e.g. collective use of leave). This is a very important element that needs to be reflected even in the case of setting up an internal and external communication platform. Although trade unions make use of their supreme position, other types of employee representatives cannot be ignored and should be invited to take action.

Co-decision of a trade union has a major impact on the employer's actions. Unlike with the case of not complying with the employer's obligation to inform the trade union or with the consultation obligation, which has no impact on the legal act and intention of the employer,

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

the employer's act without the prior consent of the trade union will be considered absolutely invalid in this case. Without the consent of the trade union, this is an absolutely invalid legal act.

Setting up mutual communication procedures between the employer and employee representatives should be predictable. As always, provisions in a collective agreement can be seen as an ideal platform.

Mutual cooperation between employee representatives and the employer assumes an active approach of both parties. The Labour Code provides for a number of situations in which mutual cooperation is necessary, whether it is the exercise of the right to information, consultation or co-decision. It does not always have to be a relatively abstract category, but also a specification that can be appropriately regulated in collective agreements. Regarding the highest level of interaction, the legal order of the Czech Republic requires the cooperation between employee representatives and the employer as a prerequisite for the further procedure of concluding the agreement (not the conclusion of a collective agreement). These are a number of cases, e.g.

- agreement on other regulation of fixed-term employment conditions
- consent to the termination or immediate dismissal of an officer
- agreement on the introduction of partial unemployment
- agreement on the introduction of *Kurzarbeit* – benefit during partial unemployment
- a working time account
- co-decision on the Cultural and Social Needs Fund
- cooperation in investigating accidents at work

2.4.1 right to exercise control

Trade unions have the right to exercise control over the state of occupational safety and health at individual employers. The employer is obliged to allow the trade union to exercise control and, for this purpose, to

a. ensure possible examination of how the employer meets its obligations in the care of occupational safety and health and whether it systematically creates conditions for safe and healthy work;
b. ensure possible regular inspections of the workplace and equipment of employers for employees and control of the employers' personal protective equipment management;
c. ensure possible examination of whether the employer properly investigates accidents at work;
d. ensure possible participation in the investigation of the causes of accidents at work and occupational diseases or their clarification;
e. enable participation in negotiations on occupational safety and health issues.

The costs arising from the exercise of control over occupational safety and health, including the costs of training to deepen the qualifications of the union occupational safety inspectors entrusted with the exercise of this control, are borne by the state on the basis of an agreement with the trade union. The costs of performing OSH control include the education of occupational safety and health inspectors.

2.5 Risk and challenge of expanding the group of participants – self-employed persons

In the introduction and in places where attention was paid to the addressees of participation rights, the agenda of platform workers and the special nature of solo self-employed persons were mentioned as one of the risks/challenges that must be taken into account in the development of social dialogue and achieving social reconciliation in the future. Collective bargaining and social dialogue are exposed to certain weakening elements at virtually all conceivable levels. These include the current trends of increasing the share of activities provided by self-employed persons and moving away from a stable employment relationship (the situation is addressed, for example, by the above-mentioned draft platform work directive). Following the implemented agendas, from the point of view of the national legislator, it is possible to bring attention to modern procedures in the perception of the categories of employees, or workers and natural persons, who should be protected by the

directive. Inspiration can thus be found primarily in being aware of the changing requirements of the economic market and the nature and form of persons performing economic activities. In general, collective bargaining and collective agreements lie beyond the possibilities of the self-employed because they would be in conflict with Community Law[18]. However, when regulating social and working conditions (i.e. social rights in general), the European legislator realized the peculiarity of the status of some self-employed persons who in their form are close to employees (in general and with regard to national legal orders that have different definitions of the *self-employed person* and include them under the term employee or completely outside the scope of labour law). Following the decision-making practice of the Court of Justice of the European Union, which considered the objectives of the European Union's social policy in its finding practice, it was concluded that certain restrictions of competition are necessarily included in collective agreements between employee representatives and employers in order to improve working conditions. They are thus not in breach of Community competition law. The Court based the definition of the term employee on a broader definition and did not focus only on grammatical interpretation. It included also the so-called false self-employed persons[19] (for example, illegal employment in the form of the '*AeroSystems*' and economically dependent self-employed persons in the Czech practice) under the legally reflected approved scope of collective agreements, who are in fact in a comparable situation as employees.[20] Under the decision of the CJEU, a false self-employed person may be a person who

- acts under the direction of their employer (contract owner), in particular as regards the choice of working hours and place and content of work;
- bears the commercial risks of the employer (contract owner), i.e. negative economic results are transferred, e.g. in connection with reduced remuneration;

[18] Čl. 101 Smlouvy o fungování o fungování EU
[19] Např. Rozsudek SDEU ze dne 21. září 1999, Albany International BV v. Stichting Bedrijfspensioenfonds Textielindustrie, C-67/96, EU:C:1999:430, bod 60.
[20] 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.

- is integrated into the employer's (contract owner's) enterprise during the contractual relationship.

Self-employed persons can thus be protected by collective bargaining and social dialogue, within a certain framework, regardless of their administrative or legal definition and designation. But the above-mentioned features must be met and it is not possible to protect the entire area of otherwise free market. The essence of the impact of the directive in terms of a solo self-employed person and participation rights is the explicit ensuring of compliance of the concluded agreement with the rules of equal competition and the fact that protection can also be enjoyed by the aforementioned groups of employees. On the other hand, the scope and enforceability of participation rights, primarily the right to collective bargaining and resolution of collective disputes through strikes or lockouts, is significantly limited or impossible.[21]

Collective bargaining may subsequently cover similar areas as in the case of traditional employees. The working conditions of the solo self-employed persons include matters such as remuneration, working hours and work schedules, holidays, leave, physical premises where they work, health and safety, insurance and social security and the conditions under which a solo self-employed person is entitled to stop providing its services, for example in response to a breach of an agreement regarding working conditions. However, individual assessment is required in case of agreements on the basis of which the solo self-employed persons collectively decide not to provide services to specific counterparties, for example because the counterparty is not willing to conclude an agreement on working conditions. Such agreements restrict labour supply and may thus cause competition concerns. If it can be shown that such a coordinated refusal to supply labour is necessary and proportionate for the negotiation or conclusion of a collective agreement, it will be treated in the same way as the collective

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

agreement to which it is linked (or would be in the event of unsuccessful negotiations) for the purposes of these guidelines.[22]

The approach of the European legislator thus shows an effort to protect persons who are in the position of employees regardless of their formal designation. Particularly the persons with economic dependence on the contract owner should be allowed to freely associate to protect their social and economic rights and the right to collective bargaining should be guaranteed.

2.6 Risk and challenge of expanding the group of participants – platform workers

Social reconciliation is based on the conditions applied in the labour market in its entirety. One of the risks that should be considered is the expansion of the group of participants in employment relationships or the economic market as a whole. If we disregard the evaluation of participants with a rigid view of the definition of dependent work (although it is still the only qualitatively value-based measure distinguishing employment relationships from other relationships), it is important to resolve the issue of covering new forms of employment. First of all, in the context of extending the personal scope of protectionist standards and the impact of social dialogue on shaping the environment and achieving social reconciliation. Social dialogue currently reflects changes in the labour market and when answering the question of the participants in social dialogue, there is a sub-question about which group of persons should have participation rights and who can, for example, exercise the right to collective bargaining. The relationship to solo self-employed persons was briefly discussed in the previous section. However, it is also necessary to specifically add the category of platform workers.

Despite the universal scope of collective agreements, some groups of persons are excluded and would benefit from the protection based on collective agreements. These are mainly

[22] Odst. 16 Návrhu pokynů k uplatňování právních předpisů v EU v oblasti hospodářské soutěže. [online]. *ec.europa.eu* [cit. 2024-28-05]. Dostupné z: https://ec.europa.eu/competition-policy/document/download/9c836e4a-29b1-4659-86a4-6946e368d8cb_en

platform workers. The platform worker category is not precisely defined, yet it is crucial for fulfilling the idea of a socially fair society.

The agenda of platform workers has recently been intensively dealt with by social dialogue also at the transnational level. An example can be the opinion of the European Economic and Social Committee on fair work in the platform economy.[23] Regarding the application of participation rights and possible participation in collective bargaining, the issue of platform workers must be addressed not as self-employed persons, but as genuine employees. When assessing activities within the platform economy as dependent work covered by labour standards, they would ensure that the protective provisions of labour law are applied to all persons in the platform economy. In particular, the right to fair work ensured by collective bargaining and collective agreements could be exercised.

According to Eurofound studies 24, platform work should be a form of an employment relationship that uses an online platform to enable an organization or individuals to access other organizations or individuals to solve problems or provide services for remuneration. The most important aspects of platform work are:

- paid work is organized through an online platform;
- takes place with the participation of three parties: an online platform, a client and a worker;
- the aim is to perform specific tasks or solve specific problems;
- the work is outsourced or contracted;
- activities are divided into tasks;

[23] 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')

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

- services are provided upon request.

Covering platform work and its subordination within the labour law regime will ensure better working conditions for employees. At present, however, it is very complicated to clearly determine in which cases they are platform workers and in which cases only ordinary self-employed persons. The complexity of platform activities, the lack of terminological coverage and the factual non-existence of (more accurate) statistical data make it difficult to assess its growth and thus the potential and importance of social dialogue coverage. According to the OECD25, most studies show that platform work represents approximately 0.5% to 3% of the total workforce. Only 1.4% of the population aged 16 to 74 years work through the platform as their main job in 16 European countries (ranging from 0.6% in Finland to 2.7% in the Netherlands)26. Approximately 11% of adults have experienced platform work27.

The main point of the whole issue is the identification of platform workers as employees. If platforms are generally presented as a relationship about the supply of services, neither European nor national regulations allow the direct application of labour law protection. The workers are thus considered to be 'self-employed persons', not 'employees', excluding the application of legislation governing the employment relationship (including health and safety protection), social protection and taxation. Although the European Economic and Social Committee (hereinafter referred to as the 'EESC') assumes that there are workers who are genuinely self-employed, it believes that the EU and the Member States must examine the application of the principle under which a platform worker is considered to be an employee in all respects, unless proven otherwise. This would ensure the protection of the interests of those workers whose main income comes from platform work. However, the EESC believes that workers who are genuinely self-employed should be able to retain this status if they explicitly wish to do so. According to the EESC, 'with due regard for national competences, a

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

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

[27] Tamtéž, s. 47.

legal framework should be established for workers that precisely specifies the relevant employment statuses: a decent wage and the right to take part in collective negotiations, protection against arbitrariness, the right to log out in order to keep digital working time within the bounds of decency, etc.'[28]

By ensuring collective bargaining and stronger status for platform workers, the trade union movement will increase its potential for membership growth and achieve its basic goal – fair work and fair wages. Social partners may proceed from the identified risks that lie in the specific nature of the work. The EU-OSHA study29 shows that platform work poses increased physical and social risks, job insecurity and exposure to various risks (traffic accidents, risks associated with chemicals, etc.) and risks associated exclusively with online activity (cyberbullying, poor posture, visual fatigue and stress caused by a wide range of factors). Risks are also evident in meeting the 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 collective bargaining (ensured through independent representatives), uncertainty resulting from the duration of obligation, low or undervalued wage, increasing intensity of work, extreme fragmentation of work on a global scale and the lack of workers' involvement in social security systems.[30]

The importance for social dialogue and collective bargaining lies in the case law of the Court of Justice of the European Union, which implies a certain degree of acceptance of the existence of collective agreements in connection with the coverage of working conditions for 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 comes into conflict with social policy, collective agreements of employees do not fall within the scope of competition law. In another decision (C-413/13, FNV Kunsten

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[28] EHSV. Úřední věstník. C 75, 10.3.2017, s. 33, odstavec 4.4.2.

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

[30] Stanovisko EHSV, op. cit. bod 3.2.

Informatie), the Court confirmed the compatibility of European competition law with collective agreements when it ruled that self-employed persons were in fact 'false self-employed persons'. This is of particular importance for platform work as it allows false self-employed persons to be treated as employees31.

Social dialogue and collective bargaining in platform work are relatively limited. Problems are related especially to the evaluation of workers as self-employed, not employees. Negotiations exist in some countries (transport and distribution sectors). The measures implemented by the platforms focus on addressing criticism of their practices, joining employers' organizations, self-regulation and subscribing to codes of conduct, including cessation of activities. The measures implemented by workers are diverse, including protests and strikes, and appear in relation to onsite work platforms for qualified workers, but also to other types of platforms, as was the case with the project launched in 2016 by IG Metall, which led to the Frankfurt Declaration in cooperation with Swedish and Austrian trade unions (Fair Crowd Work, 2016).[32]

To address the issue of platform workers and to ensure decent and fair work, social dialogue is a very important institute of protection. It is necessary to support and develop the possibilities of collective bargaining in this area as well. Social dialogue must be strengthened and linked at all levels. Social dialogue and collective bargaining must play a key role at all relevant levels, in full respect of the autonomy of social partners, to ensure high-quality work within the platform economy.[33]

2.7 Risk and challenge of expanding the group of participants – foreigners and the temporary protection regime (*Lex Ukraine*)

The changing conditions of the labour market and the threat to social reconciliation may stem from both a shortage and a surplus of labour. Social dumping is the main threat that needs to

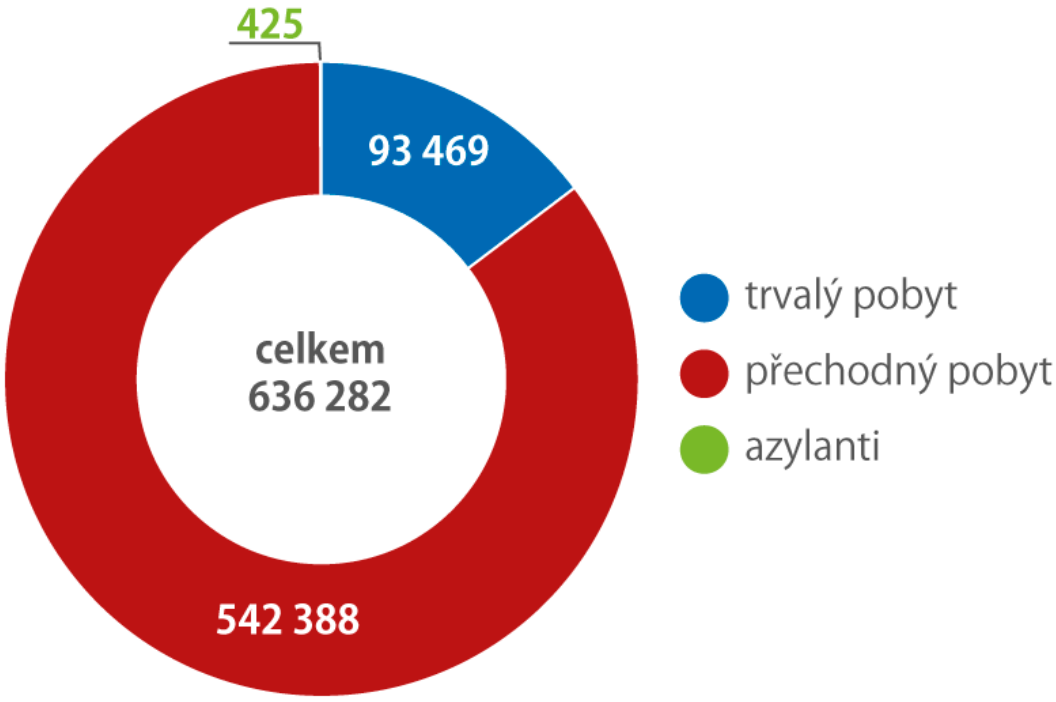
[31] KILHOFFER, *op.cit.*, s. 85.
[32] Bod 5.1.2 Stanoviska EHSV
[33] Bod 1.11 Stanovisko EHSV

be faced or prevented as part of achieving social reconciliation. It is not an unknown or emerging threat. The European labour market environment[34] is aware of its occurrence, which is also reflected in national conditions. The underlying idea of decent work, fair wages and equal access to all economic market participants is a mantra, which may be threatened by social dumping, at the level of the Czech labour market. Social dumping can be understood as an unfair competitive practice in which companies reduce costs by taking advantage of low wages and poor working conditions in an underdeveloped country. In the context of the study, the definition can be finely adjusted in connection with the opening of a wider space for the use of foreign workforce which does not insist on standard wage conditions (or has lower demands), thus affecting wage policy and the price of labour on the national market.

On the current scale, it is necessary to focus primarily on the impacts of opening up access to the Czech labour market for foreigners with temporary protection or special temporary protection, caused by the conflict in Ukraine. Increased migration naturally brings increased potential of the available workforce. The Czech legislator covers the whole situation in relation to the Employment Act and the Act on the Residence of Foreign Nationals (as the main constantly applicable laws regarding the movement of foreign workforce – foreigners – on the Czech labour market); it is necessary to follow from the regime established in the Lex Ukraine I and Lex Ukraine II. The legislator introduces special conditions of temporary protection, with the position of the persons concerned comparable with Czech (EU) citizens in terms of access to the Czech labour market. In the context of the war, the temporary protection regime applies to persons coming from Ukraine.

[34] DRBALOVÁ, Vladimíra. Vnitřní trh EU se rozpadá pod hlavičkou sociálního dumpingu. [online]. *euractiv.cz* [cit. 2024-06-04]. Dostupné z: https://euractiv.cz/section/aktualne-v-eu/opinion/vnitrni-trh-eu-se-rozpada-pod-hlavickou-socialniho-dumpingu/

Citizens of Ukraine in the Czech Republic by type of stay[35]



Permanent residence
Temporary residence
Refugees
Total

The stay of persons from Ukraine under the Lex Ukraine I and Lex Ukraine II regimes allows for their easier integration into the labour market as it is not required to apply procedures regarding the employment of foreigners. The consequence of the aforementioned procedure is, among other things, that these foreigners with granted temporary protection can also enter the register of job seekers under completely equal conditions as Czech citizens or citizens of other Member States.

[35] MAREŠOVÁ, Jarmila. Většinu cizinců v Česku tvořili Ukrajinci. [online]. *csu.cz* [cit. 2024-06-04]. Dostupné z: https://statistikaamy.csu.gov.cz/vetsinu-cizincu-v-cesku-tvorili-ukrajinci#

The Lex Ukraine II principle in the field of employment is based on Section 2 of Lex Ukraine II, pursuant to which a foreigner with temporary protection, for the purposes of the Employment Act, is a foreigner with a permanent residence permit under the Act on the Residence of Foreign Nationals in the Czech Republic. Pursuant to Section 98(a) of Act No 435/2004 Sb., on employment, as amended (hereinafter referred to as the 'Employment Act'), a work permit, an employee card, an intra-company employee transfer card or a blue card is not required to employ a foreigner with a permanent residence permit. The person concerned may enter into all employment relationships.[36] The institute of temporary protection also means that the employer can employ workers with temporary protection even in a situation where the job to be occupied by such a foreigner will not be a job reported as vacant at the Labour Office. This rule continues to apply only to foreigners who must apply for a work permit.[37]

The arrival of cheap labour becomes a risk for social reconciliation or for maintaining social reconciliation and decent work. But it is also a challenge to integrate and establish new entrants in the labour market.

Equal status of the special regime of temporary protection of the persons concerned involves easier use of their work potential. Protecting their position goes hand in hand with flexibility in terms of finding employment. It is necessary to look at all participants in employment relationships in the same way through the prism of equal treatment and the prohibition of discrimination.

The challenge for social dialogue and the effective application of participation rights while maintaining social reconciliation is the ability and possibility of appropriate expansion, or more precisely, streamlining, of protection also to the aforementioned group of persons. Representing employees' interests is not limited by nationality, it simply concerns all persons

[36] VRAJÍK, Michal. GEBOUSKÝ, Lukáš. *Lex Ukrajina a další pracovněprávní aspekty války na Ukrajině.* Praktická personalistika. č. 5-6. s. 11.
[37] Tamtéž.

in dependent work (i.e. also foreigners or persons under a special temporary protection regime).

3 Social reconciliation while maintaining the conditions for competences of trade union

In practical terms, social reconciliation is based on the recognition of social partnership and possible employee representation at the employer. Given the unique position of trade unions (as the only employee representative with legal personality and the possibility of collective bargaining), the conditions of social reconciliation, whether at the national, sectoral or corporate level, are shaped in connection with the recognition of social partnership and competences of trade union. Trade union, like an employer, operates in an environment defined primarily by the Labour Code and other legislation, such as Act No 2/1991 Sb., on collective bargaining (regulating the procedure for concluding collective agreements), Government Regulation No 567/2006 Sb., 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 an extra payment for work in a difficult working environment, Government Regulation No 341/2017 Sb., on the wages of employees in public services and administration (defining the basic limits for collective bargaining on wages and remuneration), etc. In addition to purely labour law regulations, other laws must be taken into consideration, such as Act No 89/2012 Sb., the Civil Code (defines the legal nature of the trade union) and, in particular, constitutional acts, such as Constitutional Act No 2/1993 Sb., on the proclamation of the Charter of Fundamental Rights and Freedoms (guarantees the right to strike, etc.), and international regulations, such as ILO Convention No 87 (essential for defining the right to freely associate and organize in order to advocate and promote improvements in economic or 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.

Other conditions for the trade union's activity at the employer may be specified in a collective agreement (e.g. material provision for trade union activities; method of communication; ensuring accessibility to the employer's bodies).

The basic conditions for competences of trade unions at the employer are regulated by the Labour Code (Act No 262/2006 Sb.). As it follows from the diction of the provisions of Section 1(1)(b) of the Labour Code, the Labour Code also regulates legal relationships of a collective nature and the promotion of mutual negotiations between trade unions and employers' organizations. Legal relationships of a collective nature and promotion of mutual negotiations of trade unions and employers' organizations related to dependent work are considered to be employment relationships.

The definition of collective relations – the relationship between the employer and the trade union – as an employment relationship is very important, e.g. due to the subsidiary (supportive) use of the Civil Code to regulate the relationship between the trade union and the employer. The rules contained in the Civil Code always apply to employment relationships, i.e. also to relationships between the trade union and the employer, which relate to the right to information and consultation or the right to collective bargaining, etc.; but the Labour Code takes precedence and the Civil Code is used only when it is not possible to find the necessary rules in the Labour Code.

Meeting the employer's obligation cannot be enforced by means of a contractual penalty. The definition of collective relationships as employment relationships implies, for example, the prohibition of a contractual penalty. Collective agreements sometimes contain rules under which the employer must pay the trade union a certain contractual penalty (or vice versa) for violation of obligations towards the trade union or for violation of its general obligations (e.g. in the matter of consulting the scheduling of working time according to the rules agreed in the collective agreement). This is an unenforceable performance and a violation of law pursuant to the Labour Code. The contractual penalty cannot be made conditional on the

implementation of the agreed method and scope of mutual communication (including the possible filling of positions in the employer's bodies, etc.).

3.1 Establishment of a trade union and the moment of authorization at the employer

A trade union is established, as a '*sui generis*' legal entity, on the day following the date of delivery of information on the establishment of a trade union to the competent registration court (regardless of the entry in the relevant public register of legal and natural persons). From the moment of establishment, it is necessary to distinguish consistently the moment of creation of rights and of trade union at the employer, i.e. the moment from which the trade union can exercise all rights with a particular employer (right to information and consultation, co-decision, control authorization, etc.) and when the employer is obliged to communicate with the trade union and respect it as a partner in social dialogue.

A trade union can also be established without having to be active at at least one employer. It will exist as a legal person (legal entity); but as an employee representative at a particular employer only after meeting the legal conditions of activities.

To perform its activities at the employer, a trade union (an existing legal person) must meet two fundamental conditions.

1. It must associate 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 conditions for performing activities at the employer.

The conditions for competences of trade unions at the employer are expressly set out in the Labour Code in Section 286. Trade unions are entitled to act in employment relationships, including collective bargaining, under the conditions laid down by law or agreed in a collective agreement.

3.1.1 legal conditions for performing activities

The Labour Code sets out the basic conditions for competences of trade unions as follows. A trade union that is at an undertaking (at the employer) may only act if it is **authorized thereto in the statutes** and if at least **three members of such trade union are employed at the employer**; only under these conditions the trade union or its branch that is authorized to act on behalf and in the name of the trade union organization may negotiate and conclude collective agreements.

The rights of a trade union at the employer only commence on the day following the date when the trade union notified the employer that it met the conditions for competences (i.e. at least three employees of that employer are members). If the trade union ceases to meet these conditions, it must notify the employer thereof without undue delay. There is no need for a special procedure for notifying the employer of loss of such conditions (e.g. notarial deed); a written notification is sufficient, e.g. to the employer's mail room.

Authorization to act at the employer must result from the basic document – the statutes of the trade union. Trade union's competences at the employer are not conditioned by the need to establish a new trade union every time. One trade union may operate at several employers. The only prerequisite for expanding the scope of one trade union with several employers is that it associates at least three employees of the specific employer concerned.

3.1.1.1 right of only employees in an employment relationship???

Participation rights have a wide application and apply to all employees of the employer. A specific difference lies in the possibility of establishing a trade union and relating its activities to the employer. The Labour Code defines as the basic rule of the competences of trade union at the employer that at least three trade union members are employed by the employer. The minimum number of people (3) is perceived as undisputed, not causing practically any application problems. However, the situation is different in connection with the interpretation of 'an employee in an employment relationship' because, in addition to employees in an employment relationship, a number of employees (or only employees) hired under one of the

agreements on work performed outside employment can also perform activities can work for the employer.

Employees in an employment relationship should be understood as employees who work for the employer on the basis of any of work agreements (agreement to complete a job or agreement to perform work)!

Although the methodological interpretations of the Ministry of Labour and Social Affairs and technical journals often say that the competence of trade unions at the employer can only be derived from employees in an **employment relationship** (and unfortunately it is often understood as such by trade unionists themselves), this is not the case. Everyone has the right to form a trade union, i.e. every employee, that is, even an employee employed on the basis of an agreement to complete a job or an agreement to perform work. A different interpretation would be contrary to international conventions and the Charter of Fundamental Rights and Freedoms. It follows from Article 27 of the Charter of Fundamental Rights and Freedoms that everyone has the right to associate freely with others in order to protect 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 the types of employees 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 competence at the employer by employees outside an employment relationship (employees working based on the alternative employment contract) can be deduced from the Labour Code. The provision of Section 77(2) of the Labour Code contains a rule under which all rules for employees employed by the employer in an employment relationship, with the exception of certain listed areas, apply to employees working for the employer on the basis of any of the agreements on work performed outside the employment relationship. The regulation does not apply to employees working based on the alternative employment contract (transfer to another job and transfer, temporary assignment, severance pay, working hours and rest periods; but the performance

of work may not exceed 12 hours within 24 consecutive hours, obstacles to work on the part of the employee, leave, termination of employment, remuneration (hereinafter referred to as 'remuneration pursuant to an agreement'), with the exception of the minimum wage and travel compensation). The possibility of being protected by a trade union and thus enjoying the right to information and consultation or co-decision and to conduct social dialogue is excluded in the provision in question. Employees in an employment relationship, in the context of establishing the competence of a trade union at the employer, must also be understood as employees who perform work for the employer on the basis of an agreement to complete a job or an agreement to perform work.

3.1.2 right to ensure the conditions for the performance of trade union activity

Trade unions are legal entities *sui generis* that are funded primarily by membership contributions. Social dialogue has an important role in shaping working conditions, which is why the legislator establishes the right of trade unions to material provision of the conditions for the performance of trade union work by the employer. However, the Labour Code does not contain a specific definition of either financial or material provision of activities. It also does not contain an unambiguous rule for releasing trade union officials to be full-time officials. It contains only general rules under which the employer must ensure the conditions for the performance of trade union activity.

3.1.2.1 material provision

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

The Labour Code does not specify the exact list of assets or funds that the employer is obliged to provide to the trade union. There is a wide scope for collective bargaining in relation to the provision of material and other conditions for the performance of trade union activity. Trade

unions and the employer can agree in collective agreements on examples, or a list, of what the employer is specifically obliged to provide to the trade union.

In general, trade unions can demand, among other things, the provision of a room for regular trade union meetings (training, etc.), access to a copy machine, computer, Internet, notice board and telephone. Trade unions may file a suit against the employer to demand payments to ensure trade union activity. However, trade union officials should carefully consider the extent to which the employer is able to provide for the conditions. Moreover, in the case of plurality of trade unions, a problematic situation arises when the employer must provide for the conditions for the performance of activities for all trade unions (which increases the costs and demands). The employer is obliged to ensure provision with regard to its operational capacity. Trade unions may demand an increase in payments, but it is always necessary to approach each situation prudently.

In the case of plurality of trade unions, there is a rule under which no employee representatives can be given preferential treatment in their rights and under which the employer cannot give preferential treatment to just one trade union, without justifying the reason. However, this does not mean that all trade unions are entitled to the same payments.

In fulfilling its obligation, the employer should consider especially the size of the employee representative, its justifiable, relevant needs, the number of members represented, the actual purpose for which it was established, the form and extent of its activity at the employer and its participation in employment relationships or the degree of its dependence on the creation of conditions by the employer. The subjective perception of the trade union by the employees themselves will also be important. Determining the popularity of trade unions among employees will be particularly relevant in the case of plurality of trade unions where employees define by their statement which representative or trade union they want to be represented (even if they are not members).

The definition of a closer scope of material provision may be contained in a collective agreement. A trade union may also arrange for the position of a so-called full-time official in a collective agreement in order to perform its activities.

3.1.2.2 financial provision – release of officials

The Labour Code does not contain an unambiguous rule that would ensure regular contributions to trade unions or release of an employee – a member of a trade union – to be a full-time official. On the other hand, it does not prohibit to negotiate such option in a collective agreement. The trade union and the employer may agree in a collective agreement on the release of an employee, even with the compensation of their average pay.

The Slovak Labour Code contains a rule under which trade union officials are entitled to leave with wage compensation, always based on a certain number of employees. The Czech Labour Code does not explicitly contain a similar rule; it allows trade unions to negotiate the rule with the employer.

Although the Czech Labour Code does not directly provide the trade unions with the right to release a trade union official in the same way as the Slovak Labour Code does, it provides a certain guarantee. Trade unions may (in collective bargaining or outside it) rely on the provisions of Section 203 of the Labour Code. The performance of the activities of a trade union official is subordinate to the obstacle to work on the part of the employee due to another act in public interest. Employees are entitled to time off for another act in public interest with the right to compensatory wage or salary in the amount of their average earnings for performing the function of a trade union member.

The rule on the release of employee representatives to perform trade union activities or the activities of employee representatives is of fundamental importance in the exercise of participation rights. It is possible to include in a collective agreement the terms of the method of transferring information and the right of employee representatives to be part of decision-making bodies, committees, etc. However, it is good to bear in mind that not always and not every activity of the employee representative will necessarily have to be evaluated as the

performance of work and covered by the wage claim. If it is an activity carried out outside the employee's working hours, it is not an obstacle to work either. It is therefore appropriate to include in a collective agreement not only the right of employee representatives to be part of the decision-making activities and body of the employer, but also the scope of the release to be full-time official, or the fact that the meeting and participation of the employee representative in the consulting body is considered performance of work and time spent there is working time. Recognition of the activities of trade union officials as work, or time spent exercising participation rights as working time, determines their effective exercise and implementation.

When requiring compliance with an obstacle (release of an official), trade unions may approach the request or enforcement of a claim by preparing a list of activities of the trade union official. To maintain the level of social dialogue and justify the obstacle (release of an employee), it is important that the release is justifiable and relies on factual activity (i.e. that it is well-founded). Release is well-founded in cases where the official performs the activities specified in the law or agreed in a collective agreement (such as participation in collective bargaining; participation in investigating an accident at work if the official is an authorized person; consulting termination and immediate termination of employment; consulting the amount of material damage, etc.).

If officials perform activities directly related to employee representation, they are entitled to compensatory wage or salary.

If a trade union official, or any other trade union member, performs activities that are not directly related to employee representation, it will be, to the extent necessary, an excused obstacle to work not subject to compensatory wage or salary. Other activities that are excused but do not include compensatory wage or salary are, for example, participation in intra-organizational matters, such as conventions, management meetings (management bodies), participation in conference events, demonstrations and meetings, etc. But it is possible to

arrange for compensatory wage or salary in a collective agreement even in the case of participation in the above events.

The employee is entitled to time off to perform the activities of a trade union official. If there is an obstacle, the working time is deducted from the working time fund as if the employee were working, even in the case of flexible working hours scheme. If the employee has flexible working hours scheme, the hours 'worked' are taken into account even outside the *core part* of flexible working hours (up to the average length of shift).

Slovak legislation, following the exercise of participation rights, offers employee representatives not only general obstacles to work when the employer is legally obliged to deal with them (e.g. when investigating accidents), but also in a general framework. Employee representatives may take time off to perform trade union activities to the extent specified by the Labour Code and derived from the number of employees represented.

Pursuant to the provisions of Section 240(3) of the Slovak Labour Code,[38] the scope of release of an official of trade union body with competences at the employer is guaranteed by law, in connection with the number of employees represented (i.e. employees of the employer). The employer provides a trade union body member with time off and compensatory wage for the period agreed between the employer and the trade union. If there is no such agreement, the employer will provide the trade union body members with time off and compensatory wage or salary per month in the total to the extent determined as the product of the average number of employees working for the employer during the previous calendar year and time allowance of 15 minutes (i.e. the trade union official has 15 minutes of time for each employee per month – given by law). If it is a new employer who had no employees in the previous year, it is based on the number of employees on the last day of the calendar month preceding the calendar month in which the time off and compensatory wage or salary is granted to the employee. The Slovak legislator also thought of an option when there would be a plurality of

[38] Zákon č. 311/2011 Z. z. Zákonník práce.

trade unions (or employee representatives in general) at the employer. The total amount of time off is then divided between them on the basis of their agreement, with which the employer must be acquainted. If there is no agreement, the arbitrator appointed by employee representatives decides on the division of time off. They are rather pressed to decide because the release with compensatory wage according to the above rules will not apply until the arbitrator makes the decision.

The allocation of time for release according to the above rules is not specifically addressed. The trade union or trade union body makes autonomous decision on the specific division to specific officials and the decision must always be notified to the employer in writing so that the employee's release can be directly recognized (so that there are no disputes regarding obstacles to work and violation of the employee's obligation to be at the workplace and work during working hours).

Allocated and calculated time for trade union activity and release for trade union activity is legally enforceable. However, it is not necessary to use all the time. Interestingly, the unused part will not simply lapse, but the unused release ratio may be compensated, but specific conditions must be agreed in a collective agreement.

The conditions of employee representative's activity are closely related to the real possibility of fulfilling participation rights. Again, in the ideal distribution of social dialogue, a collective agreement is offered as a tool in which, 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 (e.g. by providing remote accesses and computers, copy machines, scanners, etc., which are subsequently used to obtain and process information).

3.2 Persons covered – who they represent

Social reconciliation covers and affects a wide range of entities in society. It affects not only employees and employee representatives or social partners, but also a wider set of people (e.g. families, people dependent on the employee's income, etc.). The scope and level of information provided to which employee representatives are entitled depends on the entire

employee complex. The employer is obliged to provide information and consult its acts not only when they should affect trade unionists (employees – after all, the employer should not be aware of such a fact, i.e. that the employee is a trade unionist, unless the employee determines so due to 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 that the GDPR applies to them, etc.

A trade union represents all employees at the employer, regardless of whether the employees are members or not. Thus, the trade union also acts on behalf of employees who are not involved in a trade union. Given that there may be more trade unions at one employer, all trade unions act on behalf of all employees. The Labour Code lays down more detailed conditions of representation both for trade union members and for employees who are not involved in a trade union.

If there are several trade unions at one employer, the trade union of which the employee is a member acts on behalf of the employee in employment relationships in relation to individual employees. An employee who is not a trade union member is represented in employment relationships by a trade union with the largest number of members who are in an employment relationship with the employer, unless such employee specifies otherwise. An employee who is not a trade union member may designate another trade union as the competent one or may also exclude the competence of any trade union (in a specific case).

If there are several trade unions at one employer, in cases involving all or majority of employees, when this act or special legislation requires information, consultation or consent with the trade union, the employer is obliged to comply with these obligations towards all trade unions, unless it agrees with them on another method of information, consultation or consent.

3.3 Plurality of trade unions

The employer cannot prevent the competence of one or more trade unions. Multiple trade unions may be active at one employer at the same time (provided that they meet the conditions for competence). In such a case, there is a plurality of trade unions. As is clear from the Charter of Fundamental Rights and Freedoms, trade unions are established independently of a country. No limits may be placed upon the number of trade unions, nor may any of them be given preferential treatment in a particular enterprise or sector of industry.

The employer is obliged to provide information to all trade unions, even if there are several trade unions at the employer. It is not possible to choose just one.

The Labour Code deals with the plurality of trade unions only in relation to the exercise of the right to information and consultation (or co-decision). The issues of the plurality of trade unions in relation to collective bargaining are open to resolution (see the provisions of Section 24(2) of the Labour Code.

Trade unions should try to prevent the plurality of trade unions at the employer or contractually regulate the situation when plurality occurs. The Labour Code, also with regard to the general competence of trade unions, requires the employer to negotiate with all trade unions in matters of information, consultation and consent. Social dialogue can be significantly disturbed when it is not the employer's obligation to consult certain issues or when it is sufficient to only inform the trade union about them, but the employer must have the consent of all trade unions in matters where consent is required (e.g. issue of work regulations). If all trade unions do not agree with each other, the lack of consent (a uniform position of all trade unions) causes the absolute invalidity of the legal act (e.g., the said work regulations would be completely invalid; the problem may arise especially for employers in the public sector who are obliged to issue the work regulations). Social dialogue is weakened by the plurality of trade unions in the absence of a plurality agreement. Trade unions should do their best to contractually solve problems related to plurality.

The plurality of trade unions is a problem in most cases. Trade unions should try to eliminate plurality to maintain a quality social dialogue or at least conclude an agreement on another procedure (solving plurality – defining mutual authorizations).

3.3.1 plurality of trade unions in collective bargaining

Multiple trade unions may be active at one employer at the same time. Employers cannot prioritize any of them, which may result in paralyzing collective bargaining.

If the employer has more than one trade union, the employer must discuss a collective agreement with all trade unions; trade unions act and deal as per legal consequences for all employees together and in mutual consent, unless they agree otherwise between themselves and the employer.

The Czech-Moravian Confederation of Trade Unions is currently trying to propose a solution to the plurality of trade unions in such a way that if there were several different trade unions at the employer, the trade union that would have the most members at the employer (or the merger of the organizations that would have the most members in total) would be responsible for collective bargaining. The right of other trade unions would be the possibility (guaranteed by law) to discuss and consult before the employer (the employer would have to communicate also with these trade unions).

3.4 Relationship of a trade union to other employee representatives

A trade union represents one option of employee representation. In addition to trade unions, employees can be represented by a *works council* or a *safety and health representative* or the *European Works Council*. From the point of view of employee representation in their right to information and consultation, all employee representatives are equals. In contrast to other forms of employee representation, a trade union has a privileged position only in collective bargaining. It is the only representative who can conclude a collective agreement on behalf of the employee. Given that the Labour Code contains a regulation according to which it is not possible to replace the collective agreement with another agreement because such an agreement would not be taken into account, it is not possible to transfer the right to collective

bargaining to other employee representatives, even under a contract (e.g. when the majority of employees choose so).

It is important that all forms of employee representatives can exist side by side – together at one employer. The earlier regulation, when the trade union activities at the employer or the conclusion of a collective agreement, automatically meant the termination of a works council, is no longer effective.

Nevertheless, a trade union has a historically established privileged position. In contrast to other employee representatives, a trade union has the right to collective bargaining, the right to consult the amount of compensation for material damage caused by the employee to the employer, the right to consult termination and immediate termination of employment and the right to co-decision of termination or immediate termination of employment of an employee who is also a trade union official or the right to co-decision on the issue of work regulations, etc.

Unlike other employee representatives, a trade union has a legal personality, i.e. it is a legal entity (legal person) that can also act in other legal relations and carry out other activities.

The nature of a trade union as a legal entity *sui generis* predestines it to a sovereign position among employee representatives. No other form of employee representation has the same scope of authorization. Although a works council, pursuant to the provisions of Section 276 of the Labour Code, has a special legal personality to be a participant in a court dispute over the compliance with the right to information and consultation, trade unions are entitled to a full range of possible ways, such as enforcing the above-mentioned participation rights and engaging in social dialogue through legal acts. The quality of the implementation of the right to information and the actual activity of trade unionists in the employer's bodies and in exercising participation rights is clearly broader and more consistent.

3.5 Participation of employee representatives in supervisory boards

Although the Labour Code defines a number of participation rights in more detail, it is impossible to find an unambiguous procedure in it. One of the platforms that employees can

use to learn about important information is the audit committee or the supervisory board. If it is an employer with a supervisory board (requirement) and if the employer has more than 500 employees, it is obliged to appoint the company's employees to one third of the board under the provisions of Section 448 of the Business Corporations Act. The statutes may specify a higher number of members of the supervisory board elected by employees, but this number may not be greater than the number of members elected by the general meeting; they may also specify that employees elect part of the members of the supervisory board even with a smaller number of employees of the company. The right to elect members of the supervisory board was granted only to employees who are in an employment relationship with the company, directly or, if provided for in the electoral code, through electors. Only a natural person who is in an employment relationship with the company at the time of election or is a *representative* or *member of employee representatives* may be elected. However, the Commercial Code was repealed by rectification (as of 1 January 2014), so it can no longer be referred to. It was replaced by general provisions in the Civil Code and the new Business Corporations Act.

Trade union officials often believed that the right to participate in the supervisory board belongs exclusively to trade unionists. It does not and it has never been so. Any employee (in an employment relationship with the employer) or any member of the employee representation, i.e. also the works council (without any connection with the trade union), could be a member of the supervisory board.

The Business Corporations Act does not contain a guaranteed participation of employee representatives in supervisory boards of joint-stock companies. Naturally, nothing prevents the general meeting of joint-stock or other companies from electing one of its employees or employee representatives as a member in the event of the creation of a supervisory board. However, unlike the previous regulation, employees and their representatives cannot call for participation in supervisory boards.

It is thus appropriate for the involvement of employee representatives in supervisory boards that the right to employee representation in a supervisory board be agreed in a collective agreement. The necessary content must be both the right to participate in a supervisory board and the formulation of the rules of representation and the process of nominating candidates, etc. When enshrining the right of employee representatives to participate in a supervisory board by a collective agreement, trade unions may base it on the original wording of the Commercial Code and adjust it for 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 provisions of Section 448 of the Business Corporations Act. Nevertheless, the majority of views tend to the autonomy of the will of the parties – the possibility of freedom to negotiate and regulate mutual relationships. The method of communication and time limits can also be adjusted.

3.6 Collective bargaining

Collective bargaining is the basic tool for trade unions, as employee representatives, to influence the regulation of working conditions at the employer and create a better working environment and participate in creating more favourable working conditions. Collective bargaining is a formalized process of negotiation between a trade union and an employer aimed at concluding a collective agreement. The process of collective bargaining is contained in Act No 2/1991 Sb., on collective bargaining. The Labour Code contains other conditions, e.g. types of collective agreements and some of their essentials.

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

The basic tool for guaranteeing the fulfilment of participation rights is a collective agreement.

3.6.1 collective Agreements

In its normative part, a collective agreement is the source of law (i.e. in the part in which it states the right to the 5 weeks of leave per calendar year for an unspecified group of employees, for example). Employees may invoke the performance of claims under a collective agreement in the same way as if their rights were guaranteed by the Labour Code or other law or an employment contract.

It is possible to use collective agreements to regulate the rights of employees in employment relationships and the rights or obligations of the parties to this agreement (i.e. the rights and obligations of the employer towards the trade union, e.g. the means to ensure trade union activity). Provisions in a collective agreement that impose obligations on employees or reduce their rights set out in this act are not taken into account.

From the point of view of employees, a collective agreement may include advantageous working conditions, i.e. the establishment of new rights (e.g. increased meal allowance; higher leave for a calendar year; shorter set weekly working hours; increase in tariffs of guaranteed wages or surcharges, etc.). A collective agreement can never set new obligations for employees (e.g. obligations for the primary use of compensatory time off for overtime work instead of a bonus; shortening the period during which the employees should be informed of the scheduled working hours at the latest, e.g. to 3 days, etc.). That is, a collective agreement can include the authorizations of employee representatives, the possibility of their participation in company bodies or the scope of participation rights. But it is not possible to force employees, even in the position of a trade union official, to use even the agreed and provided authorizations under the threat of breach of duty and possible termination of employment or other sanctions.

Participation rights, even if agreed in a collective agreement, are rights, not obligations. The employer may not in any way sanction an employee representatives (its employee) for failure to use or comply with the agreed authorizations and rules in a collective agreement.

If there is a trade union at the employer, a collective agreement is the only means which, according to the Labour Code, can introduce

- extended vesting period in connection with uneven distribution of working time;
- a working time account;
- a different amount of night work allowances, etc.

It is stipulated in the Labour Code that only a trade union can conclude a collective agreement on behalf of the employee. This gives trade unions (unlike works councils and other employee representatives) a privileged position and the right to binding and enforceable regulation of working conditions.

From the point of view of exercising participation rights, associating in a trade union and its activity as an employee representative at the employer thus seem to be the most ideal form because it is possible to subsequently use the widest range of participation rights and, finally, the protection of employee representatives (see the previous section).

Collective relationships, i.e. even relationships when concluding a collective agreement, are employment relationships. They are therefore regulated by the Civil Code, 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 agreement. The Labour Code sets out its basic forms and content, the Collective Bargaining Act sets out the process of its conclusion.

3.7.1 form

According to the Labour Code, collective agreements must be in **written** form. If the written form is not observed, the collective agreement will not be taken into account at all. The particularity of the collective agreement is also the rule under which the **signatures** of contracting 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 next to each other). 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 papers covered with writing, there would in fact be no collective agreement).

In addition to the collective agreement, it is possible to consider concluding an agreement on the fulfilment of participation rights. However, it would not be covered by the rules of collective bargaining. It can also take an informal form. However, the enforceability of the agreement outside collective agreements will be questionable. It is foreseen in the Labour Code that the collective agreement cannot be replaced by any other agreement. It will thus rather be the result of a general social dialogue based on the fulfilment of mutual trust, a positive personal framework of social dialogue and a gentlemen's agreement.

3.7.2 content

It is possible to use collective agreements to regulate the rights of employees in employment relations, as well as the rights or obligations of the parties to such agreement. Provisions in a collective agreement that impose obligations on employees or reduce their rights set out in this act are not taken into account.

The actual content of a collective agreement is limited by the autonomy of the will of the parties and the legal, economic and personal framework (i.e. legal limits, economic possibilities and abilities of negotiators). All limits are essential; but the legal limit (what and to what extent can be agreed in a collective agreement) is most important for the actual possible content of the agreed working conditions.

In general, the contracting parties may derogate from the Labour Code and other employment laws if it is not expressly prohibited by law. Provisions that violate good morals, public order or the law concerning the status of persons, including the right to protection of personality, are prohibited. The so-called **minimax** applies in employment relationships. The deviating regulation of rights or obligations in employment relationships must not be lower or higher

than the right or obligation set out in this act or in the collective agreement as the minimum or maximum permissible.

It is not possible to agree on a longer scope of the set weekly working hours in a collective agreement than the maximum specified in the Labour Code. But shortened working hours may be agreed, i.e. fewer hours of work per week, but without impact on wages, holidays, etc. On the other hand, it is not possible to exceed the minimum wage in a collective agreement.

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

3.7.3 conclusion process

A collective agreement is an obligation in private law, similar to an employment contract, a lease agreement or a purchase agreement. However, specific procedures and rules apply to the conclusion of a collective agreement, different from the general conclusion of agreement under the Civil Code.

The Labour Code refers directly to the Collective Bargaining Act when it comes to concluding a collective agreement.

The Collective Bargaining Act specifically regulates the process of concluding a collective agreement; therefore, it is not possible to use the general provisions of the Civil Code for concluding a collective agreement, which relate to pre-contractual liability or an agreement on the future contract (obligation to conclude a new collective agreement), etc.

It is practically the only procedural regulation that defines employee participation in a more vigorous way. In particular, the consequences of non-compliance with the obligation to cooperate differ from the definition of the nature of information and consultation, when a dispute arising during the conclusion of a collective agreement may also be resolved by strike or lockout. In fact, it is possible to implement in a collective agreement the requirements of

employee representatives for consistent, effective and complete access to information and for the concretization of the rules of cooperation and obligations of the employer.

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

The other party is obliged to respond to the proposal in writing without undue delay, but no later than 7 working days, unless another time is agreed, and to comment on those proposals which it has not accepted.

The parties are obliged to negotiate with each other and provide each other with the required cooperation, provided that it does not conflict with their legitimate interests.

If the collective agreement was concluded for a definite period of time or if it was concluded for an indefinite period and the parties agreed on the possibility of its amendment on a certain date or if it was terminated, the parties to the collective agreement are obliged to start negotiations on the conclusion of a new collective agreement at least 60 days before the expiry of the existing collective agreement or before the date of its possible amendment.

The parties to a collective agreement may agree on the possibility of amending the collective agreement and its scope; the same procedure applies to such amendment as if concluding a collective agreement.

It is appropriate to define the possibility of negotiating an amendment to the collective agreement at a certain moment (under certain conditions) and in relation to specific provisions. It is usually not appropriate to open the entire collective agreement to change one point.

If the employer does not want to negotiate collectively, the assistance of an intermediary may be used to conclude a collective agreement. If the negotiation is not resolved within 20 days of the expiry of the submission of the dispute to the intermediary, the negotiation before the intermediary is considered unsuccessful and the trade union may initiate proceedings before the arbitrator or proceed to a strike (except for employment where strikes are excluded, e.g.

law-enforcement agencies). A collective agreement is concluded by the decision of the arbitrator.

3.7.4 trade union membership

The quality and level of social dialogue is often related to the very existence of social partners and their ability to communicate. From the point of view of collective bargaining and the enshrining of working conditions in collective agreements, an important aspect can be observed not only in the authorized entity, which is authorized to collective bargaining, but also in the civic activity transferred to membership in authorized entities. *Trade union density* is an important factor in the case of the Czech Republic. Trade union density has been decreasing in the long term, with trade unions being basic representatives authorized to collective bargaining. If the goal and possibilities of influencing social justice, including the achievement of decent wages and decent work through collective agreements, are to be consistently met, it is necessary that the authorization of trade unions to bargain on behalf of employees is as strong as possible. The strength of the authorization is most easily assessed in connection with membership (although exceptions can be identified; for example, membership in trade unions in France is not enormous, but trade unions can rely on extensive civic initiative and empathy when dealing with socio-economic employment issues – even without a link between trade union membership, employees attend the events organized by trade unions. Although trade unions in France have one of the lowest statistical levels of trade union density – membership – they play a significant role at the company, national and sectoral level[39]).

Trade union membership has been showing a downward trend in the long term (not only in the Czech Republic). Fewer and fewer employees become trade union members. Especially in countries where the union membership rate has a significant impact on, for example, the possibility of collective bargaining or is related to the application of claims resulting from the

[39] Five things you need to know about trade unions in France . [online]. *thelocal.fr* [cit. 2024-28-04]. Dostupné z: https://www.thelocal.fr/20190920/five-things-you-need-to-know-about-trade-unions-in-france/

degree of representativeness, the employee's personal affiliation to an employee representative must be perceived as an important element in creating a comfortable environment for effective social dialogue and ensuring fair working conditions through employee participation.

The long-term downward trend in trade union density is also reflected in otherwise socially strong countries, where social dialogue is historically one of the important tools for shaping the working environment. A decline can also be seen in Sweden or Denmark. The following figure shows a chart of the decline in trade union membership in the time curve.[40]

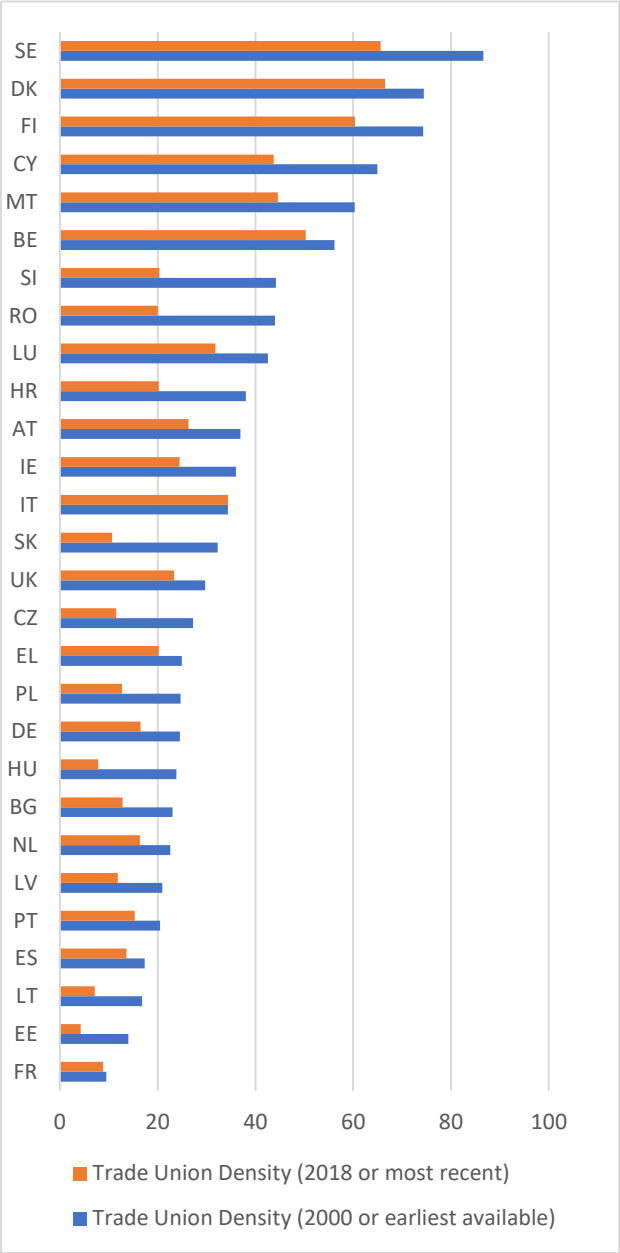
Trade union density in the Czech Republic currently oscillates at around 10% of the active workforce. On the other hand, trade union density in Sweden reaches a high level of over 80%.

The degree of exercising participation rights and the possibility of obtaining quality information from the employer depends both on the number of employees of the employer and on the strength of the trade union, which is primarily conditioned by membership.

Trade unions are not obliged to comply with the employer's request in which the employer asks the trade union to list the trade union members. On the contrary. It would be the employer's requirement which is contrary to the GDPR and the Labour Code (Section 316(4)). The employer is obliged to meet its obligations towards the trade union from the moment the trade union is active at the employer (meets the conditions for competence; see the previous section), regardless of the size of the trade union and the number of its members.

[40] 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

Table: Trade union density[41]



Changes in the labour market and collective employment relationships are reflected not only in terms of the content of collective bargaining (what can be negotiated), but also in formal and subjective terms. If trade unions are formed from employees' associations and if their strength is derived from the size of their membership, the introduction of new forms of employment will affect the social dialogue – and above all the position of the trade union. Especially the precarious forms of employment and platform work are based on distance from the usual workplace or the usual performance of work in the social environment of a group of employees.[42] There is a social separation, which often entails a reduction in trade union membership.

Both internal and external communication is gaining in importance, especially in the case of flexible forms of employment. Platform

[41] 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

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

workers, employees working from a different workplace than the employer's workplace or employees with flexible use of working hours often do not stay in a specific place and thus dilute their interaction with other employees. This naturally limits the physical transfer of information between employees, which can lead to an overall weakening of social dialogue and participation rights (limited information to compare whether the conditions at the employer are equal or not). The unwritten obligation of employee representatives can be seen in the collection and subsequent dissemination of summary information so that employees keep good track of things.

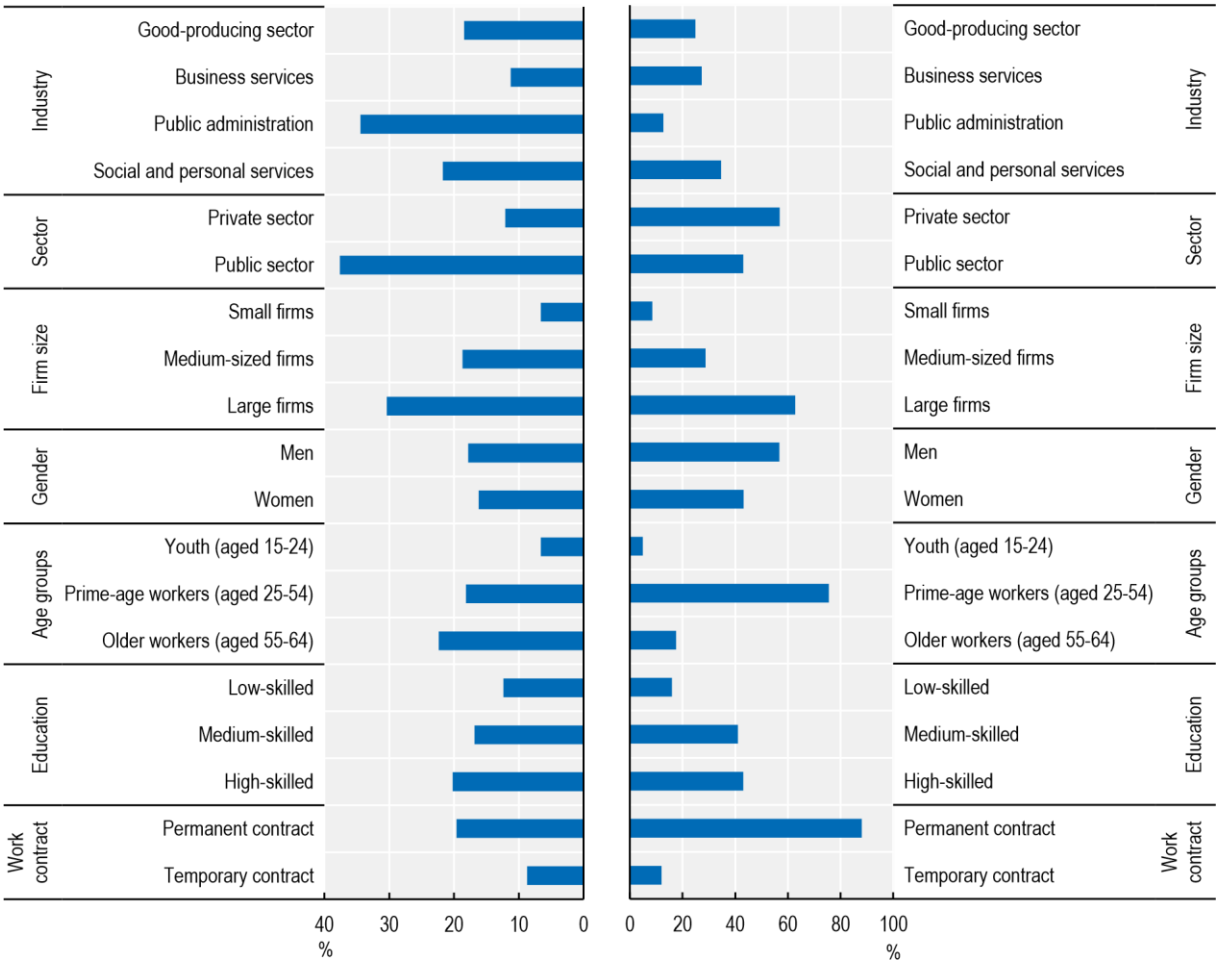
The effectiveness of collective bargaining is primarily related to the potential and bargaining power of trade unions. But this is not the only aspect. As demonstrated by the French example, the assessment of effectiveness in relation to trade union density may be misleading. When taking into account the fulfilment of the objectives of collective bargaining, the factor of the competence of collective agreements cannot be omitted. The competence of collective agreements foreshadows the personal scope of the agreed conditions. Personal competence of a collective agreement can be imagined as its specific effects on specific employees without the employee having to be a member of a trade union. If a collective agreement concluded at the company, sectoral or higher level applies to all employees, regardless of their membership in a trade union, the importance of the collective agreement itself increases. There is thus no clear equivalence between trade union membership and the competence of trade union and the achievement of fair work.

Trade union density – mandate for collective bargaining

The interest of employees to be represented is an essential factor affecting the results and possibilities of social dialogue. These are mainly the conditions of competence at the employer, primarily the strength of trade union movement so that in possible communication and social dialogue it is possible to argue with a legal mandate (e.g. in accordance with Czech legislation according to the provisions of Section 286 of the Labour Code and determined on the basis of a majority transfer). The trade union membership is steadily decreasing

worldwide. The challenges associated with digitalization include developing activities to make social dialogue more attractive and recruit new members.

Figure: Trade union density[43]



Trade union membership is optional. Nevertheless, everyone can take advantage of the benefits negotiated by the trade union, which is also reflected in trade union membership. The degree and level of trade union membership changes and varies in connection with the professions and the type of work performed by the employee. From the point of view of new

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

goals and modern trends, we can expect the activation of trade unions in social dialogue, including the use of modern technologies.

3.7.5 entities authorized to collective bargaining

The previous sections presented the importance of a trade union in exercising participation rights and the possibility of using the rights through other types of employee representatives. It should be emphasized again that although there are more employee representatives for a wider range of participation rights, only a trade union has the right to collective bargaining and a privileged position in the Czech legal environment. The prioritization of the trade union as the main employee representative also corresponds to the current trend in the European environment, when the Directive on adequate wages and the promotion of collective bargaining explicitly refers to trade unions, for example. Although the discussion and the adopted opinions of EPSCO[44], after a more extensive discussion, on the recommendation to promote the strengthening of social dialogue in Europe, indicate the possible involvement of more types of employee representatives, collective bargaining through a trade union remains a priority.

The fundamental issue of collective bargaining and achieving the possible protection of fair wages is the delineation of the group of entities that are entitled to collective bargaining. The scope of employee representatives and their authorizations may vary. The Czech legal environment grants trade unions a privileged position and a monopoly for collective bargaining, when the Charter and the Labour Code are based on the assumption that only a trade union may conclude a collective agreement on behalf of the employee and that any replacement of the collective agreement by other arrangements is considered to be contrary to law and different agreements and contracts will not be taken into account.[45]

[44] EPSCO, Proposal for a COUNCIL RECOMMENDATION on strengthening social dialogue in the European Union. [online]. *thelocal.fr* [cit. 2024-06-13]. Dostupné z: https://data.consilium.europa.eu/doc/document/ST-10542-2023-INIT/en/pdf

[45] Ustanovení § 22 a § 28 zákoníku práce

Other participants in social dialogue (caution; not entities authorized to collective bargaining) provided for by law can be identified in the Czech legal environment and these are the so-called quasi entities[46] in the form of a works council, the European Works Council and a safety and health representative. However, only trade unions have the right to collective bargaining and the possibility of concluding a collective agreement.

The extension of various ways of employee representation is independently defined by national law, such as the Austrian and German system, in which works councils are an entity that does not have the right to conclude tariff agreements (but they have special authorization to enter into corporate arrangements that they can intervene in the area of remuneration in specific cases)[47] and when the activities of employee representatives and the autonomy of the parties are limited.[48]

The consideration of the activities of employee representatives is essential for collective bargaining. The range of participants in social dialogue is quite wide and it is always necessary to consider the specific authorizations of individual forms. The following chart (2019) shows the intensity of employee representation in various forms.[49]

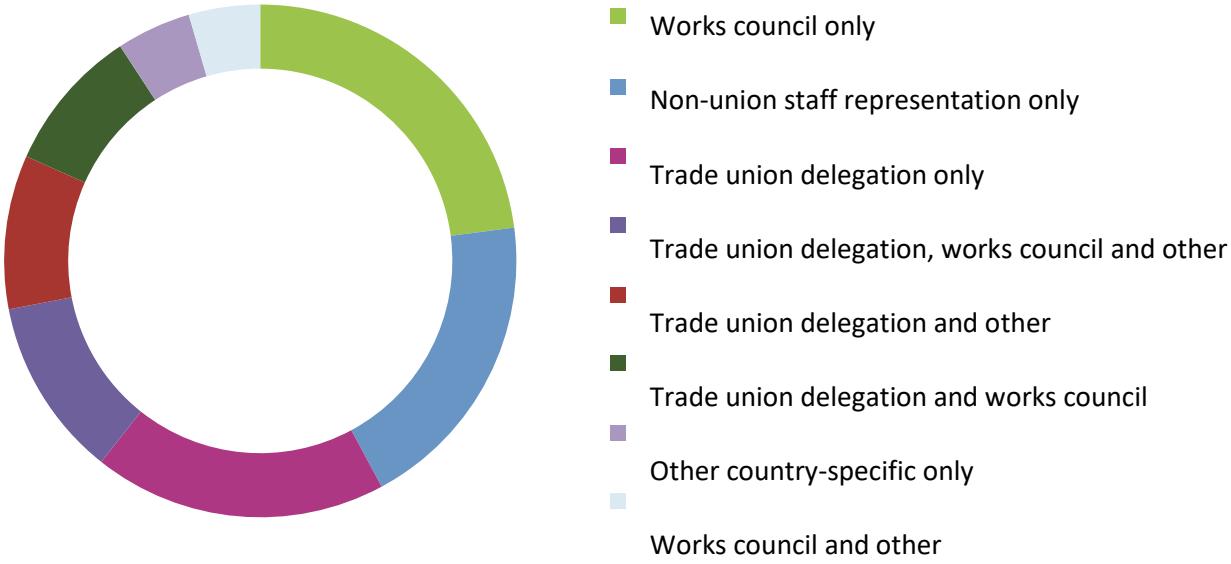
[46] HORECKÝ, Jan. STRÁNSKÝ, Jaroslav. *Sociální dialog a jeho účastníci*. op.cit. s. 27 – 41.

[47] 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/

[48] 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

[49] 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. 114

Table: Configuration of employee representation structures (%)



The global trend is to grant authorization to collective bargaining only to trade unions, as is the case with the Czech legislation. Discussions were initiated in the same direction and with the same considerations, following the wording of the Directive on adequate minimum wages and the promotion of collective bargaining. The exclusive right of a trade union to collective bargaining minimizes the potential for conflicts of interest of various forms of employee representation. However, it is always necessary to perceive the national legislation and the scope of competences or the content definition of what can be subsumed into collective bargaining. For example, when compared to the German and Austrian regulations, the Czech trade union has a greater degree of participation rights (which is due to the peculiarities of individual employee representation systems). A number of competences that belong to trade unions in the Czech environment belong to the works council in the German and Austrian environment (while Czech works councils have practically no fundamental competences). These include consent to the installation of monitoring devices or consent to the introduction of agency employment and the recruitment of temporarily assigned employees.

3.8 Collective bargaining

Collective bargaining is a narrower part of social dialogue. Although collective bargaining and social dialogue are often synonymous (usually at a transnational level), it is necessary to perceive a fundamental qualitative difference in the national conditions of the Czech Republic. Social dialogue represents any communication of social partners on all issues related to dependent work; collective bargaining is a qualitatively different institute. Unlike social dialogue, collective bargaining is bound by a number of rules that also result from the law (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 on the contracting parties and, above all, guarantees individually enforceable rights to employees by legal (judicial) means.

Collective bargaining significantly affects the conditions at the employer. Achieving fair pay, decent wages and decent work and the full and effective exercise of participation rights is one of the principal objectives of collective bargaining. Collective bargaining affects working conditions at the employer and vice versa. It is not only a legal framework for the possibilities of collective bargaining, i.e. primarily the scope of the possible content of collective agreements (what can be the content of a collective agreement from the point of view of law), but also an economic framework (what can be contained in and regulated by collective agreements from an economically sustainable point of view), and finally a personal framework. In connection with the question of to what extent, how, in what forms and under what conditions to effectively achieve the fulfilment of ideas and legally provided opportunities for the exercise of participation rights, it is necessary to think about the interconnection with the personal aspect of collective bargaining. When looking for an answer to the presented question, it is necessary to abstract from the perception of the personal limit of collective bargaining consisting in the person of the negotiator (active participant), but it is necessary to focus rather on employees who form the membership and mandate for the trade union and also on non-members – employees to whom the collective agreement and all its achievements apply without having to actively participate. In a work environment with

successful social dialogue and a quality collective agreement, trade unions often encounter the essence of collective agreement during the recruitment activities – it also applies to unorganized persons.

In practice, a quality collective agreement becomes a threat to itself because ...

> The benefits covered by collective agreements apply to all employees!

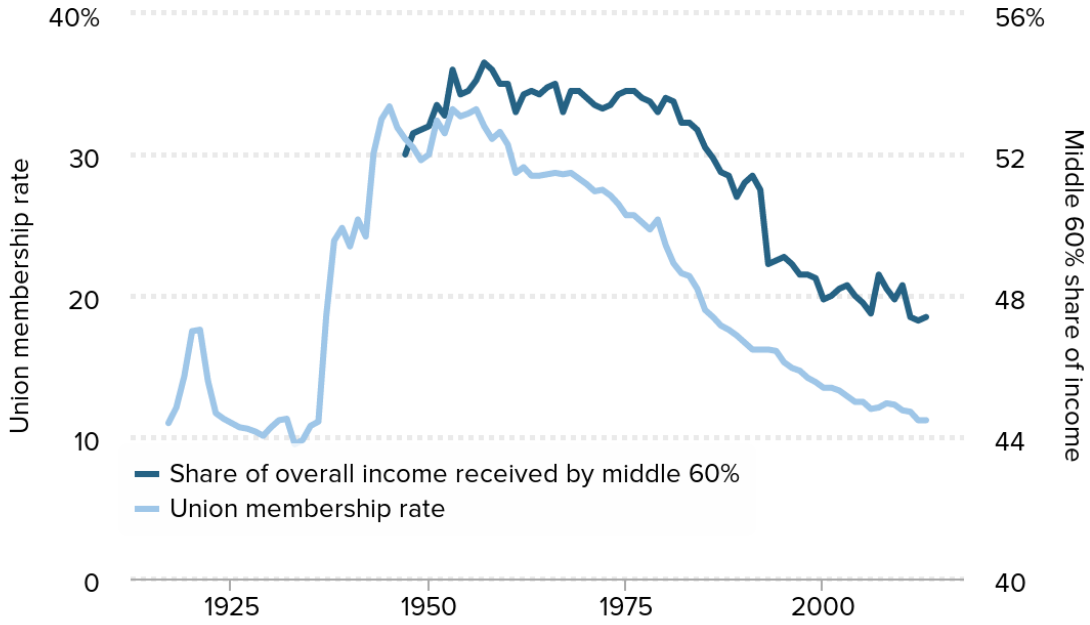
The attractiveness of membership increases with the results of collective bargaining with regard to a fair wage and ensuring the social status of employees and the secured duration of employment relationship.

The interdependence of the effective use of participation rights in defending working conditions at the employer with collective bargaining and trade union density cannot be simply demonstrated or refuted. Yet a certain trend can be traced from the available data on working conditions at employers with trade unions and working conditions co-regulated by collective agreements and at employers where collective bargaining is not manifested in any way (or collective bargaining at the company and sectoral level). In general, working conditions at employers who perceive social dialogue as an important tool for achieving social reconciliation and decent work are at a higher level than where social dialogue is not promoted.

The effect of union membership rate on fair wages can be traced especially where the results of collective agreements operate on the basis of a membership approach. Sharing the economic results of the employer (profit share reflected in quality wages and working

conditions) indicates the fundamental interdependence and importance of membership precisely in connection with ensuring fair wage or salary (see the following table[50]).

Union membership rate and share of income going to the middle 60% of families



Source: Data on union density follow the composite series found in Historical Statistics of the United States; updated to 2013 from unionstats.com. Data on the middle 60%'s share of income are from U.S. Census Bureau Historical Income Tables (Table F-2).

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A strong social dialogue and a strong position of employee representatives and their respect by the employer promotes quality and fair working conditions. The level and degree of trade union competence is also important. Both company and social dialogue and collective bargaining at a wider – sector-oriented or regional level contribute to fair wages and working conditions. The fight against social dumping and the gradual opening of the labour price

[50]EPIC. Collective Bargaining's Erosion Has Undercut Wage Growth and Fueled Inequality [online]. *www.epi.org* [cit. 2024-28-04]. Dostupné z: https://www.epi.org/publication/benefits-of-collective-bargaining/#epi-toc-5

scissors, as well as other aspects of the labour market, such as the gender pay gap, can be addressed at a higher level with a wider scope. A higher union membership rate and the subsequent competence of trade unions and collective agreements negotiated by them bring the effect of balancing working and social conditions of employees and society in general.

Experience from the comparison of working conditions and social dialogue shows that trade unions built on a strong membership and dense coverage and competence are able to negotiate working conditions more universally. The standards then apply to more workplaces or entire sectors and regions. Increasing the attractiveness of union membership and promoting social dialogue and collective bargaining should become the goal of company social partners and of national interests.[51]

3.9 Social reconciliation in the exercise of participation rights in the context of decent work

Using participation rights, and their application, employee representatives contribute to the establishment of decent work at the employer. The possibilities of exercising participation rights, as mentioned above, often affect the nature and quality of the work environment. In order to be able to conduct a quality social dialogue with the participation of employee representatives and to aim for decent work, it is necessary to set a certain quality of information exchange and activity for employee representatives. Achieving decent work (wages; working time regulation, etc.) is one of the main attributes of social dialogue and collective bargaining.

The basic legal documents of the Member States, the European Union and transnational units, contain a reference to participation rights, and thus the obligations of employers to comply with them. However, compliance with them is primarily related to the socio-economic, political, cultural and social factors of a given Member State. There is a gradual harmonization in the European Union. But exceptions must be maintained.

[51] RHINEHART, Lynn. McNICHOLAS, Celine. Collective bargaining beyond the worksite. Economic Policy Institute. [online]. *epi.org* [cit. 2024-28-04]. 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/

Participation rights are part of the European Pillar of Social Rights, when they implicitly penetrate the guarantee of decent work (similarly, for example, in the Charter of Fundamental Rights of the European Union[52]). One of the predicted dimensions (i.e. we can talk about conditional circular reasoning), namely social dialogue, leads to the achievement of decent work, which include fair wages, safe 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.[53]

Figure: European Pillar of Social Rights[54]

[52] Listina základních práv Evropské unie. [online]. *fra.europa.eu* [cit. 2024-28-04]. s. 2. Dostupné z: https://fra.europa.eu/cs/eu-charter/article/31-slusne-spravedlive-pracovni-podminky

[53] Evropský pilíř sociálních práv [online]. *ec.europa.eu* [cit. 2024-28-04]. 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

[54] Tamtéž

Modern trends affecting collective bargaining throughout the developed world, and especially within the European Economic Area, are related to changing trends not only in terms of changes in the subject of production, but also in connection with modern approaches to human resources. Social partners and trade unions (chief employee representatives) must be involved in shaping a harmonious work environment and finding a basis for establishing and maintaining the concept of *decent work*. *Decent work* has historically been the responsibility of social partners and employee representatives in particular. According to the Director General, the common future depended on how the International Labour Organization and the Member States can cope with the current social requirements of the labour market, all in the concept of the challenge of decent work.55 Decent work is an integral part of the Sustainable Development Agenda.

Figure: Decent work as part of the Sustainable Development Agenda[56]

[55] 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

[56] 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

Decent work becomes an explicitly named goal and means of achieving a fair labour market and ensuring sustainable development in the future. Especially when introducing employment standards in less developed countries (although the validity of the *Decent Work for All* agenda is universal), decent work is probably the most powerful concept and effective tool available to the international community and created over the years which provides unprecedentedly friendly political opportunities that can offer effective, proportionate and, above all, effective responses to the current globalization trend.57

When implementing the decent work agenda, the International Labour Organization sets out the basic cognitive elements of any assessed activity – work. Not every job can be equated with decent work. In addition, the concept of decent work cannot be understood only as a

[57] 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.

person being entitled to work, i.e. any work, but to work that will enable the person to live in society and meet their usual needs.

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

- striving to create enough job opportunities and jobs while developing conditions for entrepreneurship;
- guarantee of employment rights (respect for the rights of the employee);
- increasing social protection;
- promoting social dialogue.[58]

The project of decent work, or decent work as such, must be understood in a modern context as a tool for achieving economic and social growth, including sustainable development. Trade unions can make a crucial contribution to ensuring 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 participation rights is emphasized again. A common feature can be seen in the unambiguous support and underlining of the importance of social dialogue, but without a specific and precise definition of its implementation. Again, it can thus be inferred as a basic tool that can lead to fully ensuring the application of participation rights, collective bargaining and rules in the concluded collective agreement.

4 Importance of participation rights for social reconciliation not only at the national level

Social partnership is one of the elements of building national labour markets and it also affects the transnational guarantee of decent work. A clear example can be the setting of the basic

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

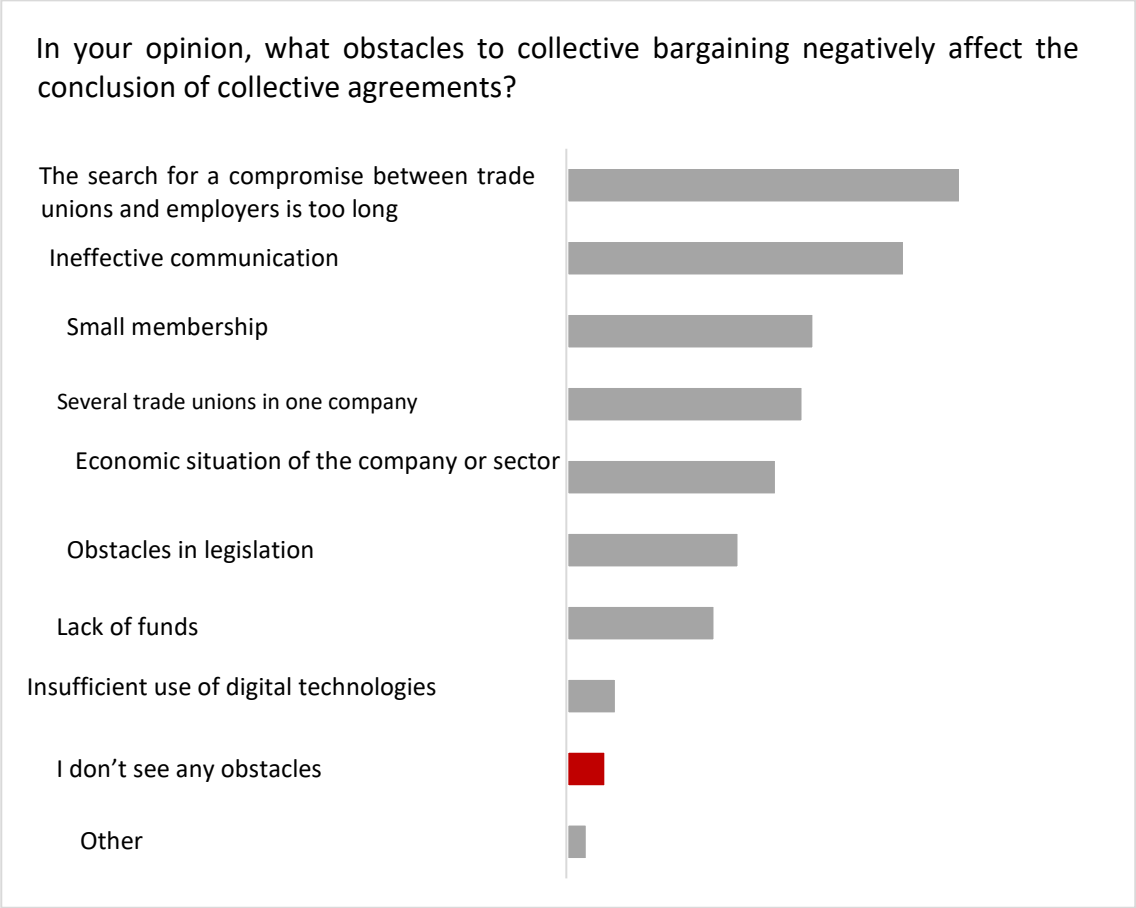
functional framework of the European economic market, based on a functioning *economic and social* model. The economy should not be focused only on financial calculation, but it is also necessary to evaluate the social consequences, i.e. those impacting the status of natural persons not only in general in society, but also in dependent work. It is also necessary to perceive other factors (e.g. current focus on the *green* economy and environmental context in connection with the *Green Deal*, while respecting social impacts, e.g. by focusing on increasing people's skills and the adaptability of labour market requirements[59]).

As mentioned above, guaranteed collective bargaining is based on a number of transnational legal sources. The participation of employees or their representatives in shaping working conditions has its history in modern history, when the fundamental importance is awarded by the above 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 social dialogue in the form of existing results and existing working conditions and the scope of collective agreements for non-unionized workers is one of the factors that affect the further enforceability of participation rights and the real participation of employee representatives in collective bargaining. The factors that affect membership and, consequently, the level of the achieved results are also at 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 an important aspect of social dialogue and the development of collective employment relationships *pro futuro*. The study carried out for the purpose of identifying the aforementioned barriers shows that the operating or procedural conditions for the performance of trade union competences (e.g. the degree of efficiency felt) are limiting factors. In fact, it may be the inadequate implementation or inappropriate regulation of the use of participation rights.

[59] Tisková zpráva. Employment: Commission outlines measures to maximise hob opportunities in the green economy. [online]. *Eur-lex.europa.eu* [cit. 2024-28-05]. Dostupné z: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_14_765/IP_14_765_EN.pdf

Figure: Obstacles to collective bargaining[60]



The most frequently cited obstacles to collective bargaining are the too long search for a compromise between trade unions and employers. This is reported by up to 58% of respondents. The second most frequently reported problem is inefficient communication in collective bargaining. Half of the respondents consider it an obstacle. A small membership is a problem according to 37% of respondents. A larger number of trade unions in one company is one of the obstacles to collective bargaining according to 35% of respondents. Other

[60] HUSAŘÍKOVÁ, Ludmila. NESRSTOVÁ, Markéta. Role a význam kolektivního vyjednávání v době 4. průmyslové revoluce. TREXIMA. 2020. s. 29. Dostupné z: https://ipodpora.odbory.info/soubory/uploads/ASO_pr%C5%AFzkum_Role_a_v%C3%BDznam_KV.pdf

reported obstacles include the economic situation of the company or sector (31% of respondents), barriers to legislation (26% of respondents) or lack of funds (22% of respondents); the lowest number of employees consider the insufficient use of digital technologies in collective bargaining as an obstacle (8% of respondents). 6% of respondents say that they do not perceive any obstacles to collective bargaining.[61]

4.1 Collective bargaining and the International Labour Organization

The application of participation rights, pursuant to the International Labour Organization, brings benefits not only for the employees, but also for society as a whole. The importance of social dialogue and collective bargaining (whether perceived in a broader or narrower sense) in the outlined view is evidenced by a number of conventions and recommendations of the International Labour Organization.[62] Both the convention and the recommendation are considered by the transnational community as tools for implementing social (but in fact also economic) policy in order to achieve decent living standards and decent work with fair working conditions. Granting the right to collective bargaining to employee representatives (within the exercise of the right to freely organize) – in the conditions of the Czech Republic, to trade unions – brings positive results. Negotiations between employee representatives and the employer are fairer when the voice of capital is heard, but also the voice of social requirements (voice of employees). The guaranteed opportunity to conduct collective bargaining provides both parties with the possibility to achieve the possible in the context of decent work, as well as a fair working environment and to minimize potential disputes or possible costs and economic losses.[63] Promotion of collective bargaining and social dialogue, which is to be guaranteed not only within the company environment, but primarily within national authorities and national legal orders, is enshrined in virtually each of the above-

[61] HUSAŘÍKOVÁ, Ludmila. NESRSTOVÁ, Markéta. Role a význam kolektivního vyjednávání v době 4. průmyslové revoluce, s. 28.

[62]

[63] ILO. International Labour Standards on Collective bargaining [online]. *ilo.org* [cit. 2024-28-05]. Dostupné z: https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/collective-bargaining/lang--en/index.htm

mentioned conventions (i.e. social dialogue results in conventions and recommendations as such in a transnational environment, while establishing the promise and task of promoting social dialogue and collective bargaining in common practice within national labour markets, etc.). If the application of participation rights is discussed, the importance of international conventions can be sought in a similar way as in the case of Community law instruments, setting the direction of a positive environment and guaranteeing minimum social standards and emphasizing the importance of social dialogue. The importance of collective bargaining (application of participation rights) can subsequently be traced, for example, in the last of the adopted conventions of the International Labour Organization in 2019, which concerned violence and sexual harassment (not only) at workplaces. In Article 5, the States commit themselves directly to respecting, promoting and implementing 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, with a view to preventing and eliminating violence and sexual harassment in the workplace and in the world of work and to promoting the right to decent work. In order to enforce the goals, the national legal framework (legislation and the legal order) should be used, but also and primarily social dialogue, collective bargaining and the conclusion of collective agreements.[64]

Although the conventions and recommendations are not automatically binding, i.e. their binding force is associated with ratification by individual states, they have universal application, especially with regard to the society-wide perception, ethics and the essence of universality of reaching the activities of the International Labour Organization.

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

[64] Úmluva MOP č. 190 o odstranění násilí a obtěžování ve světě práce [online]. *ilo.org* [cit. 2024-27-05]. Dostupné z: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3999810:NO

Republic amounts to less than 50%[65] of the conventions adopted by the ILO[66]. With regard to the content, national conditions generally correspond to the objectives contained in other conventions, while always respecting the importance of collective bargaining and social partnership.

4.2 Participation rights at European level

Enshrining social dialogue and collective bargaining is one of the central attributes of the functioning of the economic market also, as already mentioned, at the European level. Implementation and support for the implementation of participation activities of social partners at the European level, as well as for the basic parameters of the European legislative process. The harmonization of national labour market regulations and the guarantee of minimum standards through, in particular, secondary EU law (see, for example, the list of implemented European sources in note 1 of the Labour Code for the Czech legal environment[67]) are based on the negotiations of social partners at both European and national level. The minimum standards contained in the directives are agreed in a transnational social dialogue. National social partners then contribute to the factual form of enshrining the objectives and ideas of the European legislator in national legal orders. Subsequently, there is room, as in other cases (where there is no implementation), for the social partners' activities at the sectoral and company level when, especially through collective bargaining, there may be a deviation from binding standards and a guarantee of more favourable regulation of working conditions in collective agreements.

Social dialogue and collective bargaining as basic instruments for achieving social reconciliation and full use of the economic and social model of the functioning of the European economic market constantly resonate both in the activities of the European Union

[65] Úmluvy Mezinárodní organizace práce ratifikované Českou republikou [online]. *mpsv.cz* [cit. 2024-27-05]. Dostupné z: https://www.mpsv.cz/umluvy-mop

[66] Seznam Úmluv Mezinárodní organizace práce [online]. *ilo.org* [cit. 2024-27-05]. Dostupné z: https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:1785413380302::::P12000_INSTRUMENT_SORT:4

[67] ÚZ 1466 Zákoník práce. Sagit. ISBN 9788074885051.

institutions and in the results of their work or set goals and agendas. Certain stagnation of the social aspect of this model led to the restart of social dialogue processes in 2016 as part of the New Start for Social Dialogue agenda[68]. The appropriateness of social dialogue and collective bargaining as tools for ensuring economic stability (as well as the stability of the market itself) stems from the findings made in connection with the negative effects of crises. Markets of Member States where the market economy corresponded not only to the requirements of capital, but also to the requirements of employee representatives were the most resilient. Functioning social dialogue contributed to maintaining the functionality of the market, job stability and adapting to the current requirements for changes, through short-term arrangements of social partners.[69]

Following the New Start for Social Dialogue agenda, the European social dialogue is based on a further focus and, in fact, a framework instrument, which is the European Pillar of Social Rights. Promotion of collective bargaining and social dialogue is one of the basic agendas and is enshrined directly in the text of the document. The exercise and promotion of participation rights fall under the general orientation of the scope of action of the Member States, especially in the context of achieving decent work.[70]

4.2.1 agenda of acceptable wages and promotion of collective bargaining

Promotion of collective bargaining appears in a number of directives aimed at ensuring fair and decent work for employees across modern Europe. Practically all preambles or introductions of the directives include a requirement for Member States to promote social dialogue with social partners in order to implement the intended agendas (as is the case, for

[68] New start for social dialogue – one year on. [online]. *ec.europa.eu* [cit. 2024-27-05]. Dostupné z: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_16_823/MEMO_16_823_EN.pdf

[69] A new start for social dialogue – one yer after. Luxemburg: Publication Office of the European Union. 2016. s. 4.

[70] K významu Evropského pilíře sociálních práv viz text v rámci kapitoly Spravedlivé pracovní podmínky

example, with the implementation of the directive on work-life balance[71] or the proposal for a directive on improving working conditions within platform work, [72] etc.). The above-mentioned Directive on adequate wages and the promotion of collective bargaining, which should be implemented in the Czech Republic, as in other countries, within two years (by 2025), seems essential from the point of view of the application of participation rights. The text of the directive underwent turbulent changes when a significant shift was achieved as a result of an agreement between the Council of the EU and the negotiators of the European Parliament.[73] The importance of the aforementioned agreement lies primarily in confirming the specificity of social dialogue and collective bargaining, or directly the conclusion of collective agreements, while determining adequate working conditions and wages, i.e. achieving a decent labour market, working and living conditions of employees within the European economic market. From the point of view of national employee representatives, the text of the agreement has a major impact in promoting state guarantees to do collective bargaining and eliminate situations where obstacles to collective bargaining arise, which virtually completely paralyze the entire process and prevent the achievement of effective results (see the relevant chapter; in particular, the issue of plurality of trade unions in collective bargaining).

The above-mentioned agreement itself, taking into account the status of social partners, supports collective bargaining and achieving fair working conditions, including a guarantee of adequate wages, provide basic grounds, namely

[71] 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. 2024-28-05]. Dostupné z: https://eur-lex.europa.eu/legal-content/CS/TXT/PDF/?uri=CELEX:32019L1158

[72] Čl. 52 Návrhu Směrnice Evropského Parlamentu a Rady o zlepšení pracovních podmínek při práci prostřednictvím platforem [online]. *Eur-lex.europa.eu* [cit. 2024-28-05]. Dostupné z: file:///C:/Users/104220/Downloads/COM_2021_762_1_EN_ACT%20(4).pdf

[73] European Commission Press release. Commission welcomes political agreement on adequate minimum wages for workers in the EU. [online]. *ec.europa.eu* [cit. 2024-28-05]. Dostupné z: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_22_3441/IP_22_3441_EN.pdf

- better monitoring and enforcement of protection in the form of minimum wages (national legislation will have to include institutional provision for the collection of data on the spread of adequate wages; employees' access to participation rights, including the right to strike, must also be ensured);
- framework for determining the update of statutory minimum wages (where Member States will not leave the level of the minimum wage to the agreements of social partners, a proper method of indexation of minimum wages must be ensured and introduced; however, primary support is still given to social dialogue);
- promotion and facilitation of collective bargaining on wages (compared to the original text of the proposal for the framework, the directive requires that where collective bargaining on wage conditions is not extended to more than 80% of employees in the Member States (previously 70%), Member States must draw up an action plan to promote collective bargaining.

Given the importance of the directive, its wording as of the date of submission of the text is attached as an appendix.[74]

The directive on adequate wages and the promotion of collective bargaining, as well as other sources in general, as the presented text so far shows, have a common feature. Although they always emphasize the importance of participation rights, they do not give a specific answer to the basic question asked in the study, that is, how and where to look for a guarantee of the employer complying with the employee representatives' participation rights. The directive draws attention to the need to create an action framework, but even this lacks a specific form (even at the national level from the Ministry of Labour and Social Affairs).

Social dialogue at the European level plays an essential role in guaranteeing a fair socio-economic policy. Given that the European social dialogue prefers negotiations at the supranational level, a framework for sectoral social dialogue has historically been created.

[74] Příloha č. v závěru celé studie.

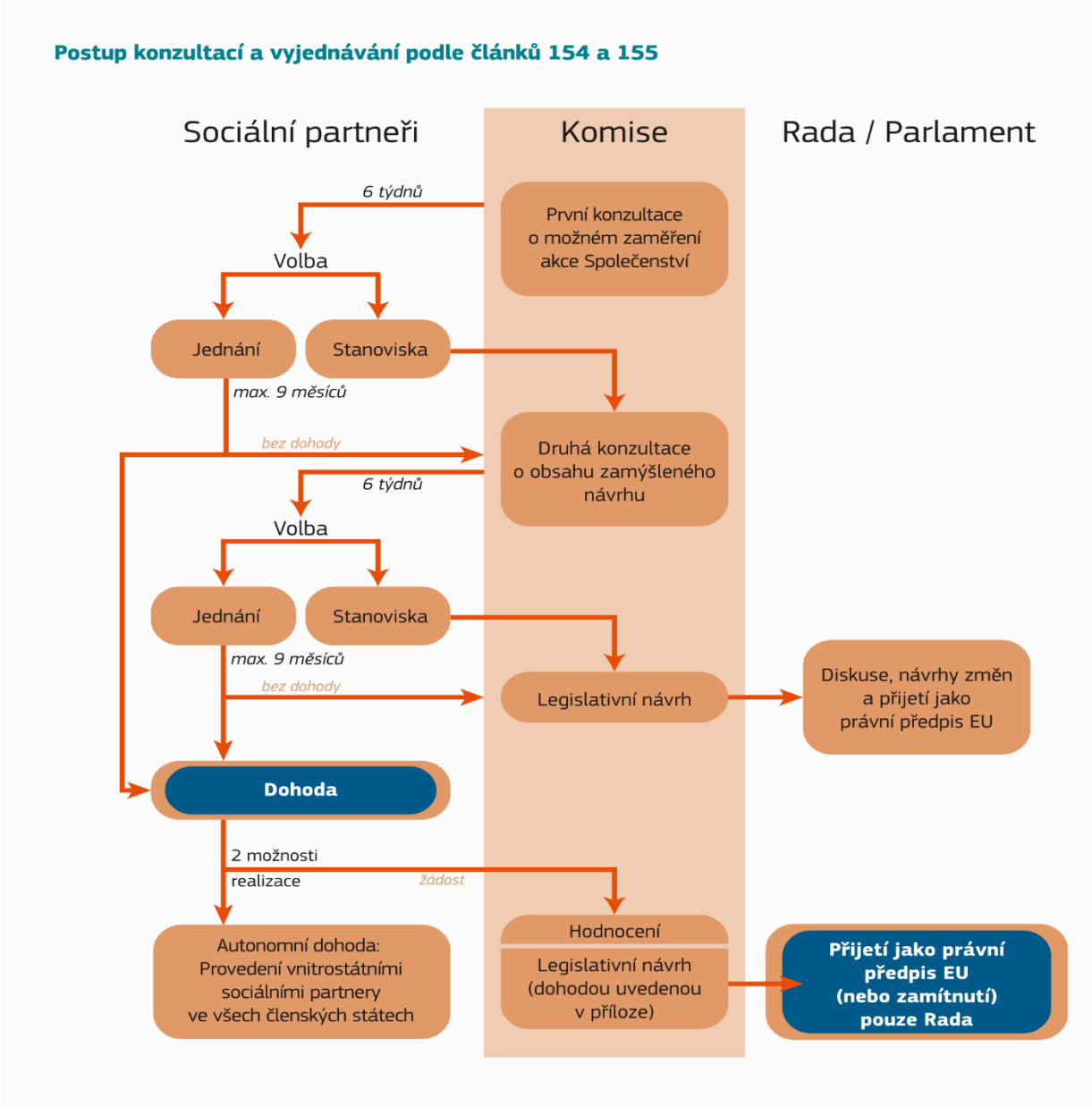
Sectoral social dialogue can more appropriately and accurately reflect the changing requirements of the labour market in a given sector and can thus create an optimized framework for collective bargaining while considering the sectoral particularities. As a result of the Commission's decision, a *sectoral dialogue at European level* was formally established. Following Commission Decision 98/500/EC, [75] social dialogue committees are being established.

Figure: How the European social dialogue works[76]

Consultation and negotiation procedure under Articles 154 and 155

[75] 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

[76] Evropská komise. *Nový začátek pro sociální dialog*. EU: Belgie. 2016. s. 7



It is possible to infer from the picture the setting of basic parameters for the functioning and implementation of participation rights at the European level. In a similar way, the implementation of participation rights can be agreed in a collective agreement, always taking into account the peculiarities of the employer.

4.2.2 participation rights and a new model for social dialogue

Social dialogue and collective bargaining are seen as essential ways for achieving a satisfied society. At the European Union level, collective bargaining becomes the subject of interest with the new Presidency in connection with the implementation of the New Start for Social Dialogue initiative at the European level and with regard to the importance of collective bargaining for the guarantee of working conditions. Social dialogue at the European level should contribute to the harmonization of working conditions across the European labour market. In particular, it should ensure a decent wage (including the minimum wage). The current President of the European Commission sees collective bargaining as a basic tool for promoting decent wages and decent work, following the establishment of the minimum wage limit. The introduction of appropriate minimum wages through social dialogue is an ideal way to set the level taking into account national particularities and in an amount consistent with the principles of decent and fair wages.[77]

The Directive on adequate wages and the promotion of collective bargaining is a typical example of this. Well-functioning collective wage bargaining is an important means of ensuring that workers are protected by an adequate minimum wage. Collective bargaining in Member States with statutory minimum wages supports total wage developments and thus contributes to improving the adequacy of minimum wages. In Member States where protection in the form of a minimum wage is provided exclusively by collective bargaining, its amount and the share of workers protected by it are directly governed by the essence of the functioning of the system of collective bargaining and the extent to which it is extended in a given country. The culture of the world of work benefits from the strong and well-functioning collective bargaining and the widespread use of sectoral or cross-sectoral collective agreements. In the context of the declining enlargement of collective bargaining, it is essential that Member States support collective bargaining to facilitate workers' access to minimum

[77] Srov. Opening Statement Ursula von der Leyen European Parliament. [online]. *Eur-lex.europa.eu* [cit. 2024-29-04]. Dostupné z: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_4230

wage protection under collective agreements. Member States with a high penetration of collective bargaining usually have a low share of low-wage workers and a high level of the amount of minimum wage. The penetration rate of collective bargaining exceeds 70% in Member States with a small share of low-wage earners. Similarly, the penetration rate of collective bargaining is above 70% in most Member States where the minimum wage is high in relation to the median wage. All Member States should be encouraged to promote collective bargaining; Member States where the penetration rate is lower should, after consultation and/or agreement with social partners, establish or strengthen a framework for mediation procedures and institutional arrangements creating the conditions for collective bargaining. This framework should be established by law or by a tripartite agreement.

The emphasis on the importance of participation rights results from Article 4 of the directive, which explicitly sets out the general obligations of Member States to promote the exercise of participation rights. In order to achieve more widespread collective bargaining, Member States will, after consulting the social partners, take at least the following measures:

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

In addition, Member States with collective bargaining penetration not reaching at least 70% of the workers will establish a framework that creates the conditions for collective bargaining, either by law in consultation with social partners or in agreement with them, and develop an action plan to promote collective bargaining. The action plan will be made public and notified to the European Commission.

The directive also provides for a close and intensive involvement of social partners in setting and updating the statutory minimum wage. Member States should take the necessary measures to ensure the timely and effective involvement of social partners in statutory

minimum wage setting and updating, including through participation in consultative bodies set up to provide advice on statutory minimum wages, and in particular as regards:

a. the selection and application of criteria and indicative reference values (the criteria are to allow for flexibility and variability, taking into account the different conditions in each Member State) and situations to determine statutory minimum wage levels;
b. the updates of statutory minimum wage levels (e.g. the indexation mechanism enshrined in the Labour Code or in collective agreements or other employment documents is supported);
c. the establishment of variations and deductions in statutory minimum wages;
d. the collection of data and the carrying out of studies for the information of statutory minimum wage setting authorities.

The cited obligations give a partial helping hand or an answer to the study question. However, these are not clear tools, only supporting arguments, when it is possible for trade unions to pressure employers or Member States to adopt measures and procedures on the basis of which the right to information and consultation will be fully saturated (for example, following the wording of the provisions of the collective agreement which will result in the right of employee representatives to participate in certain employer's bodies or the right to a specified scope of information to assess the state of working conditions and prepare for further collective bargaining), etc.

The importance of enshrining collective bargaining also in supranational documents is required by the current globalization period. The draft directive is prepared under the conditions of the European social dialogue, when the participation of social partners in solving social (including labour) issues is directly envisaged in the founding treaties of the European Union. The promotion of collective bargaining and social dialogue also results from the ETUC electoral initiative in the 2019 European Parliament elections. Stronger and more widespread collective bargaining – negotiations between trade unions and employers – social dialogue

and workers' participation in every EU country are essential to achieve a fairer Europe and more democracy, as is clear from the ETUC Programme for the EU Elections 2019[78].

The adoption of the directive on minimum wages and the promotion of collective bargaining is the result of a functioning social dialogue at European level. The nature of social dialogue, as a free and fair dealing and communication not vulnerable to the directives, which leads to the enshrining of fair working conditions, stems not only from its formal guarantee, but also from its actual functioning. Democracy and fairness also apply to the internal construction of social dialogue – on the one hand, this is a very positive aspect, on the other hand, in specific cases, it is a negative (especially when it comes to the plurality of employee representatives without legal solutions to any disagreements)[79]. Effective and efficient social dialogue and collective bargaining must also be able to deal with situations where, for example, employee representatives need to communicate different approaches. An example may be the agenda aimed precisely at the adoption of the Proposal for a Directive on adequate wages and the promotion of collective bargaining, when, on the one hand, the very positively perceived regulation of the enforcement of minimum wage standards, fair working conditions and functional collective bargaining may meet the concerns of Member States with a functioning model of social dialogue (e.g. the Nordic states).

4.2.3 Nordic model of the functioning of social dialogue

Social dialogue and collective bargaining in individual national states is recognized by the real labour market in different quality and level. The competence of employee representatives and the effectiveness of their activities are related not only to their skills, but also to their historical status and recognition in society. The Nordic countries have the most developed level of social partnership, and thus the highest potential for the application of collective bargaining without major complications, where social dialogue has historically been a way to normalize the

[78] Spravedlivější Evropu pro zaměstnance – program EOK pro Eurovolby 2019. [online]. *triparita.cz* [cit. 2024-29-04]. Dostupné z: https://www.tripartita.cz/spravedlivejsi-evropu-pro-zamestnance-program-eok-pro-eurovolby-2019/

[79] Srov. např. s částí Překážky v kolektivním vyjednávání

regulation of working conditions and social rights. While social dialogue and collective bargaining in the Czech Republic are in fact one of the ways to establish fair work (the legal order and legislation are still essential), also with regard to the scope of coverage by collective agreements and trade union density, the Nordic model has considerable potential when most working conditions are subject to regulation resulting from social dialogue (including the ability to reflect the changing requirements of the labour market, to address potential problems and to contribute to a high employment rate, wage growth, without government interventions).[80]

5 Maintaining social peace through collective agreement

Responses to the challenges associated with the manifestations of changes in the economic market (e.g. the already discussed impacts of the COVID-19 pandemic, platform work, or legislative changes) with the aim of achieving social reconciliation with the participation of social partners can (should) result in the content of collective agreements as binding rules setting out working conditions optimized according to the ideas of the employer and employees (or entities performing dependent work and entities considered to be employees) and employee representatives. An important means of appropriately capturing modern change challenges are, as we have already defined, the possibilities of social dialogue and the application of participatory employee rights.

From a parametric point of view, the discussion of the possibilities of ensuring participatory rights and the possibility of employee participation in social dialogue, or collective bargaining, were generally the subject of the previous treatise. When considering the overall content of the submitted text, a clear consideration arises, which leads to the evaluation of the question as still open. Although a number of not only international documents, but also the Czech Labour Code, explicitly introduce participatory rights, there is a lack of a complete definition

[80] BENDER. German, KJELLBERG. Anders. A minimum – wage directive could undermine the Nordic model. [online]. *socialeurope.eu* [cit. 2024-29-04]. Dostupné z: https://socialeurope.eu/a-minimum-wage-directive-could-undermine-the-nordic-model

of possible procedures and their clear and closed legal guarantees on how to effectively implement participatory rights. Although it is possible to draw inspiration from, for example, the organizational model of the functioning of the European social dialogue, the support of collective bargaining and the task of assigning the task to the Member States to create an action framework (Directive on Adequate Wages and Support for Collective Bargaining), the wording of the enshrinement of the right to information and consultation, or the regulation of collective bargaining in the Labour Code or the Collective Bargaining Act, the contours of the possibility of employee representatives participating in collective bargaining are not exactly Made.

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

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

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

For example, in higher-level collective agreements, the specification of mutual cooperation between the contracting parties in the context of the right to information and consultation can be found in about 50 percent of cases. The content of higher-level collective agreements focuses primarily on specifying the scope and content of the information provided, specifying the scope and content of materials that employers accept in cooperation with trade unions,

material security for the operation of trade unions, etc.[81] The situation is similar in corporate and public sector contracts.

A collective agreement is a basic instrument for binding regulation of labour relations and working conditions with an employer.

Collective agreements are the result of formalized social dialogue – collective bargaining. Fair work and fair wages are becoming a frequent and central objective of collective bargaining. Collective agreements may contain obligations of the contracting parties and rights of employees that favour their working conditions (e.g. increase in leave entitlement; sick leave).

From the trade union's point of view, ensuring an effective right to information and consultation can be enforceable in the wording of the collective agreement (of course, another agreement regulating the course of social dialogue between the contracting parties is not excluded).

With regard to the specifics of the employer's economic activity, the structure of employees or the general working conditions and the labour market, it is recommended that collective agreements contain provisions that concern, for example, the

- the scope of the information provided and more detailed specification of the data (e.g. in connection with the determination of equal treatment or fair treatment, documents relating to the distribution of funds to individual departments or job positions)
- deadlines by which the employer must provide information in the quality described above
- the dates on which regular discussions take place and the deadlines for the exchange of opinions, etc., while more detailed specification may result, for example, from a discussed and agreed table, which will form an annex to the collective agreement so

[81] TREXIMA, *Report on the Progress of Collective Bargaining for 2022*, Prague. ČMKOS. 2022. p. 9.

that it is clearly clear to the employer what information and in what quality the employee representative is interested in and how to approach its processing

- distribution of employee representatives' participation in employers' bodies (e.g. by ratio)
- Release of employee representatives to perform their activities, either in general (e.g. for the needs of internal communication) or according to legal parameters (e.g. to discuss accidents or the amount of compensation for property damage)
- Scope of material security (taking into account digitization)
- the extent to which employee representatives can participate in soft skills training and competence development (also for the digital age)
- the right to present suggestions and the employer's obligation to respond to them within certain deadlines and scopes.

The list of possible provisions in the collective agreement cannot be precisely defined in advance (in the submitted material). It is always necessary to take into account specific specifics.

6 Summary

The presented study dealt with issues related to the risks of the crisis affecting and affecting the labour market, especially in the context of social peace. Various changes and factors, whether economic, personal, technological or legal, represent an integral part of the market, which is simply not and cannot be rigid. Any change can be perceived as a risk, but also as a challenge. Social peace – as the goal of social dialogue – represents a balanced and harmonious setting of social dialogue participants, the main actors in labour relations, and finally the entire labour market, in the performance of dependent work, which is imprinted in quality, fair and dignified working conditions.

Reflection on the risks associated with and accompanied by the economic crisis (or the potential for a crisis) must be accompanied continuously within the framework of quality social dialogue. The perception of risks as opportunities and challenges, social dialogue and

ways of setting social peace are integral prerequisites for achieving the desired social peace. The use of participatory rights of the affected entities (employees) minimizes the negative effects of risks to the maximum extent possible.

In a general concept, the form of participatory rights of employees (employee representatives) was presented and the current legislation and the anchoring of parameters contributing to the effective exercise of participatory rights were outlined.

From the entire text of the study and its individual parts, whether it is a national or transnational reflection, a fundamental finding emerges – the starting points associated with the prevention and minimization of risks associated with the economic crisis and the change in the conditions of dependent work lie in the active participation of employee representatives and the effective conduct of social dialogue, including its integral parts (especially collective bargaining), as the central means and tools to achieve and maintain social peace.

The participation of employee representatives in the creation of work performance conditions, the right to social dialogue and collective bargaining are guaranteed in supranational documents as well as in national legislation. This is an indisputable and inalienable social right. At the same time, however, it must be admitted that the relatively clear and strict statement of the statutory guarantee exhausted the findings concerning the precise and unambiguous anchoring of participatory rights.

Although there is a more detailed specification and specification in the legislation, it is by no means a closed issue. There is always a lot of room for the contracting parties to autonomously adjust their own conditions for conducting social dialogue.

The most appropriate tool for achieving and anchoring decent working conditions, and thus ensuring social peace while reflecting possible changes, risks and challenges of the labour market, is primarily understood to be collective bargaining resulting in a collective agreement. Although it is possible to consider another form of agreement, which will be the result of social dialogue and will have the character of a mostly gentleman's agreement (related to the

personal framework of social dialogue), and will thus have its share in maintaining or achieving social peace, collective bargaining represents the basic starting point.

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