Expert study on:

The impact of collective bargaining in the area of securing working conditions on individual groups of employees in the Czech Republic

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Annotation:

The study examines the impact of collective bargaining on the provision of working conditions for employees in the Czech Republic. It focuses in particular on working hours, the promotion of health and safety at work and the consequences of the COVID-19 pandemic. The introduction sets out the broader context of collective bargaining in the current context and the importance of this instrument for workers in the EU. The study also deals with the legal regulation of collective bargaining, its limits and suggests possible ways to develop it in the Czech Republic. The results of the survey on the implications of collective bargaining are set in the current legal framework and the possibilities of regulation through collective agreements.

Table of Contents

1. Introduction: focus and content of the study 5
2. The meaning and importance of collective bargaining for employees' working conditions 7
2.1. Current initiative to promote social dialogue and collective bargaining in the EU 8
2.2. Proposal for a Council Recommendation on strengthening social dialogue in the EU and a Directive on adequate minimum wages in the EU 11
2.3. The importance of collective bargaining for the labour market, forms of work and employment relations 15
2.4. Level of coverage by collective agreements in the Czech Republic 17
3. Legal regulation of collective bargaining 19
3.1. Parties who conclude a collective agreement 19
3.2. Validity, effectiveness and binding force of the collective agreement 21
3.3. Start of collective bargaining 23
3.4. Collective bargaining process 25
3.5. Negotiations to amend the collective agreement 26
3.6. Deposit of the collective agreement and familiarisation with its contents 27
3.7. Rules for concluding a higher-level collective agreement 28
3.8. Extending the binding force of a higher-level collective agreement 29
3.9. Collective labour disputes 30
3.10. Settlement of a collective labour dispute 32
3.11. Proceedings before an intermediary 33
3.12. Proceedings before an arbitrator 35
3.13. Strike and lockout 36
4. Consequences of collective bargaining for employees' working conditions 38
4.1. Employee survey: the impact of collective bargaining 39
5. The impact of collective bargaining on working time 44
5.1. Working time legislation as a basis for collective bargaining 45
5.2. Amendment to the Labour Code 2023 51
5.3. Employee satisfaction with the results of collective bargaining in the area of working time 53
5.4. Collective bargaining options for working time 56
6. The impact of collective bargaining in promoting health and safety at work 60

6.1. Health and safety of workers in connection with the use of new technologies 61
6.2. Protecting the mental health of employees 63
6.3. Employee satisfaction with the results of collective bargaining in the field of OSH 65
7. The impact of collective bargaining in the response to the Covid pandemic 19 .. 70
7.1. Teleworking 72
7.2. Digitization 77
7.3. Employee satisfaction with the results of collective bargaining on flexible working arrangements 82
8. Limits to collective bargaining 86
8.1. Absence of sanctions in collective bargaining regulations 86
8.2. Trade union pluralism 89
8.3. Employers' organisations without collective bargaining rights at sectoral level 91
8.4. Lack of a definition of a trade union and related issues 93
9. Conclusion 97
Annex 98
List of resources 104

1. Introduction: focus and content of the study

The study focuses on the impact of collective bargaining on the provision of working conditions for employees in the Czech Republic and, in line with its terms of reference, will focus primarily on the importance of collective bargaining in the area of working time, the promotion of health and safety at work and the consequences of the COVID-19 pandemic.

The treatment of these sub-topics will be preceded by an introductory chapter focusing on the broader context of collective bargaining in the current context. The European Union places great emphasis on collective bargaining, considering it an essential instrument to guarantee adequate minimum wages and decent working conditions for EU workers. Collective bargaining is seen as one of the means to address the current cost of living crisis, which is why the EU has taken steps to strengthen collective bargaining and is encouraging Member States to focus on capacity building for social partners and other forms of support for social dialogue and collective bargaining.

It can be expected that the action plan that the Czech Republic will have to adopt in order to promote collective bargaining will have an impact both on the legal framework and, given the expected use of instruments other than strictly legal ones, on labour market conditions. One of the chapters of the study will therefore also focus on the legal regulation of collective bargaining and another on the limits of collective bargaining. This chapter will also offer possible ways of developing the legal regulation of collective bargaining that could remove or minimize some of the limits and thus contribute to the intensive development of bargaining in our conditions.

In preparing the practical parts focusing on the consequences of collective bargaining on the provision of working conditions for employees, we have based on a survey prepared by Trexima for the Association of Independent Trade Unions and published under the title The Impact of Collective Bargaining on the Position of Employees on the Labour Market in the Czech Republic. In particular, the survey data

were taken from the assessment of the effects of collective bargaining on working time, the maintenance of safe and healthy working conditions and the effects of the COVID-19 pandemic.

The results of the survey were set in the broader context of the possibilities offered by the current legislation, also taking into account the current changes prepared in connection with the so-called transposition amendment to the Labour Code, for closer regulation through collective agreements.

2. The meaning and importance of collective bargaining for employees' working conditions

Collective bargaining plays a key role not only in improving the working conditions of employees, but also in strengthening the competitiveness of companies. The undeniable importance of collective bargaining is also recognised in the context of coping with the adverse socio-economic phenomena that European economies have had to go through in recent times.

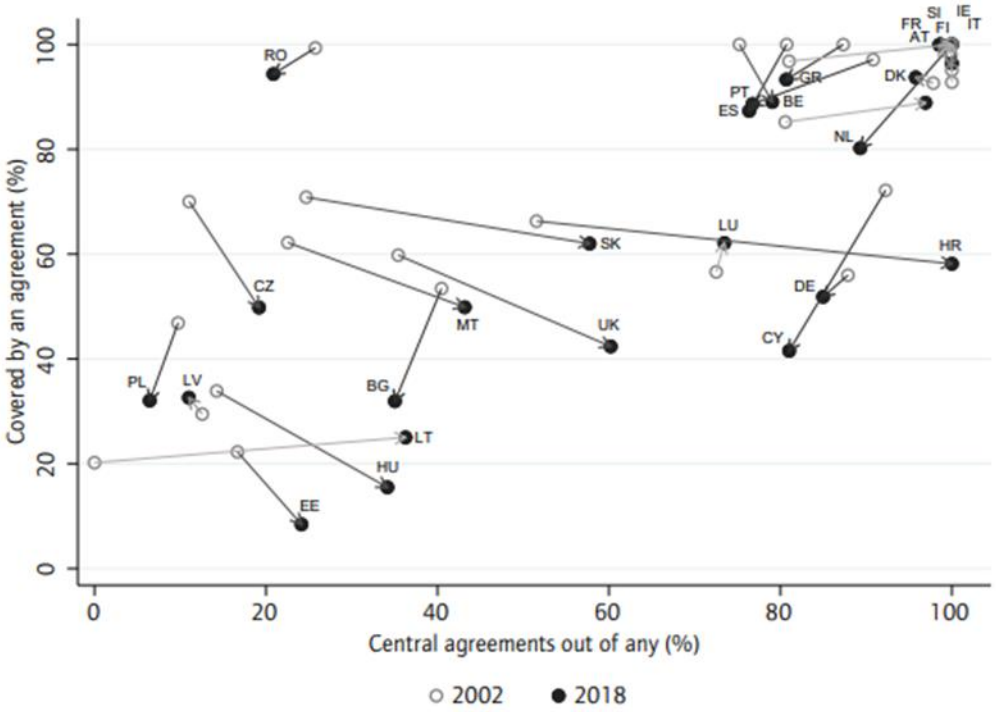
The European Union is therefore putting the promotion of collective bargaining at the forefront of its priorities. A number of instruments of different nature and legal binding force have been adopted and are currently being developed to contribute, individually and collectively, to strengthening social dialogue and, more specifically, to the development of collective bargaining so that collective agreements are concluded with a larger number of employers and cover a wider proportion of employees than at present.

In recent years, there has been a decline across EU Member States in the baseline indicators that predict the strength and actual impact of collective bargaining. First of all, there has been a steady decline in the membership base of trade unions, although on the other hand, the level of employers' organization into employers' organizations remains rather stable[1].

The declining level of coverage of employees by collective agreements should be considered a significant negative trend. Declining coverage levels can be observed in most EU Member States, including the Czech Republic. The table below shows the observed decline in coverage between 2002 and 2018 from around 70% to 50%. Current data indicate even lower values (see below in section 2.3).

[1] ICTWSS Database. version 6.1. Amsterdam: Amsterdam Institute for Advanced Labour Studies (AIAS), University of Amsterdam. November 2019.

Chart: Difference between the number of employees covered by collective agreements between 2002 and 2018



[Source: Zwysen, Drahokoupil]

2.1. Current initiative to promote social dialogue and collective bargaining in the EU

The European Union has set itself the objective of promoting social dialogue and collective bargaining so that the cooperation of the social partners can help to cope with the current situation marked by high inflation, the difficulty of predicting the prices of energy and other inputs, and other negative economic indicators that are causing a cost-of-living crisis.

The European Pillar of Social Rights, which was launched by the Council, the Commission, and the European Parliament at the 2017 Gothenburg Summit, sets out 20 key principles and rights that promote fair and well-functioning labour markets.

Principle 8 is entitled Social Dialogue and Worker Participation and has the following wording:

a. *The social partners shall be consulted on the design and implementation of economic, employment and social policies according to national practices. They shall be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action. Where appropriate, agreements concluded between the social partners shall be implemented at the level of the Union and its Member States.*
b. *Workers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and on collective redundancies.*
c. *Support for increased capacity of social partners to promote social dialogue shall be encouraged.*

In order to put into practice, the theses included in the European Pillar of Social Rights, an Action Plan has been adopted which sets out concrete measures to put the principles contained in the Pillar into practice. Among other things, the document stresses the importance of *strengthening social dialogue at national and EU level. The social partners have an important role to play in mitigating the impact of the pandemic, supporting recovery and managing future labour market changes. Greater efforts should be made to promote collective bargaining and to avoid a reduction in the number and organizational density of the social partners*.

Through the Action Plan, the Commission has called on:

- *national authorities, social partners, civil society, and other relevant actors to organize communication and participation activities by collecting and exchanging best practices across Europe,*
- *Member States to establish a coordination mechanism to ensure the involvement of all relevant stakeholders at national level in the implementation of the Pillar,*

- *Member States to promote and create the conditions for improving the functioning and effectiveness of collective bargaining and social dialogue,*
- *public authorities to further strengthen social dialogue and consult the social partners on draft policies and legislation,*
- *the European social partners to negotiate further agreements at EU level to contribute to the successful transformation of European labour markets.*

In the framework of the Portuguese Presidency of the EU Council, the Porto Social Summit of 7 May 2021 adopted the Porto Social Commitment, which was signed by the EU Council, the Commission, the European Parliament, the social partners active at European level and the Social Platform. The Porto Social Commitment was adopted to reinforce the commitment to the implementation of the European Pillar of Social Rights and called on all stakeholders, inter alia, *to promote autonomous social dialogue as a structuring component of the European Social Model and strengthen it at the European, national, regional, sectorial and company levels, with particular emphasis on ensuring an enabling framework for collective bargaining within the various models that exist in the Member States.*

Following the Tripartite Social Summit in Brussels on 19 October 2022, Commission President Ursula von der Leyen issued a Declaration pledging the Commission's support and strengthening of social dialogue to preserve the value of the social market economy. At the same time, she stressed the importance of social partnership and social dialogue in difficult times, especially in dealing with crises[2].

On 25 January 2023, the Commission issued a press statement on concrete steps to increase the involvement of social partners at national and EU level. In it, the Commission took the initiative to strengthen and promote social dialogue through steps to be taken at Union and national level. It is to renew a strong commitment to social dialogue as the cornerstone of the EU's social market economy and its competitiveness.

[2] Statement/22/6264. Statement by President von der Leyen following the Tripartite Social Summit.

The press release states that *this initiative empowers social dialogue to adapt to the changing world of work and new trends on the labour market, against the backdrop of the transitions to a digital and climate neutral economy and the emergence of new forms of employment.*

The negotiations between organisations representing employers and workers (social partners) through social dialogue and collective bargaining help improve living and working conditions, such as pay, hours of work, annual leave, parental leave, training, and health and safety measures. They also have a crucial role to play in adapting to changing economic and social circumstances and achieving the productivity gains that are necessary to enhance the competitiveness of European businesses. All this helps to ensure social fairness and democracy at work, and boost Europe's prosperity and resilience.

The Commission has proposed the adoption of a Council Recommendation containing measures to be taken by Member States to strengthen social dialogue and collective bargaining at national level. At the same time, it adopted a Communication on strengthening and promoting social dialogue at EU level[3].

2.2. Proposal for a Council Recommendation on strengthening social dialogue in the EU and a Directive on adequate minimum wages in the EU

The proposal for a Council Recommendation on strengthening social dialogue in the EU is an initiative to complement the EU Adequate Minimum Wages Directive (see below). This proposal aims to support Member States in promoting social dialogue and collective bargaining at national level through three main elements:

[3] Sdělení Komise Evropskému parlamentu, Radě, Evropskému hospodářskému a sociálnímu výboru a Výboru regionů. Posílení sociálního dialogu v Evropské unii: využití jeho plného potenciálu ke zvládnutí spravedlivých transformací. COM (2023) 40 final.

- consultation of the social partners in the design and implementation of economic, employment and social policy
- Supporting the social partners in negotiating and concluding collective agreements, respecting their autonomy and right to collective action,
- Supporting increased capacity of social partners.

Social dialogue, including collective bargaining, is identified in the draft Recommendation as an essential and useful instrument for a well-functioning social market economy, which promotes economic and social resilience, competitiveness, stability and sustainable and inclusive growth and development. The draft also states that collective bargaining covers issues related to working conditions and terms and conditions of employment, such as wages, working hours, annual pay, annual leave, parental leave, training and occupational health and safety. It is therefore particularly important in preventing labour disputes, raising wages, improving working conditions and tackling pay inequalities.

For the individual points contained in the draft Recommendation to be addressed to Member States, see the Annex to this study.

In the context of strengthening social dialogue, it is also necessary to refer at least briefly to Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on a fair minimum wage in the European Union ("the Minimum Wage Directive").

This Directive has two main objectives. One of them is to get Member States to set **adequate legal minimum wages** to ensure decent living and working conditions. The setting and updating of minimum wages must be guided by criteria set to promote their adequacy in order to achieve a decent standard of living, reduce in-work poverty, promote social cohesion and upward social convergence and reduce the gender pay gap. Member States are to define these criteria themselves, with the understanding that they should include at least the following elements:

a) the purchasing power of the legal minimum wage in relation to the cost of living,

b) the general level of wages and their distribution,

c) the rate of wage growth,

d) *Long-term national productivity rates and their evolution*[4].

However, in addition to the above, the Directive includes another important objective, which is to **promote collective bargaining** on wage setting. The Directive is based on the belief that collective bargaining is the best guarantor of high wage levels. Therefore, we need to work towards the goal of 80% coverage by collective agreements[5].

Any Member State where collective agreement coverage is below the 80% threshold will be obliged under the Minimum Wage Directive to establish a framework that creates the conditions for collective bargaining, either by law after consultation with the social partners or by agreement with them. Member States that do not meet this condition regarding the extent of employee coverage by collective agreements will also be required to develop an action plan to promote collective bargaining. The Action Plan should not be merely declaratory or proclamatory, as the Minimum Wage Directive requires. The action plan must set out a clear timetable and concrete measures to gradually increase the level of coverage by collective agreements. The action plan will need to be reviewed regularly, at least every five years, and updated, as necessary.

The Minimum Wage Directive emphasises the use of tripartite social dialogue in all the above steps. The action plan is to be drawn up when one of the options for involving the social partners is applied:

- in consultation with the social partners,
- in agreement with the social partners, or

[4] Čl. 5 odst. 2 Směrnice o minimálních mzdách.

[5] MÜLLER, Torsten. Minimum wage developments in 2022 - fighting the cost-of-living crisis. ETUI, 2023, s. 1.

- at the joint request of the social partners in the form agreed between them.

Member States must take the same approach to updating the action plan. The action plan and any updates to it must be published and notified to the Commission.

The Minimum Wage Directive can be seen as a "game changer" in relation to collective bargaining. It offers two basic tools to mitigate the negative effects of high inflation on the lives of workers and their families. It is intended to be a means to effectively combat the current cost of living crisis[6].

The Minimum Wage Directive offers several instruments that Member States can use to promote collective bargaining on wage setting. These include **support for building and strengthening the capacity of social partners** to engage in collective bargaining on wage-setting. Capacities in this sense can also be understood as capacities related to the membership base. Given that in the Czech Republic only trade unions can collectively bargain and conclude collective agreements on behalf of employees (see Section 22 and Section 24(1) of the Labour Code), support for capacity building should entail active support for the growth of the membership base of trade unions. Similarly, the Czech Republic should also focus on actively supporting the growth of the membership base of employers' organizations that can bargain collectively at the sectoral level and conclude higher-level collective agreements (Article 23(3)(b) of the Labour Code).

The 2018 Resolution of the International Labour Conference on the Second Recurrent Debate on Social Dialogue and Tripartism also refers to capacity building of the social partners. It states that the International Labour Office, in collaboration with other partners, should strengthen the capacity of the various social dialogue components and institutions to strengthen the capacity of the most representative employers' and workers' organizations to include representatives of workers' organizations and

[6] MÜLLER, Torsten. Minimum wage developments in 2022 - fighting the cost-of-living crisis. ETUI, 2023, s. 10.

economic units from the informal economy in their ranks, in accordance with national practice, to enable them to engage effectively in tripartite and bipartite social dialogue and to bargain collectively.

2.3. The importance of collective bargaining for the labour market, forms of work and employment relations

Collective bargaining agreements focus primarily on wages and other working conditions, including working hours, holiday pay, employee benefits, employee training and professional development, severance pay or health and safety provisions. In our context, it is not usually the case that collective agreements include arrangements relating to labour productivity or employment continuity, which could include various forms of work performance, including platform work or cooperation with self-employed persons.

Agency employment is a certain exception to this. Pursuant to Section 309(8) of the Labour Code, a collective agreement concluded with a user, i.e., an employer to whom an employment agency temporarily assigns its employees on the basis of an agreement pursuant to Section 308 of the Labour Code, may contain the scope of agency employment.

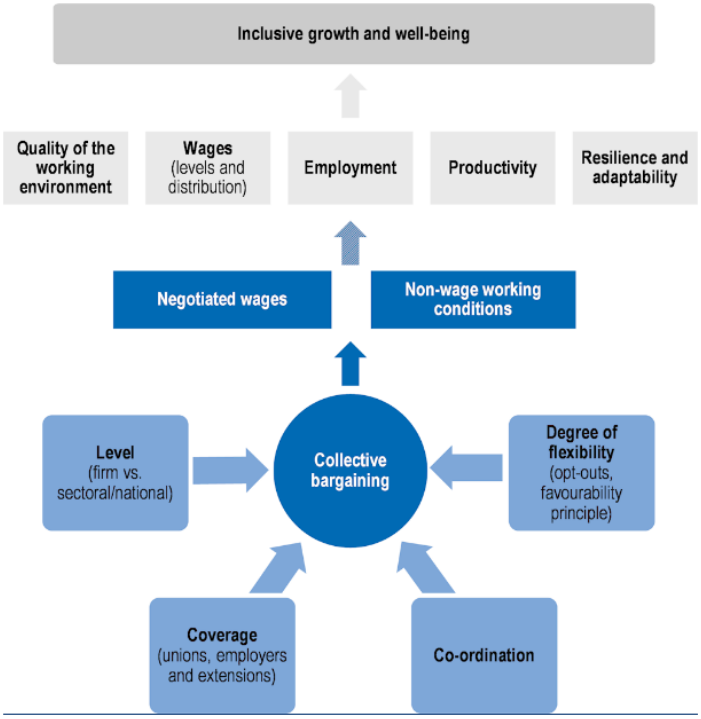
The way in which collective bargaining affects the labour market and employment relations depends both on the specific outcomes achieved in the bargaining process and on the conditions in which bargaining takes place. It may be relevant how large the employer is, whether the terms and conditions negotiated with this employer affect the working conditions of other employers in the sector, in the region, or within a group of employers or employers who form a chain of supply and purchasing relationships with this employer.

Collective agreements of a higher level may also have broader labour market implications, especially if their binding effect is extended to other employers with

predominant activities in the sector designated by the sectoral classification code of economic activities (Section 7 of the Collective Bargaining Act).

Labour productivity could be the subject of collective bargaining if the parties negotiate on the amount of work and the pace of work. Pursuant to Section 300(3) of the Labour Code, the amount of work required and the pace of work, or the introduction or modification of a labour consumption standard, shall be determined by the employer, if not agreed in a collective agreement, after consultation with the trade union. Therefore, in collective bargaining, for example, the area of remuneration or the provision of employee benefits could also be linked to labour productivity through agreements on work pace, labour consumption standards or other indicators affecting employee performance.

The following chart shows which components of the labour market are or can be affected by collective bargaining.



[Source: Denk, Garnero, Hijzen, Martin]

Collective bargaining can also help improve working conditions in specific forms of work, such as those who work for platforms. More broadly, instruments other than collective agreements, understood in their traditional but relatively narrow sense, can help improve working conditions. These are forms of social dialogue, including non-binding agreements to which public authorities may be party, which have the potential to help improve working conditions in sectors as specific as platforms and their employees[7].

2.4. Level of coverage by collective agreements in the Czech Republic

The Czech Republic is among those EU Member States where the level of coverage of employees by collective agreements falls far short of the target set by the Minimum Wage Directive.

According to the worker-participation.eu website(https://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Collective-Bargaining2), the coverage rate of collective agreements in the Czech Republic is 38%, with company collective agreements forming the major part. The figure reported here is based on a 2013 data source.

The latest figure available on the OECD website(https://stats.oecd.org/index.aspx?DataSetCode=CBC) gives a collective agreement coverage rate of 34.7% for the Czech Republic, which is the value for 2019.

Given the downward trend, which also characterises the development of the trade union membership base, it can be assumed that the level of collective agreement coverage will be around 30% in 2023.

[7] LAMANNIS, Mariagrazia. Collective bargaining in the platform economy: a mapping exercise of existing initiatives. ETUI, Brussels, 2023, str. 8.

It can definitely be concluded that the Czech Republic should actively support and build the capacity of social partners and take further measures to strengthen social dialogue and collective bargaining. The Minimum Wage Directive is to be implemented by Member States by 15 November 2024 at the latest. In connection with the implementation of the Minimum Wage Directive, the Czech Republic should already be preparing the Action Plan to Support Collective Bargaining foreseen by the Directive. In view of the prescribed involvement of the social partners, negotiations should be initiated soon, both between the social partners themselves and at tripartite level, so that either an agreement is reached or at least the Action Plan is discussed.

The Czech Republic will have to continuously assess whether the objectives of the Action Plan are being met and whether the level of coverage by collective agreements is increasing. It is probably not realistic to expect that the requirement of 80% coverage of employees by collective agreements will be met in the short term. By evaluating and updating the Action Plan with the involvement of social partners, the Czech Republic should work towards this goal at least in the long term.

3. Legal regulation of collective bargaining

The right of trade unions to bargain collectively can be considered the strongest and most important right available to employee representatives in our context. Employees themselves and other employee representatives (works council, OSH representative or European Works Council) do not have the right to collective bargaining. Under Section 22 of the Labour Code, only trade unions may bargain collectively and conclude collective agreements. With regard to the principle of social representation, trade unions collectively negotiate and conclude collective agreements as representatives of all employees of the employer, i.e., also for those employees who are not members of the trade union or no trade union.

Collective bargaining takes place at two levels. These are enterprise-level bargaining, aimed at concluding an enterprise collective agreement, and sectoral bargaining, aimed at concluding a higher-level collective agreement.

3.1. Parties who conclude a collective agreement

An enterprise collective agreement is usually concluded between the employer and the trade union or several trade unions operating in the employer's company.

Who is entitled to act for the employer in collective bargaining and who is entitled to conclude a collective agreement follows from the general regulation of the employer's legal conduct. If the employer is a natural person, it may be concluded by the natural person himself or by a person representing him. The employer, which is a legal entity, is primarily represented by its statutory body, or other persons, which may be employees of the legal entity if the conditions set out in the Civil Code are met.

If the employer is the state, the rights and obligations in labour relations are exercised by the relevant organisational unit of the state. The head of the organisational unit of the state, or other employees, acts legally on behalf of the organisational unit of

the state and therefore concludes the collective agreement under the conditions set out in the Act on the Property of the Czech Republic and its Representation in Legal Relations.

The collective agreement is concluded on behalf of the trade union by its body designated for this purpose by the statutes or by another act issued on the basis of the statutes. In any case, the designation of this body is an internal matter for the trade union and cannot be controlled or reviewed by the employer in any way.

The basic and most frequently applied model, according to which a company collective agreement is concluded by one employer and one trade union operating at that employer, cannot be considered the only possible model. Although such collective agreements are not common in Czech conditions, it is not excluded that a company collective agreement can be concluded by several employers. In such a case, the other party to the contract may be a single trade union operating in all these employers, or several trade unions that agree on a common procedure.

Last but not least, attention should be paid to the situation where more than one trade union is active in the same employer. In such a case, pursuant to Section 24(2) of the Labour Code, the employer negotiates a collective agreement with all trade unions. The Act further provides that trade unions shall act with legal consequences for all employees jointly and in concert unless they agree otherwise between themselves and the employer.

The content of the agreement of the trade unions on a different procedure may be, for example, that the collective agreement will be concluded by one or some of the trade unions on behalf of all the trade unions, or that the collective bargaining will be conducted by a joint body of the trade unions (coordination committee) to be established. It should be noted that this agreement must be concluded not only between the trade unions but also with the employer.

Although the Act does not insist on a written form in connection with this agreement, the written form should clearly be observed in view of the importance of the agreement in question for the entire course of collective bargaining and the legal certainty of its participants. The agreement should ideally be concluded before the start of collective bargaining and should clearly define the procedure to be followed in collective bargaining.

In the worst case, a situation where several trade unions fail to reach an agreement on a common course of action can lead to a blockage of collective bargaining, as no trade union can be excluded from collective bargaining. This is one of the legal limits to the broader development of collective bargaining in our context, which will receive more attention later in Chapter 8.

3.2. Validity, effectiveness, and binding force of the collective agreement

One of the conditions for the validity of a collective agreement is that it satisfies the conditions imposed on its formal implementation. Section 27(2) of the Labour Code requires that the collective agreement be in writing and signed by the parties on the same document. At the moment of such signature, the collective agreement becomes valid. If the conditions of the written form and the signatures of both parties on the same document were not complied with, the collective agreement would not be taken into account. It would therefore be a null and void act, which legally speaking does not exist and does not cause any legal consequences.

Pursuant to Section 27(1) of the Labour Code, the provisions of an enterprise collective agreement that regulate the rights of employees in labour relations to a lesser extent than higher-level collective agreements are disregarded. Thus, if an employer is bound by a collective agreement by virtue of its membership in an employers' organisation which has concluded a higher-level collective agreement or by virtue of an extension of its binding force, it is not permissible for the company collective agreement

to regulate employees' rights to a lesser extent. Another limitation in terms of the content of the collective agreement is the minimum rights within the scope of the Labour Code. According to Section 23(1), arrangements in a collective agreement which curtail the rights of employees under the law shall be disregarded. Nor would such provisions of the collective agreement that impose obligations on employees be disregarded.

The effectiveness of a collective agreement is the period for which it is negotiated and during which it creates rights and obligations. The specific duration of the collective agreement depends, of course, on the agreement of the parties.

Pursuant to Section 26(2) of the Labour Code, the effectiveness of a collective agreement begins on the first day of the period for which the collective agreement was concluded and ends on the expiry of that period, unless the period of effectiveness of certain rights or obligations has been agreed otherwise in the collective agreement. It is possible to negotiate the effectiveness of various rights and obligations differently in a collective agreement. The parties may agree that certain obligations will extend beyond the term of the remainder of the collective agreement in order to allow for the provision of benefits under the existing collective agreement prior to the conclusion of a new collective agreement.

Collective agreements are often concluded for a period of one year, which coincides with the calendar year but often with the fiscal year. However, collective agreements concluded for a longer period of time, e.g., two or three years, are also relatively common. A collective agreement may also be concluded for an indefinite period.

A collective agreement may also be negotiated for a fixed term with reference to a condition. A condition is a circumstance that the parties know will occur in the future but do not know exactly when it will occur. According to Section 26(1) of the Labour Code, if a collective agreement is linked to a condition, it shall state the latest period of its effectiveness.

Collective agreements concluded for a fixed or indefinite period can be terminated. Either party may proceed to termination. The notice must be in writing but need not be for any reason. Termination may be given by either party no earlier than six months after the date on which the collective agreement takes effect. The notice period shall then be at least six months and shall commence on the first day of the month following the delivery of the notice to the other party. The parties may agree directly in the collective agreement to a longer notice period in the event of termination.

If a new collective agreement is not concluded until sometime after the existing collective agreement has expired, the effective date of the new collective agreement can be set retroactively.

A collective agreement becomes binding upon its valid conclusion. It then ceases to be binding at the end of its period of effectiveness. According to the Labour Code, a company collective agreement is binding on the parties to it. According to Section 25(2) of the Labour Code, a collective agreement of a higher level is binding for:

- employers who are members of an employers' organisation that has concluded a higher-level collective agreement and for employers who have withdrawn from the employers' organisation at the time the collective agreement comes into force,
- trade unions for which a higher-level collective agreement has been concluded by a trade union.

3.3. Start of collective bargaining

According to Section 8(1) of the Collective Bargaining Act, collective bargaining is initiated by one of the parties submitting a written proposal for the conclusion of a collective agreement to the other party. This written proposal must contain all the elements of the proposed contract in addition to the identification of the parties to the proposed contract.

The other party must respond in writing to the proposal to conclude a collective agreement within 7 working days at the latest unless a different deadline is agreed between the parties. The purpose of this obligation is in particular to prevent delays or boycotts of collective bargaining.

The written reply of the other party shall contain a statement on those draft agreements which it has not accepted. If the other party to the agreement adds its own proposals for the content of the collective agreement or requests changes to the original proposal, this counterproposal shall be considered a new proposal subject to further negotiations.

According to Section 8(3) of the Collective Bargaining Act, the parties are obliged to negotiate with each other and to provide other required cooperation. This rule does not imply an obligation to conclude a collective agreement, but it does imply an obligation for the parties to negotiate, i.e., to participate in the negotiation process with all seriousness and to seek room for compromise. Neither party can completely reject a proposal for a collective agreement on the grounds that it is not interested in concluding a collective agreement. The above rule defines one of the special features of the collective bargaining regulations as compared to the general regulation of the contracting process contained in Section 1724 et seq. of the Civil Code. This general regulation certainly does not imply an obligation to negotiate a contract. No one is obliged to respond to an offer to enter into a contract, to act or to provide any assistance to the other party.

The special regulation in the Collective Bargaining Act underlines the importance and significance of collective bargaining, where a collective agreement cannot be seen as just any "ordinary" agreement. On the other hand, certain imperfections in this specific regulation cause significant legal limits to the wider development of collective bargaining. In particular, there is no sanction for non-compliance with any of these obligations. Moreover, the interpretation adopted at the same time applies the duty to bargain collectively and provide the necessary cooperation only to the employers

themselves when negotiating an enterprise collective bargaining agreement. At the sectoral level, in relation to employers' organisations, the situation is considerably more complicated. More attention will be paid to these legal limits later in Chapter 8.

Section 8(4) of the Collective Bargaining Act provides that if a collective agreement has been concluded for a fixed term, or if it has been concluded for an indefinite term and the parties have agreed on the possibility of amending it on a certain date, or if it has been terminated, the parties are obliged to commence negotiations for the conclusion of a new collective agreement at least 60 days before the expiry of the existing collective agreement, or before the date on which the parties have agreed on the possibility of amending it. The purpose of this provision is to ensure the continuity of the collective agreement, i.e., the timely replacement of the old collective agreement with a new one.

3.4. Collective bargaining process

The Act does not limit the number of negotiation rounds in which the parties exchange their proposals and counterproposals. Optimally, the parties will find the necessary compromise and conclude the collective agreement within a reasonable time after the first proposal has been submitted and commented on. A situation in which a contractual consensus cannot be reached even after long negotiations can escalate into a dispute over the conclusion of a collective agreement.

The employer and the trade union shall be obliged to deal with each other and to provide any other required cooperation unless it conflicts with their legitimate interests.

As regards the employees themselves, whose interests should be defended by the trade union in collective bargaining, they have the right, whether or not they are members of the trade union, to information about the collective bargaining process and to submit suggestions for collective bargaining (Article 25(3) of the Labour Code).

In addition to the legal standpoint, the process of collective bargaining has an important communication and psychological standpoint. The right negotiating tactics, the right negotiating team, etc. need to be found and chosen.

3.5. Negotiations to amend the collective agreement

Section 8(5) of the Collective Bargaining Act is of considerable importance in terms of any amendment to the concluded collective agreement. According to the Act, the parties may negotiate changes to the collective agreement, or they may agree on which specific provisions should be subject to change. The procedure for proposing, negotiating, and adopting amendments to a collective agreement, where the possibility of amending the collective agreement has been agreed, shall be the same as for the actual conclusion of the collective agreement.

If the trade union and the employer do not explicitly agree in the collective agreement on the possibility of amending the collective agreement, they can still start negotiations on the amendment, but only if both parties agree to it. If the possibility of amending the collective agreement has not been expressly agreed, the other party will not be obliged, unless it is in its interests to do so in the circumstances, to respond to any proposals to amend the collective agreement during its effective term.

It is not possible to say unequivocally, whether or not, it is preferable to include a provision on the possibility of amending the collective agreement. It always depends on the specific circumstances, in particular the duration of the collective agreement, its content and the foreseeable or unforeseeable conditions of the parties. The possibility of changing the collective agreement has its advantages as well as disadvantages. The advantage is that if there is a change in the terms and conditions which results in one or the other party no longer being satisfied with the originally agreed terms and conditions, the collective agreement does not remain untouched, as either party can propose a change and the other party is obliged to negotiate the change.

The disadvantage of the provision on the possibility of changing the collective agreement is that it reduces the stability of the agreed terms. The collective agreement is often seen as an instrument that both represents and guarantees the social conciliation achieved. Collective bargaining is often long and difficult. If the parties have successfully completed this process, they are usually not interested in allowing what has been agreed to be destabilised. However, it is the proposal to change the collective agreement that can be perceived as a certain destabilising element.

In view of the above, it is sometimes possible to negotiate the possibility of amending a collective agreement only in relation to a certain section of it. For example, the parties agree that the section of the collective agreement containing the wage rates for individual groups of employees may be changed. In the case of such an arrangement, the parties are assured that certainty and stability will prevail in other parts of the collective agreement. It is only in the area of wages that one or the other party may propose a change to the collective agreement and the collective bargaining process is de facto reopened.

The parties may also agree that they will be obliged to bargain over wage developments if a certain pre-agreed circumstance (e.g., inflation exceeding the agreed level) is met. However, it should be pointed out that when drafting such an agreement, the parties should pay adequate attention to its wording so that its content is unambiguous and it is clear that it is to be interpreted as an agreement on the possibility of amending the collective agreement pursuant to Section 8(5) of the Collective Bargaining Act (it is appropriate to refer to this provision explicitly).

3.6. Deposit of the collective agreement and familiarisation with its contents

If a collective agreement is successfully concluded, the parties to the agreement are obliged to inform the employees of its contents within 15 days of its conclusion, pursuant to Section 29 of the Labour Code. The specific manner in which the obligation

to inform employees will be fulfilled can be negotiated directly in the collective agreement. The obligation to inform employees of the contents of the collective agreement also applies to adopted amendments to the collective agreement.

In accordance with Section 37(1) of the Labour Code, the employer shall, within one month of the commencement of the employment relationship, provide employees who enter into an employment relationship with an employer with which a collective agreement has been concluded with written information about, inter alia, the collective agreement and its parties. In the near future, the 30-day period for providing information on the content of the employment relationship to the employee will be shortened to 7 days by the so-called transposition amendment to the Labour Code.

The employer must ensure that the collective agreement is accessible to all its employees. The parties are obliged to keep the concluded collective agreements for at least five years from the end of their effective period (Section 9(5) of the Collective Bargaining Act).

3.7. Rules for concluding a higher-level collective agreement

In addition to collective bargaining at the enterprise level, collective bargaining in our context also takes place at the sectoral level, where higher-level collective agreements are concluded. These collective agreements constitute a very important instrument for regulating labour relations, as they can significantly affect the economic and social conditions and competitiveness of individual employers within the sector concerned and, ultimately, the sector as a whole in international competition.

The subjects of collective bargaining at the sectoral level, and therefore the parties to higher-level collective agreements, are usually trade unions and employers' organisations.

A higher-level collective agreement may also give rise to enforceable rights for individual employees. However, it is also possible for an employer who is bound by a higher-level collective agreement to conclude an enterprise collective agreement. However, the latter may not regulate the rights and obligations arising from the employment relationship of employees to a lesser extent than a higher-level collective agreement. However, nothing prevents an enterprise collective agreement from providing employees with a greater range of rights than a higher-level collective agreement.

As far as the procedure for concluding a higher-level collective agreement is concerned, there is only one legal regulation of the procedure for concluding a collective agreement in the Collective Bargaining Act, and it is therefore applicable to the negotiation of higher-level collective agreements in addition to company collective agreements.

The contracting party to the higher-level collective agreement on the employer's side is obliged to submit it to the Ministry of Labour and Social Affairs of the Czech Republic for deposit. A similar procedure shall be followed when a higher-level collective agreement is amended. The Ministry shall announce the deposit of the higher-level collective agreement in the Collection of Laws. The Ministry shall make these agreements available on its website without delay after the notification of their deposit in the Collection of Laws.

3.8. Extending the binding force of a higher-level collective agreement

As a result of the extension of the binding nature of the higher-level collective agreement, the collective agreement may also become binding on employers who are not members of the employers' organisation that concluded the higher-level collective agreement.

The aim of extending the binding effect is primarily to unify labour conditions in the sector and to remove the unjustified competitive advantage gained by some employers through the low costs associated with unreasonably low labour costs, which are reflected in the very low level of wage and other rights of their employees.

The extension of the binding effect of a higher-level collective agreement may occur if both parties to the agreement jointly propose that a ministerial notice be published in the Collection of Laws stating that the higher-level collective agreement is binding on other employers with predominant activities in the sector designated by the economic activity classification code.

The notification of the Ministry shall be published in the Collection of Laws if a higher-level collective agreement is concluded by:

- the employers' organisations employing the largest number of workers in the sector in which it is proposed to extend the binding effect of the higher-level collective agreement; or
- the relevant trade union representing the largest number of employees in the sector in which it is proposed to extend the binding effect of the higher-level collective agreement.

3.9. Collective labour disputes

The very nature and meaning of social dialogue imply that it carries a certain potential for conflict, since the parties to social dialogue in many cases act as representatives of often contradictory positions. The ideal situation occurs when this conflict is resolved by finding a compromise that represents a satisfactory solution for both parties involved. However, the social partners may fail to reach an agreed position and a legal dispute may arise.

A collective labour dispute can only arise between an employer and a trade union. Collective labour disputes differ from other legal disputes primarily in their subject matter, i.e., the rights and obligations at stake in the dispute. These rights and obligations must always be the collective rights and obligations of the employees and the employer or employers' organisations.

A dispute in which an individual employee's individual right is at stake cannot be considered a collective labour dispute, even if the employee's right is based on a collective agreement.

The specific subject of the dispute may be a dispute as to whether or not there is a right of the subject of the collective right, or a dispute as to the performance of the obligations of one of the parties.

The Collective Bargaining Act regulates the resolution of two types of collective labour disputes defined in Section 10 thereof. This is a dispute over the conclusion of a collective agreement and a dispute over the performance of the obligations of the collective agreement, which do not give rise to rights for individual employees. Disputes over the conclusion of a collective agreement are significantly more common.

In the context of negotiations between the parties to conclude a collective agreement, a situation may arise in which one of the parties to the collective bargaining process does not fully respect the procedure prescribed by the Collective Bargaining Act for collective bargaining.

However, even when there is mutual goodwill towards concluding a collective agreement, negotiations often come to a standstill at a certain point and the parties are unable to move forward. A dispute may arise even if a collective agreement has already been concluded but one of the parties fails to fulfil the obligation agreed in the agreement.

3.10. Settlement of a collective labour dispute

The rules for settling collective legal disputes, i.e., disputes over the conclusion of a collective agreement, represent another significant difference between the regulation of collective bargaining and the general rules for concluding contracts in the Civil Code. From a purely private law point of view, there are no mechanisms available to assist the parties in concluding a contract on which the parties have not themselves agreed for various reasons. It can be concluded that, within the framework of respect for the autonomy of the will of the parties in private law relations, such mechanisms are not even necessary.

However, a collective agreement is not just an "ordinary" contract in this respect. It is important not only for guaranteeing the working conditions of employees, but also for achieving and maintaining social reconciliation as a condition for the harmonious development of the employment environment, which is important not only for employees but also for employers. The interest in concluding a collective agreement is not a purely private interest of the parties to the collective bargaining agreement. There is also a public interest in ensuring that collective agreements are concluded and reflect a state of socio-economic optimum in which employees are satisfied with their working conditions and employers have the conditions in place to effectively manage and organise the productive work performance of their employees. For these reasons, the legislation offers the parties to the contract instruments to find the necessary compromise, despite any persistent differences, to conclude a collective agreement and to avert the risk of social conflict escalating into a strike or lockout.

These instruments include some form of public interference in the negotiation process. The Ministry of Labour and Social Affairs of the Czech Republic plays an important role in this respect, as it selects and registers mediators and arbitrators in the relevant lists and appoints mediators or arbitrators on the basis of the parties' requests.

The method of resolving the two collective legal disputes mentioned above is directly regulated by the Collective Bargaining Act, in its Section 11 et seq. The specific

solution varies depending on which of these disputes is at issue. In any case, however, the same applies as for legal disputes in general, i.e., that the initiation of such disputes occurs when one of the contracting parties exercises its right in accordance with the procedure established by law.

Every collective dispute under the Collective Bargaining Act has a first, so-called obligatory, phase, which is a mediation procedure. If this procedure is unsuccessful, the collective dispute enters a second phase. If the collective dispute is a dispute over the conclusion of a collective agreement, the parties may resolve the dispute either by asking an arbitrator to resolve it or by resorting to the last resort, which is a strike on the part of the trade union and a lockout on the part of the employer. If the dispute is about the fulfilment of obligations under a collective agreement or about the conclusion of a collective agreement in a workplace where strikes are prohibited, the dispute must be heard before an arbitrator.

3.11. Proceedings before an intermediary

If the parties get into a collective dispute that they are unable to resolve themselves but want to resolve, the first stage of dispute resolution under the Collective Bargaining Act is the mediation procedure.

Although a collective dispute has already arisen in the mediation proceedings, this is still an attempt to resolve the dispute amicably. Proceedings before an intermediary are therefore characterised by considerable informality.

The mediator shall be an unbiased and objective person acting as a mediator. The mediator should try to get the parties to find a compromise, i.e., a mutually acceptable solution to the dispute. This can put an end to the dispute and therefore prevent it from escalating into a much more conflictual way of resolving it.

However, the initiation of proceedings before a mediator is not automatic. It is always premised on the agreement of the disputing parties that a mediator will be asked to resolve the dispute. In the context of reaching an agreement on this matter, the parties may subsequently agree on the person of the mediator, request the mediator to resolve the dispute, and the mediator's acceptance of this request initiates the proceedings. In this way, any legal person with legal capacity may mediate a dispute, provided that he or she agrees to act as a mediator.

It is highly advisable for the parties to try to agree on the person of the mediator, as if the mediator is a person in whom both parties have confidence, this increases the likelihood that the proceedings will be successful, and the dispute will be amicably resolved.

The request for dispute resolution shall be submitted by the parties to the mediator in writing. The request must precisely define the subject matter of the dispute and state the previous procedure for its resolution, which must be supported by written materials.

The request must also be accompanied by a written opinion from the other party. All written material shall be submitted to the intermediary in duplicate.

If the parties do not agree on the person of the mediator, the Ministry shall appoint a mediator from the list of mediators and arbitrators maintained by the Ministry at the request of either party, or the proceedings shall be initiated by the delivery of the decision on the appointment of the mediator. However, in a dispute over the conclusion of a collective agreement, such a motion may be filed no earlier than 60 days after the written proposal to conclude the agreement has been submitted.

The proposal to the Ministry should indicate that the parties have not agreed on a mediator and that the Ministry proposes to appoint a mediator. In a dispute over the conclusion of a collective bargaining agreement, a party should demonstrate that at least 60 days, as provided by law for the filing of a request, have elapsed between the

submission of the proposal for the conclusion of a collective bargaining agreement to the other party and the proposal for the appointment of a mediator.

For proceedings before a mediator chosen by the parties and the designated Ministry, the parties and the mediator are generally obliged to provide the required cooperation to each other in the proceedings. The reason for this statutory requirement is to try to achieve an objective result and avoid unjustified obstruction.

The mediator's task is not to decide the dispute, but to propose and recommend to the parties a way to resolve it. The result of the proceedings is therefore a written proposal for the resolution of the dispute, which the mediator is obliged to communicate to the parties within 15 days from the date of initiation of the proceedings, unless the parties agree otherwise with the mediator. If the parties accept the proposed solution, the dispute is resolved.

If the dispute is not resolved within 20 days from the date of receipt of the request by the mediator or the parties do not accept the mediator's proposed solution, the mediation procedure shall be deemed to have failed.

3.12. Proceedings before an arbitrator

After an unsuccessful mediation procedure in some cases, the collective dispute can and, in some cases must, proceed to the next stage, which is the arbitration procedure. The necessary continuation of a collective dispute is a proceeding before an arbitrator if the dispute is about the performance of obligations under a collective agreement or a dispute about the conclusion of a collective agreement arising in a workplace where strikes are prohibited. In other cases, the proceedings before the arbitrator are optional.

Leaving aside the workplace where strikes are prohibited, a proceeding before an arbitrator may occur if both parties, by agreement, request in writing that the arbitrator

decide the dispute. Upon acceptance of the request by the arbitrator, the proceedings before the arbitrator are initiated.

The arbitrator shall notify the parties in writing of the decision reached within 15 days of the commencement of the proceedings. If the dispute was over the conclusion of a collective agreement, the collective agreement is concluded upon receipt of the arbitrator's decision. In a dispute over the performance of obligations under a collective agreement, the arbitrator's decision is enforceable in court.

3.13. Strike and lockout

Both strike and lockout are extreme means of resolving collective labour disputes, which often have mutually negative consequences. If a strike or lockout occurs, it is in principle an expression of a dysfunctional social dialogue since its purpose is to achieve social reconciliation and prevent similarly radical ways of resolving disputes and problems in labour relations. The economic, legal, and other consequences of a strike or lockout can be very serious for both employers and employees.

A strike in the true sense of the word can only be called an action in which there is a total or partial interruption of the employee's work. Other forms of pressure, such as assemblies or demonstrations that do not involve a work stoppage, or symbolic forms of support for a strike, cannot be considered a strike in the true sense of the word. A strike is not even a so-called strike alert, which is a form of coercion represented by the fact that the trade union that has declared the strike alert is thereby drawing attention to the fact that there is a real risk of a strike. No prerequisites for declaring a strike alert arise from the legislation.

A strike under the Collective Bargaining Act is possible in a dispute over the conclusion of a collective agreement and in a dispute over the amendment of an existing collective agreement if the possibility of amendment or its scope has been agreed in the

collective agreement. A collective bargaining strike can only be called after the parties have unsuccessfully gone through the mediation process.

The strike is called and decided by the trade union. A strike may be called in a dispute over the conclusion of a collective agreement if at least two-thirds of the employer's employees participating in a strike ballot and affected by the collective agreement agree to the strike, provided that at least half of all the employer's employees affected by the agreement have participated in the ballot.

The trade union is obliged to inform the employer at least three working days in advance when the strike will start, the reasons and objectives of the strike, the number of employees participating in the strike and the lists of workplaces that will be closed during the strike. However, the trade union does not have to provide the employer with a list of names of strike participants.

Participation in a strike is entirely a personal decision of the employee and therefore no employee can be forced to participate in any way. A trade union which is authorised to act on behalf of strike participants must allow reasonable and safe access to the employer's workplace and must not prevent employees who wish to work from entering or leaving the workplace or threaten them with any harm.

4. Consequences of collective bargaining for employees' working conditions

The concept of working conditions can be understood in several ways. In the broadest sense, it refers both to the overall environment in which dependent work is performed in the basic employment relationship and to the totality of all benefits that employees receive from their employer in return for or in connection with the performance of their work. However, a more traditional and appropriate approach is a narrower one, which focuses on the work environment and the employer's care for the conditions in which employees work.

The obligation of employers to take care of the working conditions of their employees is already based on the constitutional level. According to Article 28 of the Charter of Fundamental Rights and Freedoms, employees have the right to satisfactory working conditions, with more detailed conditions for the implementation of this right to be determined by law. The Labour Code includes satisfactory and safe working conditions among its fundamental principles listed in the illustrative list of Article 1a(1)(a) to (e). According to Article 1a(2) of the Labour Code, the principle of satisfactory and safe working conditions is one of those principles which express values that protect public order.

The very emergence of labour law as a relatively independent branch can be placed in the context of ensuring safe and healthy working conditions. The very first interventions of the legislators into the relationships arising in the performance of dependent work were motivated by the desire to reduce the number of work accidents and to eliminate or minimize the effects of health-threatening or health-damaging influences associated with the performance of work. Even today, efforts to ensure safe, health-safe and in other respects satisfactory and dignified working conditions are among the typical manifestations of the protective function of labour law.

Nevertheless, it is not just about occupational safety. The basic principle in Section 1a(1)(b) of the Labour Code also speaks of satisfactory conditions. In this sense,

it is possible to consider conditions that are favourable for employees, creating a working environment in which they feel comfortable, which will have a positive effect on their motivation to achieve quality work results and increase their performance.

Ensuring satisfactory working conditions is perceived as an expression of the employer's care for the employee. After all, the Care of Employees is the title of Part Ten of the Labour Code, which sets out more detailed rules for the provision of working conditions for employees, professional development of employees, meals and special working conditions for certain selected groups of employees.

In the context of providing care for employees, we sometimes refer to corporate social policy that should aim to meet the social needs of employees, with feedback to meet the needs of the employer. Although many employers consider it to be unnecessary and a luxury, social policy is an important factor influencing the efficiency of an employer's operations.

4.1. Employee survey: the impact of collective bargaining

The Association of Independent Trade Unions commissioned a survey of employees in 2021 on the impact of collective bargaining on the status of employees. The results of the survey were published under the title The Impact of Collective Bargaining on the Labour Market Position of Employees in the Czech Republic (in the following as "Survey Results" for simplicity). The following chapters 5, 6 and 7 are based on the results of this research, focusing, according to the study's terms of reference, on the impact of collective bargaining on working time and its duration, the promotion of occupational health and safety, and the consequences of the COVID-19 pandemic.

The research carried out is based on the premise that collective bargaining contributes to eliminating the negative effects of changes in the nature of work related to digitalisation and automation. However, collective bargaining in the Czech Republic

has different effects on different groups of employees. The survey was therefore carried out among employees in order to obtain up-to-date information on the impact of collective bargaining in the area of securing working conditions on individual groups of employees in the Czech Republic. The survey included questions on employee satisfaction with the results of collective bargaining, the possibility for employees to engage in collective bargaining and the application of various forms of flexible working. In order to show the impact of collective bargaining on different groups of employees, the selected survey results are also broken down by gender, age, occupation, sector, industry and education.

Additional data on collective bargaining outcomes relevant to the preparation of the following Chapters 5, 6 and 7 were obtained from the periodic Information on Working Conditions Negotiated in Collective Bargaining Agreements, which was last published for the year 2022 (in the following as "Information on Working Conditions 2022" for simplicity). Information on working conditions is gathered through an analysis of collective agreements and focuses on the social partners' arrangements in the following areas:

- employee remuneration,
- cooperation between the parties,
- length of working time and extension of leave,
- changes in the employment relationship,
- employment,
- providing benefits and working conditions for employees,
- obstacles at work,
- professional development of employees,
- equal treatment and
- health and safety at work.

Information on working conditions in 2022 was obtained by analysing 1,764 collective agreements, comprising of 1,276 collective agreements concluded by

employers who remunerate their employees by salary (so-called business employers) and 488 collective agreements concluded by employers who remunerate their employees by salary (so-called non-business employers).

In addition to the areas that will be addressed in more detail in the following chapters, one can highlight, for example, the findings on **leave rates**. Given the nature of the legislation, it is clear that the amount of leave can only be the subject of collective bargaining for employers in the business sector. Of these collective agreements, a full 89.6% include arrangements to increase the amount of leave beyond the statutory minimum, which is 4 weeks per calendar year under Section 212(1) of the Labour Code. Of the total number of collective agreements analysed, 78% of collective agreements increased the amount of leave by an additional week, 2.8% of collective agreements increased it by two weeks and 8.8% of collective agreements increased it by less than a full week, i.e., by several working days.

The survey asked respondents to rate their satisfaction with the extra leave. The results of the survey show that 16% of respondents are very satisfied, 31% satisfied and 21% somewhat satisfied with their leave. Dissatisfaction was expressed by 24% of respondents, who appear to be employees of employers whose leave is not increased above the legal minimum by collective agreement.

One important component of employee care and working conditions that remains somewhat neglected in collective bargaining is the **training and professional development of employees**. Even on the part of trade union negotiators, one can encounter a rather defensive approach to this issue, based on the thesis that employee training is at the employer's disposal and should not be the subject of collective bargaining.

As can be seen from the Information on Working Conditions 2022, collective agreements in the business sector in most cases do not mention the issue of employee training. Only 33.1 % of collective agreements show the negotiation of conditions for the professional development of employees. The information does not provide data on

the nature of these arrangements in collective agreements. Therefore, it cannot be excluded that in many cases, these may be merely declaratory rules or arrangements merely taken from the relevant provisions of the Labour Code. It is difficult to estimate what percentage of collective agreements contain provisions on specific employer obligations in the field of education that could give rise to enforceable rights for employees. However, it can be inferred from the figure that only 2.1% of collective agreements contain provisions on specific staff development programmes, including an indication of the number of employees to be covered by the professional development.

The situation is slightly better for non-business employers. According to the Information on Working Conditions 2022, 61.3% of collective agreements contain conditions for the professional development of employees. However, similarly to the business sector, only 2.3% of collective agreements contain provisions on specific professional development programmes for employees, including the number of employees to be covered by the professional development.

The survey results show that respondents' satisfaction with professional development, i.e., training, and professional development opportunities, is around 60-65% and increases slightly with age. In terms of the type of occupation, the satisfaction rate is lower for manual workers (51%) compared to 67% for the white-collar group. The question is to what extent the respondents expressed satisfaction with the training opportunities agreed in the collective agreement, or to what extent their answers are more indicative of what training opportunities the employer offers without these opportunities being enshrined in the collective agreement.

In any case, it is worth noting that a defensive approach to collective bargaining in the area of training and professional development of employees is not appropriate. Even though the legislation treats, for example, the improvement of qualifications in such a way that the employee is obliged to improve their qualifications (thus the employer is entitled to unilaterally order the employee to improve their qualifications) and participation in training or other forms of training or studying for the purpose of

improving qualifications is considered to be performance of work (Section 230(2) and (3) of the Labour Code), this does not mean that the issue of improving qualifications cannot also be the subject of collective bargaining.

The employer may commit to specific, qualitative, and quantitative indicators in the area of employee skills development through a collective agreement. In relation to specific job roles, it may be agreed what training or other forms of training they receive and to what extent. Under such an arrangement, the employer would then be obliged to send employees to training courses or to organise training or other forms of study for them directly.

The subject of collective bargaining could also be the area of increasing skills. Compared to deepening qualification, increasing qualification is more individual. For each employee, the employer must assess whether the study, education, training, or other form of training to attain a higher level of education is consistent with the employer's need (Section 231(2) of the Labour Code). It is clearly not realistic to expect an employer to commit to deciding whether or not a particular study is consistent with the employer's need in consultation with the union. It could, however, undertake to discuss with the trade union in advance its decision as to whether or not a particular study, in respect of which the employee has requested to be considered as an increase in qualification within the meaning of section 231 of the Labour Code, is in accordance with the employer's need. This would give the trade union the opportunity to at least express its view in the consultation process as to whether a particular employee's study, education, training, or other form of preparation to achieve a higher level of education should be considered as an increase in qualification relevant to the employer's needs.

5. The impact of collective bargaining on working time

Working time and the related issue of leave are an important part of working conditions that significantly affect employee satisfaction. During working hours, the employee is obliged to perform the agreed work for the employer. The length of the weekly working time, the way in which it is scheduled and the length of individual shifts, or the possibility of scheduling working time or part of it separately, are important criteria for employees, which have an impact on the choice of employment itself. Different working time arrangements have a significant impact on the employee's personal time off and how they can spend their leisure time. All of this is then reflected in his satisfaction not only in their professional but also personal life.

Similarly important for employees is the topic of leave, which serves to regenerate the workforce and to rest longer. Employee satisfaction is mainly influenced by the length of leave and the ability to take it according to their needs. Work fatigue without sufficient rest negatively affects the private life of employees. For more on employee satisfaction with the length of leave agreed in collective agreements, see the previous chapter.

The topics of working time and leave are intrinsically linked to the issue of work-life balance, which according to the OECD is one of the main determinants of quality of life in individual countries[8]. Collective bargaining can bring a number of benefits and improvements to workers in this area and thus make a significant contribution to improving their quality of life. The benefits of a well-balanced work and family life of an employee are mainly maintaining harmonious family and friendship relationships, more time for personal hobbies and the possibility to relax from work, which in turn leads to a reduction in stress levels and at the same time acts as a prevention of burnout syndrome. On the employers' side, the benefits lie mainly in higher employee performance due to higher motivation and lower absenteeism. Being able to use work-

[8] How's Life? 2015, Measuring Well-being, OECD, ISBN 978-92-64-23817-6 (PDF), s. 26

life balance tools leads to employees being more loyal to their employer and reduced turnover.

5.1. Working time legislation as a basis for collective bargaining

a) Weekly working hours

The Labour Code regulates working time in the provisions of Section 78 to Section 100. The general statutory **working week** is **set** at 40 hours per week. The special statutory weekly working time of 38.75 hours per week applies to employees on a two-shift work schedule and 37.5 hours per week to employees performing particularly demanding underground work and employees on a multi-shift (3 or more shifts) and continuous work schedule. The statutory weekly period cannot be extended in any way.

The statutory weekly working time may be reduced by an internal regulation issued by the employer or by a collective agreement by requiring employees to work a lower total number of hours per week. However, the essential condition is that the **reduction in weekly working time** must not be accompanied by a reduction in pay (the amount of pay remains unchanged when the reduced weekly working time is introduced).

The reduction of the statutory weekly working time cannot be made by an employer who provides employees with a salary for their work, i.e. the state, a local self-government unit, a state fund, a contributory organisation whose costs for salaries and on-call remuneration are fully covered by an operating contribution provided from the founder's budget or from reimbursements under special legal regulations, and an educational legal entity established by the Ministry of Education, a region, a municipality or a voluntary association of municipalities under the Education Act.

In addition to shortened working hours, the law recognizes a separate concept of **shorter working hours**. Shorter working hours are involved if the employer agrees in

the contract with the employee a shorter weekly working time than the fixed weekly working time applied by the employer. The concept of shorter working hours must be distinguished from the concept of reduced working hours, since if shorter working hours are agreed, the employee's wage or salary must be reduced proportionately to correspond to the agreed shorter working hours. In such a case, the lower wage or salary (compared to the one originally provided) is automatically due to the employee without the need to negotiate. Where shorter working hours are agreed at the start of the employment relationship, the wage or salary must be agreed or determined with reference to those shorter working hours in order to comply with the principle of equal pay. Shorter working hours can only be agreed in an individual contract with the employee.

The employer does not have to grant the request for shorter working hours, it is a matter of contractual freedom of the parties. An exception to this rule is the provision of Section 241(2) of the Labour Code, according to which the employer is obliged to comply with the request of a pregnant employee and an employee who takes care of a child under 15 years of age for shorter working hours or other appropriate adjustment of the fixed weekly working hours (e.g., assignment only to day shifts, different start and end of shifts, etc.), unless serious operational reasons prevent him from doing so. The employer is also obliged to do so with respect to employees who are mainly caring for a person who is dependent on the assistance of another natural person in II, III or IV degree of dependence (moderate, severe or total dependence). There is no restriction on the negotiation of shorter working hours or other suitable arrangements for working time or a combination thereof, except that the length of a shift may not exceed 12 hours.

b) Scheduling of weekly working time

The employer shall have the right to divide the fixed weekly working time into shifts, including the method of division into individual weeks (even or uneven distribution) and the type of working pattern (single-shift, double-shift, or multi-shift in continuous or uninterrupted operation). The working time scheduled by the employer

represents the time frame within which the employee is required to perform (be prepared to perform) the essential duty arising from their work commitment.

The weekly working time may be spread evenly or unevenly over the weeks. The main difference between the two methods of scheduling is that in the case of the even scheduling, the fixed weekly working time or the agreed shorter working time is fully distributed in each week, i.e., the same number of hours. An even schedule includes a schedule where the shift is of different lengths on different days of the week, or where the hours of work are spread over days other than Monday to Friday (e.g., Wednesday to Sunday), provided that the same number of hours are allocated to the employee in each week.

On the contrary, the uneven distribution of working time is determined by its irregularity - in each week a different number of hours of the fixed weekly or agreed shorter working time is distributed, with the proviso that during the so-called compensation period the total working time distributed on average for each week may not exceed the fixed weekly or shorter working time (total number of hours distributed / number of weeks within the compensation period = fixed weekly or shorter working time). If the length of the compensation period is not agreed in the collective agreement, the compensation period may be a maximum of 26 consecutive weeks. The compensation period may be extended to 52 weeks, as agreed in the collective agreement. It is also possible to negotiate the specific length of the compensation period in the collective agreement, or, if only by agreeing on a possible maximum of up to 52 weeks, to leave it up to the employer to determine the specific length of the compensation period through an internal governing document.

Within the weekly working time schedule, the employer is obliged to determine the exact start and end of shifts (the so-called fixed working time schedule), so that it is clear from when to when the employee is obliged to work within the shift, and from when it would possibly be overtime work. It should also specify the days of the week on which these shifts fall (e.g., Monday to Friday). The obligation to determine the exact

start and end of shifts does not apply to flexible working time arrangements, where the start and end of shifts on individual working days are determined by the employee within optional periods set by the employer. See below for more details on flexible working time.

If the length of the weekly working time or the way it is scheduled is not directly included in the contract with the employee, the employer may change the schedule at any time during the employment relationship according to its operational needs. However, if the employment contract stipulates, for example, that the working hours are 40 hours per week and are evenly distributed, a change to an uneven schedule and shift work is only possible after agreement with the employee. The same applies if the weekly working time is agreed in a collective agreement.

The way in which weekly working hours are arranged will, of course, always be based primarily on the employer's operational needs, but the employer is nevertheless obliged to take into account safe and healthy working conditions when arranging working hours, which will relate in particular to the length of shifts and periods of uninterrupted rest between shifts. As a rule, if possible, working hours should be spread over five days a week. The employer is obliged to take into account the needs of employees caring for children when assigning employees to shifts (Section 241(1) of the Labour Code). In addition, as part of the increased protection of certain groups of employees, the employer is obliged to accommodate the requests of employees caring for a child under 15 years of age, pregnant employees or employees who mainly care for persons dependent on their assistance for a long period of time (see above).

The employer shall not, when drawing up the shift schedule, spread the shift over more than 12 hours on any particular day. This maximum duration does not include the time allowed for meal and rest breaks. Therefore, the time interval from the start to the end of the shift will normally be longer than the length of the shift (except for shifts that include so-called reasonable meal and rest periods as time worked).

The law does not prohibit a shift from being divided into several parts with shorter rest periods in between (so-called split shifts). The only limit for dividing shifts and setting their start and end is the mandatory rest period between two shifts (continuous rest between two shifts - the so-called daily rest).

Although the length of the shift is limited to twelve hours, the employee's total working hours may be longer on any given day. These are mainly cases where overtime is worked on a given day on the employer's order or with the employer's consent. The limit on total working time within 24 hours is the daily rest period, which may be as little as 8 hours in 24 consecutive hours in certain cases (for example, when working irregular hours or overtime).

Flexibility in the use of working time is represented by its flexible scheduling, where the employer only limits the period of time within which the employee's shift is to be worked on a given day by specifying periods of so-called optional working time. The employer leaves the specific start and, if necessary, end time of the shift to the employee's decision. On individual days, the employee is usually only obliged to work the so-called basic working hours. It is a way of scheduling working time that brings a number of undeniable advantages for both the employer (e.g., in terms of obstacles to work on the part of the employee) and the employee (the possibility to influence the distribution of working time and to better balance their work and private life).

Under **flexible working schedule**, the employer is obliged to determine the periods of optional working time and basic working hours and the days on which the work is to be performed (e.g., Monday to Friday). There may be more than one section of optional and basic working time within a day, and they may be combined in different ways. The employee then has the choice of whether and when to come to work and start the shift, or when to end the shift, within the optional working hours. The employee is always obliged to work the basic working hours.

In total, the total time covering the optional and basic working time periods may exceed 12 hours, but the shift must still not exceed 12 hours. Flexible scheduling can be

either equal or unequal in nature, depending only on the length of the compensation period in which the employee is to work the specified weekly or shorter working hours. The compensation period is normally a maximum of 26 weeks, only the collective agreement can extend it up to 52 weeks.

c) Work overtime

The employer is limited in its ability to order employees to work overtime by statutory limits. An employee may be ordered to work a maximum of 8 hours of overtime in any one week. Therefore, if an employer needs an employee to work an extra twelve-hour shift as overtime, for example, it must be agreed with the employee to work overtime. Consent to work overtime may be given in writing, verbally or tacitly by the employee coming in and working the extra 12-hour shift.

In total, an employer may order 150 hours of overtime work in a calendar year. This limit may also be exceeded by agreement with the employee. In this case, the employee's consent cannot be replaced by an agreement in a collective agreement. However, through the collective agreement, both weekly and annual overtime limits may be reduced.

The total amount of overtime work, i.e., work ordered and agreed with the employee, is limited only by mandatory periods of uninterrupted rest between shifts (called daily rest) and during the week (called weekly rest). The total amount of overtime work in a calendar year is limited by the law so that overtime work may not exceed an average of 8 hours per week during a set compensation period, which may be no more than 26 weeks for an employer without a trade union or where this compensation period is not agreed in a collective agreement, and no more than 52 weeks if it is agreed in a collective agreement. The total amount of overtime for a given period is then calculated as the product of 8 hours and the number of weeks of the compensation period (e.g., 8 x 26 = 208 or 8 x 52 = 416).

d) Break at work for food and rest

The employee must be given a break of at least 30 minutes after no more than 6 hours of continuous work, regardless of whether the work is shift work or overtime, only the continuity of work is relevant. A break must be given to a worker under 18 years of age after 4.5 hours of continuous work. The break may be divided and given in several parts, at least one of which must be at least 15 minutes.

5.2. Amendment to the Labour Code 2023

The Chamber of Deputies is currently debating a transposing amendment to the Labour Code (Chamber of Deputies Document No. 423). This amendment is intended to incorporate into the Czech legal system the requirements based on EU directives - Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers ("WLB Directive") and Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union. Both of these directives should have been implemented at the beginning of August 2022, which means that the Czech Republic is in a significant delay, so the adoption of the amendment should take place as soon as possible. In addition to the transposition of the aforementioned directives, the Labour Code is to further regulate the performance of work from a place agreed with the employee other than the employer's workplace (so-called "telework").

According to Article 9 of the WLB Directive, Member States shall take the necessary measures to ensure that workers with children up to a certain age, which is at least eight years, and carers have the right to request flexible working arrangements for care purposes (according to Article 3 of the WLB Directive, flexible working arrangements are the possibility for workers to adapt their working arrangements, including the use of teleworking, flexible working arrangements or shorter working hours). Section 241(2) of the Labour Code already imposes an obligation on employers to allow shorter weekly working hours or other appropriate adjustment of working hours

for certain groups of employees - see above. The employer will now be obliged to give reasons in writing for any refusal of a request for shorter working hours or other appropriate adjustment of working hours.

In addition, it is proposed to allow an employee whose request for shorter working hours has been granted by the employer to request a renewal or partial renewal of the weekly working time, although the granting of this request is not intended to be an entitlement. If the employer does not comply with the request (which it will not be obliged to do), it will only be obliged to give reasons in writing. Requests for other appropriate adjustments to working time are subject to a completely different regime, where any such adjustment (including a request to restore the original timetable) is a new request and is entitled to be granted unless serious operational reasons on the part of the employer prevent it.

Furthermore, under the proposed new provision of Section 241a, employees caring for a child under the age of 9, a person dependent on the care of another person or a pregnant employee will be able to apply to perform telework, although even here the granting of this application is not intended to be an entitlement. The employer is only obliged to give reasons in writing for any failure to comply with the employee's request. In this context, beyond the transposition of the directives in question, the performance of work outside the employer's workplace on the basis of a telework agreement is also regulated in detail in Section 317 of the Labour Code (see further in Chapter 6).

The legislation should also be clarified in the sense that if the employee's request or shorter working hours or other appropriate modification of working hours or teleworking is granted, an addendum to the employment contract should be concluded in which the parties agree on all relevant issues (in the case of a request for shorter working hours, e.g. the specific length of weekly working hours, from when the change takes place, or whether the addendum is concluded for a fixed period, etc.).

5.3. Employee satisfaction with the results of collective bargaining in the area of working time

An evaluation of the results of collective bargaining in the area of working time and leave is contained in the 2022 Working Conditions Information in Table A22b:

IPP 2022 Tabulka č. A22b

Pracovní doba a dovolená v třídění podle krajů

Kraj NUTS 3	Délka pracovní doby											Pružné rozvržení pracovní doby		Zvýšení nároku na dovolenou					
	sjednána v KS		obecně bez rozlišení			v pracovních režimech								sjednáno v KS		o dny		o týden	o 2 týdny
								1 směnný	2 směnný	vícesměnný	nepřetržitý								
	PKS	% KS	PKS	% KS	hod/týden	PKS	% KS	hod/týden	hod/týden	hod/týden	hod/týden	PKS	% KS	PKS	% KS	% KS	dny	% KS	% KS
Celkem	**1153**	**90,4**	**753**	**59,0**	**38,0**	**400**	**31,3**	**39,7**	**38,35**	**37,4**	**37,3**	**381**	**29,9**	**1143**	**89,6**	**8,8**	**4,4**	**78,0**	**2,8**
CZ010 Hlavní město Praha	166	85,1	86	44,1	38,4	80	41,0	39,6	38,30	37,3	37,2	77	39,5	172	88,2	7,2	5,0	76,4	4,6
CZ020 Středočeský	71	87,7	48	59,3	38,1	23	28,4	39,8	38,53	37,5	37,4	16	19,8	66	81,5	8,6	5,4	71,6	1,2
CZ031 Jihočeský	110	90,9	66	54,5	38,0	44	36,4	39,5	38,44	37,2	37,1	36	29,8	108	89,3	5,8	5,4	81,8	1,7
CZ032 Plzeňský	65	94,2	42	60,9	37,9	23	33,3	39,8	37,98	37,4	37,4	21	30,4	64	92,8	7,2	4,8	82,6	2,9
CZ041 Karlovarský	33	94,3	23	65,7	38,3	10	28,6	40,0	38,59	37,5	37,5	6	17,1	25	71,4	8,6	3,7	62,9	
CZ042 Ústecký	75	93,8	58	72,5	37,7	17	21,3	39,7	38,33	37,5	37,5	26	32,5	74	92,5	11,3	4,2	78,8	2,5
CZ051 Liberecký	51	79,7	37	57,8	37,8	14	21,9	39,5	37,79	37,5	37,5	16	25,0	56	87,5	14,1	4,3	70,3	3,1
CZ052 Královéhradecký	72	92,3	50	64,1	37,9	22	28,2	39,8	38,47	37,5	37,5	16	20,5	68	87,2	2,6	5,5	82,1	2,6
CZ053 Pardubický	63	95,5	34	51,5	38,1	29	43,9	40,0	38,38	37,5	37,5	11	16,7	60	90,9	10,6	5,0	78,8	1,5
CZ063 Vysočina	70	92,1	45	59,2	38,1	25	32,9	39,8	38,40	37,5	37,5	19	25,0	72	94,7	11,8	3,3	78,9	3,9
CZ064 Jihomoravský	105	89,7	67	57,3	38,2	38	32,5	39,8	38,33	37,5	37,4	24	20,5	107	91,5	12,8	3,7	74,4	4,3
CZ071 Olomoucký	72	93,5	56	72,7	37,9	16	20,8	39,7	38,25	37,3	37,2	25	32,5	67	87,0	5,2	5,0	79,2	2,6
CZ072 Zlínský	75	96,2	44	56,4	38,0	31	39,7	39,7	38,46	37,5	37,2	22	28,2	73	93,6	6,4	6,2	85,9	1,3
CZ080 Moravskoslezský	125	89,9	97	69,8	37,8	28	20,1	39,6	38,50	37,5	37,1	66	47,5	131	94,2	11,5	3,6	79,9	2,9

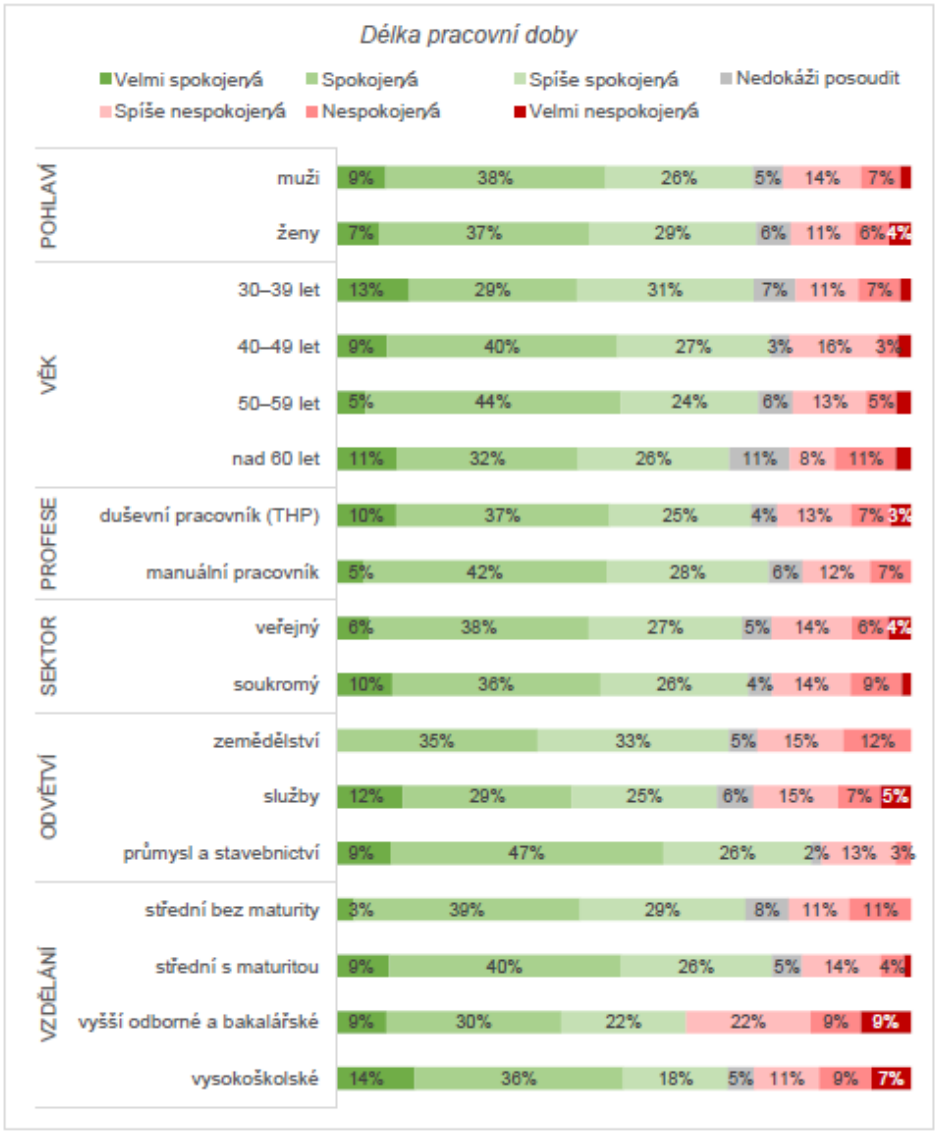
Vysvětlivky: PKS počet kolektivních smluv, ve kterých je příslušný ukazatel sjednán
% KS podíl kolektivních smluv, ve kterých je příslušná hodnota sjednána k celkovému počtu smluv v souboru
hod/týden průměrná délka pracovní doby
dny průměrný počet dní, o které je navýšena dovolená (pokud není navýšena v týdnech)

[Source: Working Conditions Information 2022]

The table above shows that the length of working time is a common arrangement, contained in more than 90% of collective agreements. In most collective agreements, a reduced working week without a reduction in wages compared to the fixed weekly working hours for the different working arrangements under the Labour Code is thus agreed. Only about a third of collective agreements provide for flexible working hours.

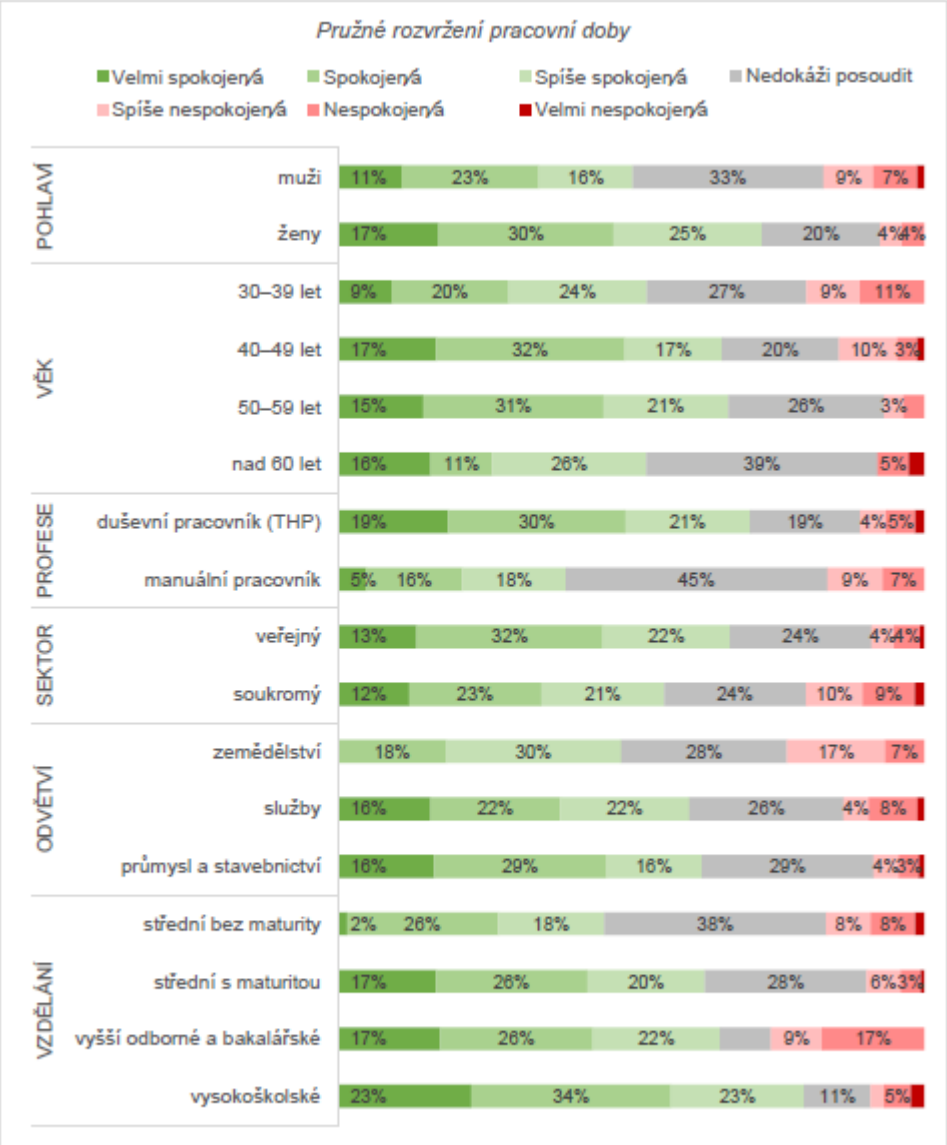
Arrangements for leave beyond the Labour Code, i.e., extensions of more than 4 weeks, are included in almost 90% of collective agreements. Most often (in almost 80%) an extension of leave by 1 week is agreed. In a small number of collective agreements, only single days of extra leave are agreed upon, and even less frequently the amount of leave in collective agreements is extended by 2 weeks.

Satisfaction with the results of collective bargaining on working time and flexible working arrangements by gender, age, occupation, sector, industry, and education is shown in the following tables from the Survey Results:



Zdroj: Šetření Vliv kolektivního vyjednávání na postavení zaměstnanců na trhu práce v České republice, výpočty TREXIMA.

Length of working time



Zdroj: Šetření Vliv kolektivního vyjednávání na postavení zaměstnanců na trhu práce v České republice, výpočty TREXIMA.

Flexible working hours

The results of the survey show that approximately 70 to 75% of respondents are satisfied with the length of working hours, regardless of gender, age, type of profession, etc. In the case of flexible working arrangements, the evaluations according to the selected characteristics are already more varied, as can be seen, for example, in the type of occupation performed. In the group of white-collar workers, 70% are satisfied, whereas only 39% of manual workers are satisfied. In addition, almost half (45%) of

manual workers could not assess flexible working arrangements, compared to 19% of white-collar workers.

5.4. Collective bargaining options for working time

Through collective bargaining, legal standards on working time can be significantly improved, contributing to greater employee satisfaction and a better balance between work and personal life.

A collective agreement may contain, for example, the following working time arrangements:

a) Reduction of the fixed weekly working time without a reduction in wage

The shortened working week is most often 37.5 hours per week (taking into account five half-hour breaks during the week). It is of course possible to reduce the working week even further.

In the case of different shift patterns of work for the same employer, in accordance with the principle of equal treatment, not only should the working time be standardised to the uniform weekly working time set by law for multi-shift or continuous operation, i.e. 37.5 hours, but the different lengths of the statutory weekly working time for all working patterns should be reduced.

b) More detailed rules for negotiating part-time work (shorter working time)

Shorter working time can only be negotiated in an individual contract with the employee, but a collective agreement may negotiate obligations on the employer to improve the position of employees if they wish to work shorter hours. For example, it may be agreed that the employer will accommodate the request of all employees for shorter working time, unless serious operational reasons on its part prevent it, or the employer's obligation may be limited to selected groups of employees (beyond those listed in Section 241(2) of the Labour Code) - for example, employees of pre-retirement age who may be interested in shorter working hours because of their declining strength and greater need for rest. In addition, the collective agreement may require the employer to grant the employee's request to return to the previous working hours or to request a different (also shorter) weekly working time, unless serious operational reasons on the employer's side prevent this.

c) Arrangements for other suitable working time adjustment

The collective agreement may specify how weekly working hours may be adjusted to better suit the personal needs of employees. The essence of another appropriate adjustment of the fixed weekly working time may be that the employee and the employer agree on their own (individual) working time schedule, with the understanding that the generally established limits for the distribution of working time into shifts (maximum length of one shift, minimum length of rest periods) also apply here. In this case, another appropriate adjustment of working time is, in particular, a different start or end of shifts from those of other employees. Other appropriate arrangements for working time may include varying the length of shifts on individual days, scheduling working time only on certain days of the week, or flexible working time arrangements.

d) Flexible working time arrangements

Within the meaning of the WLB Directive, the concept of 'flexible working time arrangements' covers the various possibilities for workers to adapt their working arrangements - for example, flexible weekly working patterns, shorter working hours, the use of teleworking.

Flexible working time can be agreed in collective agreements in different variations depending on the length of the compensation period:

- Flexible working day - the entire shift is to be worked on each working day, the "flexibility" is only manifested in the fact that the employee can influence the start or end time of the shift within the optional working time periods. The flexible working day can be applied under both equal and unequal working time arrangements.
- Flexible working week - a set weekly working time to be worked in each week. In this case, it is about the even arrangement of working time. The employee may choose the start and end of shifts on individual days but is only required to work the basic working hours on each day and the total weekly working hours for the whole week.
- Flexible calendar month - the total working time for a calendar month should be on average a set weekly working time or an agreed shorter working time. The employee is required to work only the basic working time on each working day. The employee is then obliged to work a total of the number of hours per calendar month at the specified weekly or shorter working hours. It is therefore uneven distribution of working time. The total number of working hours may vary from calendar month to calendar month.
- Flexible periods of a few weeks or months - up to a maximum of 52 weeks based on the collective agreement. The rules are similar to the flexible calendar month.

e) Arrangements for breaks at work

A longer meal and rest break may be agreed in the collective agreement. Such a measure is particularly appropriate when the catering facilities are not close to the employer's premises and employees need a longer time for lunch. It is also possible to reduce the time interval after which the employee must be given a meal and rest break at the latest, so that two breaks are given in shifts exceeding 8 hours. In particular, shifts of 12 hours can be very exhausting for employees, and according to the law, it is sufficient to provide only 1 break (after a maximum of 6 hours and after another 6 hours the shift ends). It is also possible to agree on the division of meal and rest breaks, including the length of each part of the break.

Other types of breaks may be introduced, including, where appropriate, credit for time worked (paid breaks) - for example, for smoking, talking on the phone, meditation, or other purposes.

f) Restrictions on overtime work

The excessive amount of regular overtime work can be one of the main reasons for employee dissatisfaction due to lack of free time for rest or personal activities. The collective agreement may agree on a lower amount of overtime work in individual weeks (less than 8 hours) as well as a lower maximum amount of overtime work in a certain period (e.g., that overtime work may only amount to 4 hours per week on average in a given period or a maximum of 100 hours in total per calendar year).

g) Minimum standards on working time and rest periods for teleworking

According to the current legislation on teleworking, which is not to be affected by the amendment to the Labour Code, the regulation on the scheduling of working time, downtime and interruptions of work caused by adverse weather conditions does not apply to work outside the employer's workplace. Digitalisation and the increased use of IT technologies at work have significantly affected the work-life balance, blurring the clear boundaries between working and resting time, and leading to intensification of work and disproportionately long working hours with the risk of unpaid overtime. See Chapters 6 and 7 for more on teleworking and its risks.

Collective bargaining can set the rules for work organisation, working time and rest periods when using digital technologies and teleworking. For example, rules can be introduced for not contacting employees outside their working hours (the so-called "right to disconnect"). It may be agreed that if employees who are contacted by the employer outside of working hours find it harassing, they can raise an objection to the employer for which they will not be penalised. At the same time, it is appropriate to set rules on the use of digital work tools for private purposes during and outside working time.

h) Shorter working week (compressed week)

A shorter working week usually means working four days instead of five. This schedule may include fewer total hours per week (reduced or shorter weekly working hours) or shifting normal working hours to a four-day period, e.g., four ten-hour shifts per week). A shorter Friday shift may also be an option.

i) Possibility to take unpaid leave without restrictions

The collective agreement may contain an obligation for the employer to grant the employee's request to take leave without pay (so-called unpaid leave) unless serious operational reasons prevent it.

j) Sabbaticals

New and non-traditional working time benefits include sabbaticals or long-term leave, which can be paid, partially paid or unpaid. It is intended to serve primarily as part of psycho-hygiene and prevention of burnout syndrome. The purpose is mainly to take a break from work stress, focus on personal development and family life. Employees can spend it, for example, travelling. It can also be a sabbatical leave for the purpose of scientific work, self-education, or work on a publication. The length of the sabbatical is individual, but most often ranges from two to six months, sometimes even a whole year.

6. The impact of collective bargaining in promoting health and safety at work

The issue of occupational safety and health ("OSH") is one of the traditional topics of collective bargaining because improving occupational safety and health is an important task for trade unions worldwide. Collective bargaining thus plays a key role in creating and maintaining healthy and safe working conditions for workers in all industries and sectors by helping to set standards and minimum requirements for occupational health and safety. It also allows employees to participate in the development and updating of health and safety policies in their work environment. Through their representatives and trade unions, employees have the opportunity to express their needs, concerns and suggestions regarding their health and safety. This ensures their direct involvement in the decision-making process and increases their satisfaction.

Collective bargaining also contributes to improving awareness and expertise in occupational safety and health. Collective agreements provide for regular training for employees on risks and preventive measures in the workplace. This raises awareness of health and safety issues and provides employees with the necessary training.

The epidemic has further increased the interest of employers and employees in occupational health and safety issues. The adjustments to the organisation of work that occurred during the coronavirus crisis will continue to have an impact on the future shape of OSH in companies in many ways. In particular, stronger integration of occupational safety into operational systems and business processes is needed, using modern digital tools.

In recent years, new technologies have dramatically changed the way and nature of work in the workplace for many employees. It is important to monitor these developments and take precautions in advance to protect the health and lives of employees who may be adversely affected by new technologies. Above all, it is important to remember that new technologies, if not implemented properly, can damage

the physical and mental health of employees. The main challenges for collective bargaining in the field of occupational safety and health will therefore be digitalisation in the coming years, together with increasing workloads, growing responsibilities, and an ageing workforce. In particular, we need to maximise the benefits of new technologies while ensuring that working environments are safe.

6.1. Health and safety of workers in connection with the use of new technologies

Digitalisation is opening up increasing health and safety challenges, particularly ergonomic, organisational and psychosocial, which need to be better understood and managed. But it also offers new opportunities to reduce or better manage some health and safety risks. The appropriate use of technology and its proper management is important.

Measures that could help mitigate the OSH challenges posed by digitalisation include:

- Developing ethical frameworks for digitalisation and codes of conduct,
- Emphasis on prevention through a "prevention by design" approach that integrates human factors and worker-centred design,
- Involving staff in the design and implementation of all digitisation strategies,
- Cooperation between academia, industry, social partners, and governments in the field of research and innovation in digital technologies, in order to take due account of the human dimension,
- A regulatory framework to clarify OSH responsibilities in the context of new technologies and new ways of working,
- A tailored education and training system for staff.[9]

[9] COCKBURN, William. OSH in the future: where next? European Journal of Workplace Innovation, 2021. Vol. 6, no. 1. Doi: https://doi.org/10.46364/ejwi.v6i1.813.

Technological advances in recent decades have led to the problem of abusing the easy availability of employees even outside working hours. Employers often expect that by providing employees with mobile phones and laptops with internet access, employees will be available to them when needed outside of their standard working hours without being on call. Twenty years ago, it was rare (unless it was an emergency) to contact employees outside working hours, and even more so on weekends or holidays. Currently, contracts often oblige employees to be available after work, at weekends and on holidays. This "on-call availability" is associated with higher productivity and is considered essential for career advancement. This practice significantly interferes with work-life balance and contributes to blurring the clear boundary between working and resting time, to the intensification of work and to excessively long working hours. This subsequently leads to numerous negative effects in employees such as sleep deprivation, burnout, isolation, cancer, reduced concentration, musculoskeletal disorders, emotional exhaustion, anxiety, and depression.

The massive use of telework caused by the Covid pandemic has accelerated and intensified discussions on the possible introduction of a "right to disconnect". The right to disconnect is the employee's right to disconnect from work and refrain from work-related electronic communications during non-working hours and holidays. In its 2021 Resolution on the right to disconnect, the European Parliament expresses the view that the "right to disconnect" should be a fundamental right for all employees in the digital era, not just those working outside the workplace.[10] Collective agreements are an appropriate instrument for introducing such restrictions.

There are other health and safety risks associated with teleworking - for example, risks from the use of equipment, or - particularly for administrative and mental work - risks to health from non-ionising radiation (PC work), inadequate lighting, microclimate or working position. Working conditions such as lighting, workplace temperature, ventilation, noise, and sanitation (water, toilets) can also be problematic. The loneliness

[10] European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL).

of work and the feeling of isolation when working from home, the lack of support from the work team and the reduced support from the organisation can also cause serious problems for the employee.

The main advantage of teleworking is the ability to adapt working hours to time needs. In practice, however, this is often not possible, and employees pay for the freedom that such working arrangements bring them through eroded work-life boundaries and constant accessibility. This unhealthy work regime can lead to a lack of proper lifestyle, mental strain, and the urge to be constantly active and online. The consequence can be a physical or psychological breakdown of the employee or even the breakdown of family or social relations with their surroundings.

The employer is also responsible for health and safety when working from home and it is therefore in the employer's own interest to warn employees of the above risks or to introduce measures to eliminate them in cooperation with trade unions (for example, informing employees about the correct ergonomics of the workplace and respecting their right to disconnect).

6.2. Protecting the mental health of employees

The consequences of the Covid pandemic have brought the issue of employee mental health to the forefront. Surveys suggest that there has been a significant increase in stress, anxiety, and depression among employees during this time. Many employers have responded to these findings quite flexibly in their collective agreements, which have begun to include benefits aimed at supporting employees' immunity, physical fitness, or mental health to a greater extent (see below). Under the cafeteria system, the use of benefits has moved more into the health area (pharmacies, remote medical consultations, consultations with a coach or psychologist).

Protecting the mental health of employees is an important aspect of everyday working life. Employers and trade unions should pay particular attention to this issue

and actively seek to create conditions that support the mental health of their employees. Prevention is crucial in this respect - investments should be directed towards education and awareness of employees about mental health and its importance (the risks of mental strain, stress, or burnout). Removing the stigma associated with mental health in the workplace is also an important step. Employees should feel confident that they can talk about their mental health problems without fear of possible negative consequences. An open and supportive communication culture creates a space for sharing, understanding and mutual support.

Equally important is the promotion and development of skills that help employees cope more effectively with work demands and stressful situations. Employers should identify factors that may contribute to work stress and actively seek to minimise them. This may include improving work organisation and creating a supportive working environment, sensible distribution of work demands, providing support and tools for stress management and implementing strategies to strengthen the mental resilience of employees. Employers should ensure that employees also have access to professional support such as counselling, psychological support, or mentoring. This support should be accessible and safe so that employees feel they can talk openly and without fear about their concerns. Promoting teamwork, communication and cohesion also contributes to good mental health.

Employees should be allowed to use rest and holiday time without restrictions and interference, as work overload and lack of time to relax are common causes of mental exhaustion. Employers should therefore respect employees' right to disconnect and encourage them to take longer periods of leave so that employees have the opportunity to rest and recharge.

Last but not least, it is also important to regularly monitor and assess the mental health of employees. This allows you to identify potential problems and respond to them in a timely manner. Questionnaires, employee satisfaction surveys and employee

interviews can provide valuable information about the state of mental health in the work environment.

Benefits to promote psychological well-being and mental health that appear in collective agreements:

- leave in excess of the law (more than 4 weeks),
- contribution to cultural and sporting activities,
- contribution to recreation, spa, wellness,
- above-standard medical care in contracted medical facilities - increased frequency of preventive check-ups, dental care, spas, massages, rehabilitation,
- allowance for vitamins, food supplements,
- counselling, coaching, psychotherapy (in person, by phone or online),
- educational activities to promote mental health,
- relaxation zones in the workplace,
- flexible working hours,
- telecommuting,
- company nursery, children's group,
- nursery allowance,
- sabbatical,
- peer programmes (the principle is the active involvement of pre-prepared, healthy peers who positively and informally influence the attitudes of colleagues).

6.3. Employee satisfaction with the results of collective bargaining in the field of OSH

An assessment of the results of collective bargaining in the area of the use of social funds (negotiation of various types of benefits) is contained in the 2022 Working Conditions Information in Table A 29a:

Odborový svaz	Struktura plánovaného užití fondu sjednaná v KS											Spolurozhod. právo ZO OS k užití fondu		Užití fondu formou osobních účtů	
	A	B	C	D	E	F	G	H	I	J	K				
	prům. %	prům. %	prům. %	prům. %	prům. %	prům. %	prům. %	prům. %	prům. %	prům. %	prům. %	PKS	% KS	PKS	% KS
Celkem	**9,23**	**3,07**	**1,71**	**25,08**	**1,53**	**2,99**	**0,67**	**9,01**	**2,46**	**31,86**	**12,37**	**350**	**27,4**	**213**	**16,7**
ČMOS civilních zaměstnanců armády	25,99	1,46	0,84	31,16	1,00	6,92		26,51	0,73	1,59	3,80	5	100,0	2	40,0
Dopravy															
Dopravy, silničního hospod. a autooprav.												5	45,5		
Dřevozprac.odv., lesního a vodního hosp.	5,78	3,97	1,19	32,91	0,65	5,88		19,43	5,71	9,34	15,14	16	24,6	18	27,7
ECHO	7,97	7,13	5,60	21,33	1,49	2,89	1,08	7,91	3,68	32,19	8,74	21	27,6	43	56,6
Hornictví, geologie a naftového prům.												3	17,6	4	23,5
KOVO	6,75	3,14	1,65	29,29	0,99	3,45	2,28	7,91	1,70	26,44	16,40	103	18,9	26	4,8
NOS potravinářského pr. a příbuz. odvětví												11	17,7	9	14,5
Odborové sdružení železničářů												20	60,6	2	6,1
Orchestrálních hudebníků ČR															
Pohostinství, hotelů a cestovního ruchu									100,00			1	9,1		
Poštovních, telekom. a novinových služeb												1	16,7	1	16,7
Prac. peněžnictví a pojišťovnictví	2,68	2,51	0,63	36,30	1,52	0,69		11,16		38,04	6,47	8	61,5	11	84,6
Pracovníků vědy a výzkumu	3,87	0,38	2,07	32,03	3,38	2,15		3,92	0,31	31,37	20,50	19	65,5	10	34,5
Pracovníků zemědělství a výživy	27,83	6,75	3,31	15,82	0,89	11,37	11,33	4,75	1,33	12,25	4,37	8	17,0	7	14,9
Skla, keramiky a porcelánu	1,41	5,68		18,89	4,51	5,27		5,64	0,65	56,51	1,44	15	53,6	2	7,1
STAVBA	22,69	0,55	0,57	13,55	0,12	3,05		0,58	4,92	44,41	9,56	31	28,4	39	35,8
Textilního, oděvního a kožedělného pr.	1,99	3,58		7,96	31,52	2,59		21,50	11,35	2,39	17,12	5	20,0	1	4,0
UNIOS	18,91	1,84	4,34	19,84	1,07	1,65		7,04	0,84	8,25	36,23	63	54,8	27	23,5
Vysokoškolský OS												7	36,8		
Zaměst. obchodu, logistiky a služeb												1	6,7	3	20,0
Zaměstnanců letectví														2	66,7
Zdravotnictví a sociální péče ČR												7	28,0	6	24,0

Vysvětlivky:
PKS počet kolektivních smluv, ve kterých je příslušný ukazatel sjednán
% KS podíl kolektivních smluv, ve kterých je příslušná hodnota sjednána k celkovému počtu smluv v souboru
prům. % průměrné procento užití pro tento účel z celkové tvorby fondu
A rekreace - příspěvek zaměstnanci a rod. přísl.
B zdravotní služby - lázně, rehabilitace
C půjčky zaměstnancům na bytové účely
D příspěvek na závodní stravování
E sociální výpomoci, soc.půjčky
F odměny při pracovním a životním výročí
G příspěvek na dopravu do a ze zaměstnání
H příspěvek na tělovýchovné, kulturní a sportovní akce
I příspěvek odborové organizaci
J ostatní užití
K zůstatek

61

[Source: Working Conditions Information 2022]

This table shows that within the structure of the planned use of the social fund, the funds are most often used for the following benefits (in order of the average percentage of use for a particular benefit out of the total creation of the fund):

- a contribution to company catering (a quarter of the fund),
- recreation allowance for the employee and a family member (9%),
- contribution to physical education, cultural and sporting events (9%),
- health services - spas and rehabilitation (3%),
- work and life anniversary bonuses (3%),
- loans to employees for housing purposes (1.7%),
- social assistance and loans (1.5%),

- transport allowance to and from work (0.7%).

Table A 31a contains an assessment of the frequency of arrangements for OSH measures and written evaluation of the OSH situation:

Odborový svaz	Odborný rozvoj zaměstnanců				Konkretizováno rovné zacházení a zákaz diskriminace		V kolektivní smlouvě sjednáno				Konkretizován způsob realizace rámcové dohody			
	sjednány podmínky pro odborný rozvoj zaměstnanců		sjednány konkrétní programy s počty zaměstnanců, jichž se to týká				opatření (technické a organizační) k zajištění BOZP		písemné vyhodnocování stavu BOZP		o stresu spojeném s prací		o obtěžování a násilí na pracovišti	
	PKS	% KS	PKS	% KS	PKS	% KS	PKS	% KS	PKS	% KS	PKS	% KS	PKS	% KS
Celkem	**422**	**33,1**	**27**	**2,1**	**464**	**36,4**	**1067**	**83,6**	**674**	**52,8**	**7**	**0,5**	**17**	**1,3**
ČMOS civilních zaměstnanců armády	3	60,0			2	40,0	5	100,0	3	60,0				
Dopravy	7	50,0			3	21,4	10	71,4	7	50,0				
Dopravy, silničního hospod. a autooprav.	5	45,5					8	72,7	7	63,6				
Dřevozprac.odv., lesního a vodního hosp.	38	58,5			40	61,5	64	98,5	7	10,8				
ECHO	42	55,3			34	44,7	74	97,4	34	44,7	2	2,6	1	1,3
Hornictví, geologie a naftového prům.					5	29,4	15	88,2	6	35,3				
KOVO	116	21,3	5	0,9	186	34,1	398	73,0	327	60,0	1	0,2	9	1,7
NOS potravinářského pr. a příbuz. odvětví	32	51,6			3	4,8	59	95,2	42	67,7				
Odborové sdružení železničářů	23	69,7	5	15,2	18	54,5	30	90,9	26	78,8	1	3,0	4	12,1
Orchestrálních hudebníků ČR	1	33,3					1	33,3						
Pohostinství, hotelů a cestovního ruchu	6	54,5			8	72,7	10	90,9	7	63,6				
Poštovních, telekom. a novinových služeb	3	50,0			2	33,3	6	100,0	1	16,7				
Prac. peněžnictví a pojišťovnictví	8	61,5			8	61,5	12	92,3	2	15,4				
Pracovníků vědy a výzkumu	17	58,6	2	6,9	5	17,2	24	82,8	6	20,7				
Pracovníků zemědělství a výživy	6	12,8			23	48,9	44	93,6	5	10,6				
Skla, keramiky a porcelánu					2	7,1	27	96,4	24	85,7				
STAVBA	27	24,8			70	64,2	89	81,7	46	42,2			1	0,9
Textilního, oděvního a kožedělného pr.					1	4,0	23	92,0	15	60,0				
UNIOS	47	40,9	12	10,4	25	21,7	113	98,3	91	79,1			1	0,9
Vysokoškolský OS	13	68,4	1	5,3	8	42,1	17	89,5	6	31,6				
Zaměst. obchodu, logistiky a služeb	3	20,0			8	53,3	14	93,3	7	46,7	3	20,0	1	6,7
Zaměstnanců letectví	3	100,0			3	100,0	3	100,0						
Zdravotnictví a sociální péče ČR	22	88,0	2	8,0	10	40,0	21	84,0	5	20,0				

Vysvětlivky: PKS počet kolektivních smluv, ve kterých je příslušný ukazatel sjednán
% KS podíl kolektivních smluv, ve kterých je příslušná hodnota sjednána k celkovému počtu smluv v souboru

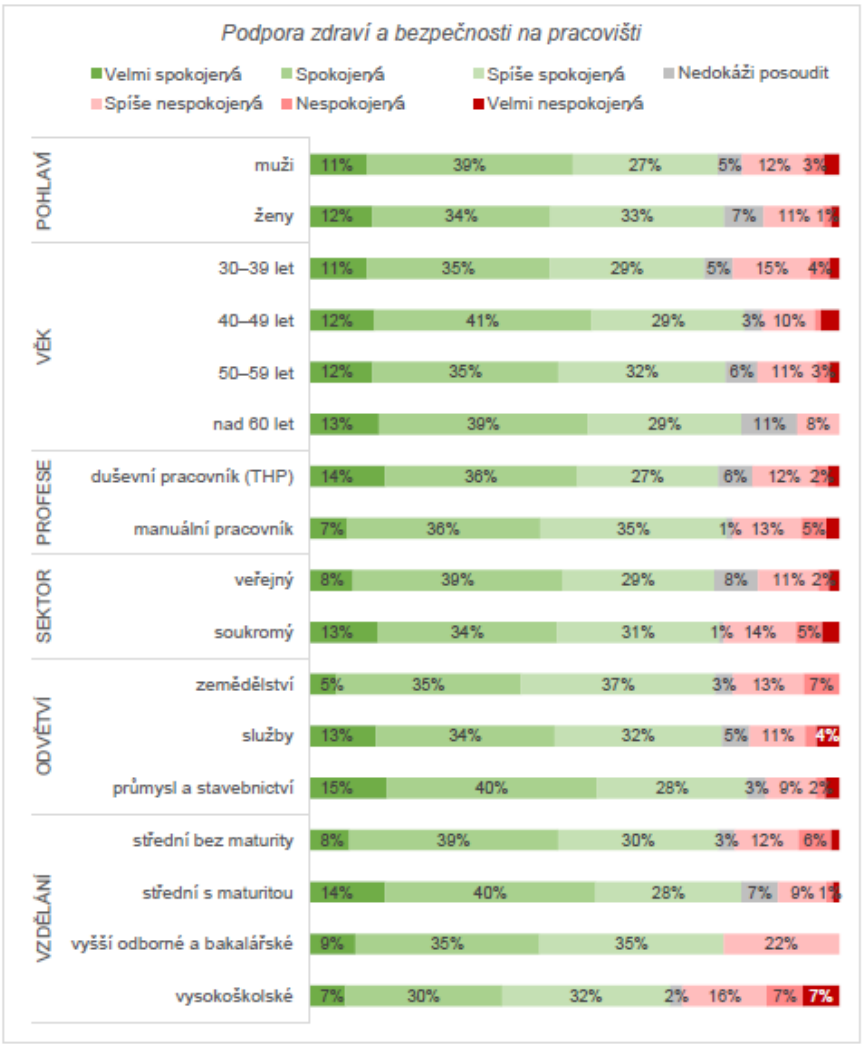
[Source: Working Conditions Information 2022]

This table shows that technical and organisational measures to ensure OSH are agreed in the majority of collective agreements (over 83%). More than half of collective agreements (53%) contain commitments to written OSH assessments.

Satisfaction with collective bargaining outcomes in the areas of health promotion and prevention of discrimination and work stress are shown in the following graphs from the Survey Results:

How satisfied are you with the results of collective bargaining in the following areas?

Zdroj: Šetření Vliv kolektivního vyjednávání na postavení zaměstnanců na trhu práce v České republice, výpočty TREXIMA.



Zdroj: Šetření Vliv kolektivního vyjednávání na postavení zaměstnanců na trhu práce v České republice, výpočty TREXIMA.

Promoting health and safety in the workplace

The tables include an assessment of collective agreement provisions on the promotion of health and safety at the workplace, equal treatment and non-discrimination, prevention of work stress and promotion of the right to disconnect. Satisfaction ratings in this area clearly show the difference between arrangements that are common in collective agreements and arrangements that are new and only gradually starting to make their way into collective agreements. For standard negotiated arrangements such as the promotion of health and safety in the workplace and equal treatment and non-discrimination, a relatively high proportion of satisfied respondents is evident. On the other hand, for non-standard arrangements (prevention of work stress and support for the right to disconnect), there is a lower proportion of satisfied respondents and a high proportion of respondents unable to make a judgement.

7. The impact of collective bargaining in the response to the Covid pandemic 19

On 11 March 2020, the World Health Organization declared the spread of coronavirus infection to be a global pandemic of Covid19. Both the pandemic and the public health measures taken to limit the transmission of the disease have had dramatic effects on the world of work, on business continuity and, depending on the sector and activity, on employees, their health and income security.

The COVID-19 pandemic began to spread around the world in the second half of 2019, continuing through 2020 and into 2021. In response, many organizations have instituted work-from-home policies, while others have stopped operations altogether in an effort to limit the spread of the disease among their employees and communities. This containment strategy was not universally workable - long-term shutdowns impacted on the economic viability of companies and some sectors were designated as 'essential services' and therefore continued to operate. These employers were faced with the decision of how to balance the needs of the business and community with the ongoing responsibility of providing a safe workplace for employees.

The ILO estimates that in the second quarter of 2020, 557 million people switched from on-site to teleworking from home, representing 17.4 per cent of global employment. However, many employees were in professions that could not be performed remotely. The consequence of this has been that millions of people have had their jobs hindered or lost their jobs altogether. According to ILO estimates, the loss of working hours in 2020 was equivalent to a staggering 255 million full-time jobs.[11]

Collective bargaining plays an important role in many countries in ensuring decent work and equality of opportunity and treatment. The pandemic crisis has further underlined this importance. During the pandemic, collective bargaining was essential to protect workers and strengthen the resilience of businesses and labour markets, helping

[11] Social Dialogue Report 2022. Collective bargaining for an inclusive, sustainable and resilient recovery.

to save jobs, protect incomes and ensure business continuity. Negotiated solutions have also helped to mitigate the impact of the pandemic on inequality. Agreements negotiated in response to telework and hybrid working practices triggered by the pandemic are now being transformed into more permanent frameworks.

In the area of labour market and social affairs, the past years have deepened and reinforced existing inequalities and, despite all efforts, jobs have been lost, with the result that we now face the risk of increased long-term unemployment. Moreover, the effects of the pandemic were not evenly distributed, with the worst impact on already fragile groups in the labour market - young workers and workers with low qualification. Inequalities based on age, education and residence status have also increased in a number of Member States. Similar inequalities can also be observed in the area of occupational health and safety - for example, those in feminised occupations were at higher risk and impact. On wages and collective bargaining, there has also been a widening of the gap not only between low- and high-income groups, but also between women and men.[12] Collective bargaining should focus on mitigating these differences.

The pandemic and the restrictive measures associated with it have had a huge impact on workers and communities around the world. It has required a massive national and employer response, both in dealing with the direct health impacts and the subsequent impacts of emergency measures. As a result, many aspects of daily life, including work processes, have been disrupted. New flexible forms of work (e.g., on-call work, hiring freelancers, etc.) have been introduced, characterised by low levels of security for employees and generally lower and insecure earnings. In addition to the mass use of off-site work, which has been an effective solution to workplace closures, government measures and lockouts have accelerated the digitisation of work (work using computing and online connectivity) during 2020 and 2021. The future of the labour market is linked to digital working practices.

12 HOMFRAY, Šárka. Evropský pracovní trh mezi dvěma otřesy. Sondy revue. 2022, č. 3.

Digital technologies and new approaches to communication with employees are inevitably making their way into the work of trade unions and the collective bargaining process. Not only the quality of technical equipment, but especially the digital literacy of all participants in labour relations and the use of modern communication tools (teleconferences, chats, webinars, etc.) have advanced tremendously in recent years.

The pandemic has also brought the issue of occupational health and safety to the fore, particularly in relation to the mental health of employees. While teleworking has been essential to limit the spread of the virus, job retention and business continuity, and to increase employee flexibility, it has also blurred the boundaries between work and private life, which has had a significant impact on employees' psychological well-being. For more on this topic, see Chapter 6.

At the same time, issues whose importance has been exacerbated by the coronavirus pandemic, such as teleworking, digitalisation and mental health, now also present new challenges for collective bargaining.

7.1. Teleworking

Work outside the employer's workplace ("mobile work", "teleworking", "home office" or "work from home") is regulated in the Labour Code in the provisions of Section 317. The beginning of the Covid pandemic was associated with business closures and a huge expansion of teleworking, which, however, took place rather spontaneously, without clearly defined rules. The legislation in the Labour Code is rather brief and does not cover all aspects of this working arrangement that should be addressed. This is now to be changed by an amendment to the Labour Code - see Chapter 5 for more details.

a) Existing legislation - Section 317 of the Labour Code

An agreement between the employee and the employer is a prerequisite for using the work outside the workplace option. The form of the agreement is not specified, but in view of the brief legal regulation, it is recommended that it be in writing and specify the conditions of work outside the workplace - in particular the scope of work outside the workplace, the specification of the work equipment and tools provided, the method of assigning tasks and handing over the results of work, the definition of the time when the employee may not work (e.g., night time and Saturdays and Sundays), the employee's obligation to take breaks and record the time worked, the method of reimbursement of the employee's expenses, the context of the investigation of an accident at work or the negotiation of conditions for access to the place where the work will be performed for the purpose of inspecting the occupational health and safety conditions (none of the above is regulated by law).

Work outside the workplace may be agreed for the whole or part of the fixed or shorter working hours. Its occasional irregular use is not excluded (e.g., during the employee's illness, if they are not incapacitated and their health condition do not prevent them from performing their work).

The law regulates telework only by listing the parts of the Labour Code that do not apply to telework. There are no rules on working hours and their arrangements - an employee working away from the employer's workplace schedules their own working hours. In the event that the employee performs the work to a greater extent, they shall not be entitled to overtime pay or pay or compensatory time off.

In the case of other important obstacles at work regulated by Government Regulation No. 590/2006 Sb., which establishes the scope and extent of other important personal obstacles at work, as amended, the employee is entitled to compensation for wages or salary only in connection with a wedding, death of a close person and relocation. Even if the employee's work is not subject to a fixed working time schedule, the employer is obliged to schedule the employee's working time at least fictitiously for

the purposes of payment of wage compensation for the first 14 calendar days of incapacity for work pursuant to Section 192 of the Labour Code.

Work outside the workplace also has specifics in the area of remuneration - in addition to wages or compensatory time off for overtime work, the employee is also not entitled to wage compensation or additional pay for working on public holidays. However, other wage supplements (for working at night or on Saturdays and Sundays) are not excluded by law. Therefore, if the employee works during these periods, they will be entitled to the relevant allowances, which is why it is sometimes recommended to agree that the employee will not work on Saturdays, Sundays, and nighttime.

The costs of working from home are not regulated by law at all and the employer's obligation to cover these costs is derived only from the general principle that work is performed at the employer's expense (see the provisions of Section 2(2) of the Labour Code). Due to the difficulty in quantifying these costs (e.g., utilities, internet connection, wear, and tear on your own equipment), it is recommended that you negotiate a lump sum with the employee to cover the costs associated with the work.

There are no exceptions when it comes to occupational health and safety. The employer has the same obligations towards employees working outside the workplace in the field of occupational health and safety as towards other employees. The basic principles for safe work are contained in the Labour Code and its implementing regulations, as well as Act No. 309/2006 Sb., on ensuring other conditions of occupational safety and health. Even in the workplace at home, the basic principles of safe working practices must be followed. The employer is also obliged to provide homeworkers with personal protective equipment, work clothing and footwear, washing, cleaning and disinfecting agents with respect to the work they perform.

Employees who work from home for all or part of their working time are subject to the same rules as other employees regarding mandatory OSH and fire safety training. A teleworker must be properly trained in all the risks associated with the performance of their work in relation to the conditions under which the work is performed (for

example, when working with computers, the health risks of working on equipment with display units, etc.), including fire safety. In addition to the mandatory training, teleworkers are subject to rules related to safety at work, such as prohibiting the consumption of alcoholic beverages and the handling of dangerous objects that are not explicitly stated in the employment contract.

b) Amended legislation - Parliamentary Document No. 423

The amendment to the Labour Code under discussion contains a completely new wording of the provisions of Section 317, with the addition that work outside the workplace is to be given a new name - "telework". It is also proposed that the employer be obliged to conclude a written telework agreement with the employee. This obligation should also apply to existing employment relationships in which informal work outside the workplace is used. If the parties do not have a written agreement on work outside the workplace, they will have to conclude it within 1 month of the amendment coming into force.

The obligation under the telework agreement may be terminated by written agreement or terminated in writing for any or no reason with 15 days' notice from the date of delivery of the notice (the parties may agree on a different length of notice or exclude the terminability altogether by contract). The possibility for the employer to order an employee to perform remote work in exceptional cases following a measure of a public authority is newly regulated.

In a new provision of Section 190a, the amendment also addresses the issue of compensation for costs related to telework, which consists of compensation for costs incurred by the employee in connection with the performance of telework, which the employee has proved to the employer, or a fixed lump sum amount of compensation (currently CZK 2.80 for each hour of work, with the possibility of an increase for inflation). Lump-sum reimbursement of expenses up to the amount set by the legislation is not to be subject to income tax, as the proposed amendment to the Income Tax Act will not make the income from employment taxable (an employer in the business sector

will be able to provide an amount even higher, where the difference will be taxable). In order for the employer to provide compensation for telework-related costs at this flat rate, which would cover all costs incurred by the employee in performing telework, this will need to be agreed in a contract (individual or collective) or set out in an internal regulation. However, the amendment will also allow the employer and the employee to agree in writing in advance that the employee will not be entitled to reimbursement of all, or part of the costs related to the performance of telework. The reimbursement of the costs related to telework thus becomes essentially a voluntary obligation and does not respect the aforementioned principle that dependent work is always performed at the employer's expense. It can be assumed that employers will frequently include such clauses in model telework contracts. If this legislation is adopted, collective agreements should respond to this by agreeing on the employer's obligation to always provide reimbursement.

The amendment does not address the issue of health and safety at telework. Only Act No. 251/2005 Sb., on Labour Inspection, is to provide for a new inspection authorisation for the Authority's inspector to enter places other than the employer's workplace, with the consent of the employee and other persons concerned who live in the locality, if telework work is performed there. Collective bargaining should focus more closely on this area. For more on this issue, see Chapter 6.

It is also proposed to insert a new provision into the Labour Inspection Act regulating offences in the field of telework.

In order to properly transpose Art. 9 of the WLB Directive, it is proposed to include in the new Section 241a that an employee caring for a child under the age of 9, a pregnant employee and an employee who is predominantly caring for a person who is considered to be dependent on the assistance of another natural person in level II (moderate dependence) under a special legal regulation, Grade III (severe dependency) or Grade IV (total dependency), may request in writing that the employer perform work from another location in accordance with Section 317, which corresponds to the

employer's obligation to justify in writing any refusal to grant such a request. Therefore, granting the request of the aforementioned persons for remote work is not an entitlement. If the employer accepts this request, the employer shall conclude a telework agreement with the employee in accordance with Section 317. If an employee who does not fall within the above list of persons requests to work from home, the employer is not obliged to respond to the request or to provide written reasons for any refusal.

7.2. Digitization

While in the spring of 2020, during the first wave of the Covid-19 pandemic, it might have seemed that this was just a very exceptional short-term mobilisation of technology and its "emergency" use, with the autumn of 2020 it became clear that the need for technology use will be much longer-term and will require a deeper adaptation of society. Society was much more prepared in the next waves of the pandemic; the technology came on automatically. This indicates that irreversible changes have occurred in society (socio-technical space) that will accelerate the process of technology adoption in the future.[13]

A large number of employees need to expand their training in digital technologies. Social partners should also work with the trend towards digitalisation in collective bargaining. Collective agreements should include commitments to increase the digital literacy of employees in order to reduce inequalities due to different conditions of access to technology and the different capacities of employees to adopt and work with technology.

Employment law has not escaped digitalisation either. Already in 2020, changes have been made to the mailing of employment documents. However, the change has been criticised because the technological development of information technology has not been sufficiently reflected, and moreover, the regulation is so complicated in terms

[13] The impact of the Covid-19 pandemic on the diffusion of digital technologies.

of the conditions that both parties to the employment relationship must fulfil that in practice, for example, communication via data repositories or electronic communication is hardly used.

The forthcoming amendment to the Labour Code (Print No. 423) will bring several other innovations beyond the changes based on EU directives. One of them is in the area of electronisation of the personnel agenda and delivery of documents in the employee's own hands. The draft amendment to the Labour Code provides for the possibility of concluding labour law documents electronically (similar to the purchase of goods via e-shop) and then sending the documentation to the employee (also electronically) with the possibility of the employee to withdraw from the concluded contract if it is not sent electronically.

There are to be changes in the area of electronic delivery, but there is some scepticism as to its practical application, as the employee's consent to such delivery and the existence of a recognised electronic signature on both sides will still be required.

a) Written communication via electronic means

Under the current legislation, an employer may already deliver a document to an employee by hand using an electronic communications network or service. However, the Labour Code makes the effects of delivery subject to such strict conditions that electronic delivery is virtually non-existent.

Not all legal actions that must be in writing must be delivered to the employee by hand. The Supreme Court has recently ruled that if the contract between the employer and the employee is in writing, but there is no obligation to deliver it to the employee by hand, the contract is validly concluded even if a simple electronic form is used. In this case, the exchange of the proposal and acceptance of the contract was by electronic mail without guaranteed electronic signatures.[14]

[14] Rozsudek Nejvyššího soudu ze dne 27. 4. 2022, sp. zn. 21 Cdo 2061/2021.

Many, especially larger employers, are interested in the possibility of computerisation of employment contracts and their amendments (so-called amendments to the employment contract). However, under the current regulation, legal acts concerning the creation and changes to the employment relationship must be delivered by hand. It is therefore possible to amend the employment contract electronically, but subject to the strict conditions mentioned above. The amendment to the Labour Code will, however, bring a number of changes to this area, which will make the possibility of using electronic means even in the establishment and changes of basic employment relationships significantly more accessible.

b) Written legal acts done electronically

The amendment to the Labour Code in the new Section 21 will explicitly confirm the possibility of concluding some even very important written bilateral legal transactions via an electronic communications network or service. As this legislation will not require any form of qualified electronic signature, a simple electronic signature (e.g., an e-mail message that includes the sender's name at the end of the text) will be sufficient.

If a contract of employment, an agreement to perform work, an agreement to perform work, an amendment to a contract or agreement, or an agreement to terminate employment is concluded in this way, it will be a valid written legal act. It will be important to note that even the exchange of a proposal and acceptance of a contract via ordinary e-mail messages will result in the conclusion of a contract. In addition to e-mail, the parties will also be able to use other electronic tools, for example various intranet applications to which the employee logs in and thereby authenticates their expression of will.

However, the employer will be obliged to send a copy of the legal acts to the employee's electronic address, which is not in the employer's possession and which the employee has communicated in writing to the employer for this purpose. The purpose

of this rule is to ensure that the employee has a copy of the contract or agreement outside the employer's internal system or outside the employer's e-mail address.

Another special rule will still apply to employment contracts, agreements, or amendments thereto (i.e., not termination agreements). According to the new Section 21(2) of the Labour Code, the employee will have the right to withdraw from this legal transaction from the moment of its conclusion, but no later than within 7 days from the date of delivery of a copy of it to the employee's electronic address. The resignation will have to be in writing and will not be executable at the moment when the employee has already started the performance (i.e., if they have already started working on the basis of an electronically concluded employment contract or if they have started performing a different type of work on the basis of an electronically concluded agreement to change the employment contract in which a different type of work has been agreed).

These special rules will not apply to other written legal acts, such as a qualification agreement or a fiduciary responsibility agreement. These contracts can therefore also be validly concluded using electronic tools, but the employer will not be obliged to send them separately to the employee at the address designated by the employer and the employee will not have the right to withdraw from them.

c) Methods of delivery in own hands

Under the new Section 334a(1) of the Labour Code, the employer will be able to deliver a document to the employee by hand:

a) by handing it over at the employer's workplace,
b) by handing it over wherever the employee is found,
c) via data repository,
d) via an electronic communications network or service, or
e) via the postal service provider.

The options in (a) to (d) will be seen as equivalent. It will therefore be up to the employer to decide which one to choose. Only the application of option (e) will be conditional on the employee not being able to be delivered at the employer's workplace.

In addition, the amendment will significantly facilitate the possibility to deliver via an electronic communications network or service or via a data repository.

d) Electronic delivery tools

If the employee has a data repository and has not made it available for delivery of documents from the data repository of a natural person, an entrepreneurial natural person or a legal entity, the employer will be able to deliver the document via this data repository. No special consent will be required from the employee for this method of delivery. Only after it is established that the employee has a data repository and has not made it inaccessible can they use this method of delivery. The letter will be delivered on the date the employee logs into their data repository. If they do not log in to the data repository within 10 days from the date of delivery of the document to the data repository, the so-called fiction of delivery occurs, and the document will be deemed to have been delivered on the last day of the period.

The new wording of Section 335 of the Labour Code will contain significantly lighter conditions than the current legislation also for delivery using an electronic communications network or service. The most common delivery is by e-mail. The employer will be able to use this method of delivery if the employee has given written consent. However, this consent will not be able to be included among other arrangements in the employment contract. It will have to be contained in a separate written statement, i.e., separate from the employment contract or other document. This statement will also need to include an electronic address for delivery that is not available to the employer. Before giving consent, the employer will be obliged to inform the employee in writing of the conditions for the delivery of the document via an electronic communications network or service, including the possibility of a fiction of delivery. The employee will be able to withdraw consent in writing.

An employer's document delivered via an electronic communications network or service must be signed with a recognised electronic signature. The letter will be delivered on the date the employee acknowledges receipt by data message. However, this message will not have to be accompanied by a recognised electronic signature on the part of the employee. A simple reply to an e-mail message in which the employee acknowledges receipt of the document is sufficient.

If the employee does not acknowledge receipt of the document within 15 days of its delivery, it shall be deemed to have been delivered on the last day of that period. This means that the fiction of delivery will apply, and the employee will be deemed to have been delivered the document. Delivery of a document via an electronic communications network or service will be ineffective if the document sent to the employee's electronic address is returned to the employer as undeliverable.

7.3. Employee satisfaction with the results of collective bargaining on flexible working arrangements

Evaluation of the results of collective bargaining in the area of specific forms of work is contained in the 2022 Working Conditions Information in Table A 25a:

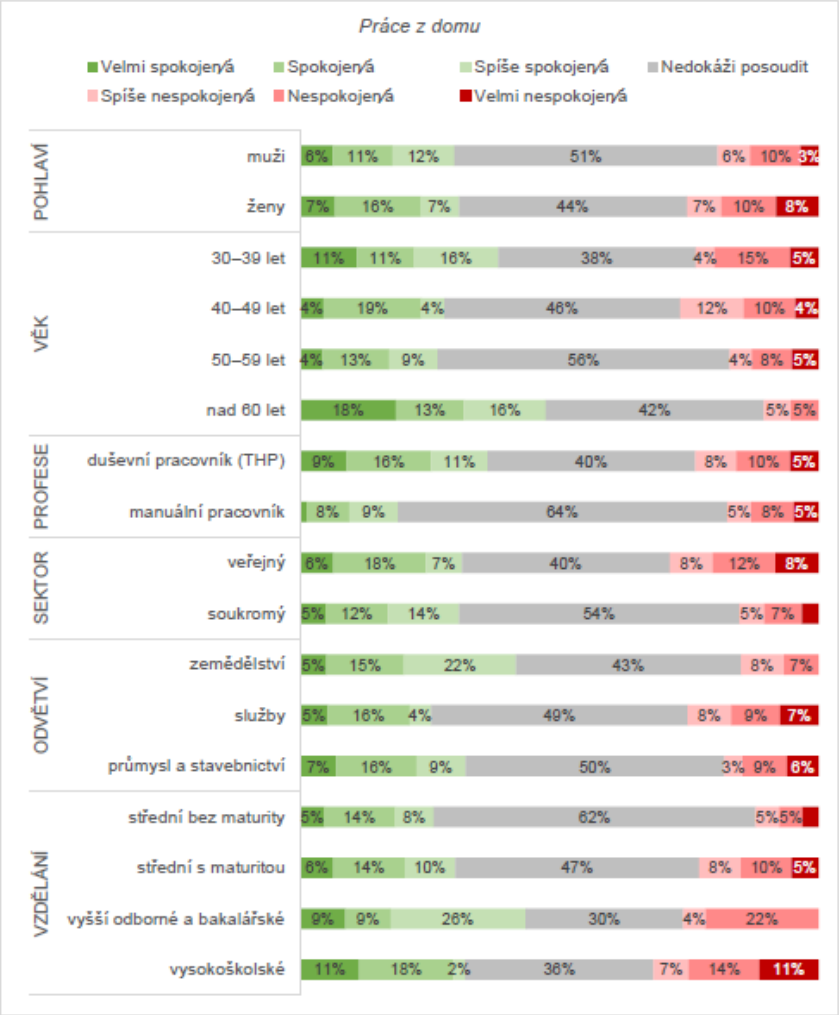
Odborový svaz	Podmínky vývoje zaměstnanosti		Podmínky vývoje zaměstnanosti jsou doprovázeny						Podmínky pro spec.formy práce a pracovní režimy		Možnosti specifických forem práce a pracovních režimů									
			kariérními plány		metodikou obsazování volných míst		zajištěním podmínek pro práci mimo firmu				práce doma		práce bez stálého výkonu práce		sdílení pracovního místa		práce bez "pevného stolu"		jiné formy práce a pracovní režimy	
	PKS	% KS	PKS	% KS	PKS	% KS	PKS	% KS	PKS	% KS	PKS	% KS	PKS	% KS	PKS	% KS	PKS	% KS	PKS	% KS
Celkem	**410**	**32,1**	**25**	**2,0**	**398**	**31,2**	**10**	**0,8**	**35**	**2,7**	**33**	**2,6**			**2**	**0,2**			**2**	**0,2**
ČMOS civilních zaměstnanců armády	3	60,0			3	60,0			1	20,0	1	20,0								
Dopravy	1	7,1	1	7,1																
Dopravy, silničního hospod. a autoprav.	5	45,5			5	45,5	2	18,2												
Dřevozprac.odv., lesního a vodního hosp.	42	64,6			42	64,6			4	6,2	4	6,2								
ECHO	44	57,9	5	6,6	44	57,9	3	3,9	11	14,5	10	13,2			2	2,6				
Hornictví, geologie a naftového prům.	7	41,2			7	41,2			3	17,6	3	17,6								
KOVO	115	21,1	6	1,1	112	20,6	1	0,2	4	0,7	4	0,7							1	0,2
NOS potravinářského pr. a příbuz. odvětví	35	56,5	3	4,8	34	54,8			1	1,6	1	1,6								
Odborové sdružení železničářů	24	72,7	6	18,2	21	63,6	1	3,0												
Orchestrálních hudebníků ČR																				
Pohostinství, hotelů a cestovního ruchu	3	27,3			3	27,3														
Poštovních, telekom. a novinových služeb	4	66,7			4	66,7														
Prac. peněžnictví a pojišťovnictví	9	69,2			9	69,2			2	15,4	2	15,4								
Pracovníků vědy a výzkumu	6	20,7	3	10,3	3	10,3			3	10,3	3	10,3								
Pracovníků zemědělství a výživy	11	23,4			11	23,4			2	4,3	2	4,3								
Skla, keramiky a porcelánu									1	3,6	1	3,6								
STAVBA	22	20,2			22	20,2	1	0,9												
Textilního, oděvního a koželělného pr.																				
UNIOS	54	47,0			53	46,1	1	0,9												
Vysokoškolský OS	12	63,2			12	63,2			1	5,3									1	5,3
Zaměst. obchodu, logistiky a služeb	9	60,0			9	60,0														
Zaměstnanců letectví	1	33,3	1	33,3	1	33,3	1	33,3	1	33,3	1	33,3								
Zdravotnictví a sociální péče ČR	3	12,0			3	12,0			1	4,0	1	4,0								

Vysvětlivky: PKS počet kolektivních smluv, ve kterých je příslušný ukazatel sjednán
% KS podíl kolektivních smluv, ve kterých je příslušná hodnota sjednána k celkovému počtu smluv v souboru

[Source: Working Conditions Information 2022]

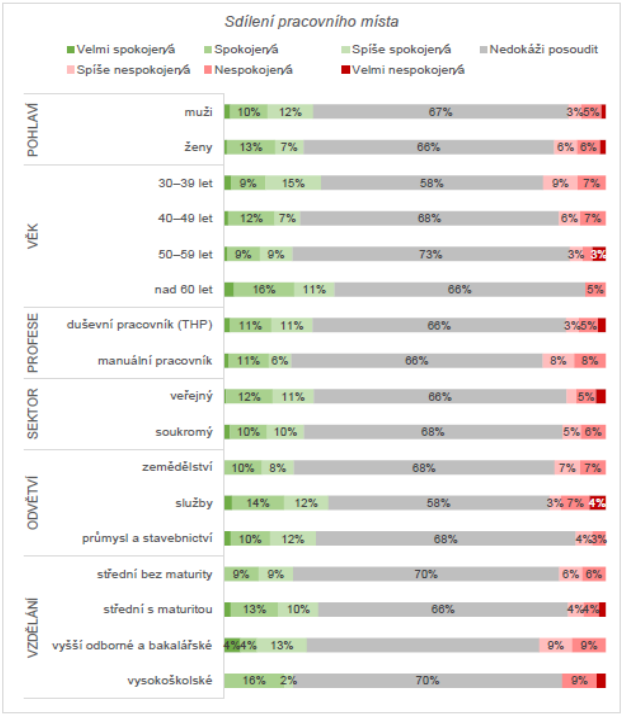
This table shows that, with the exception of teleworking ('working from home'), which appeared in just under 3% of the collective agreements surveyed, arrangements for other specific (flexible) forms of work are virtually non-existent.

Satisfaction with the results of collective bargaining in the area of flexible working is shown in the following tables from the Survey Results:



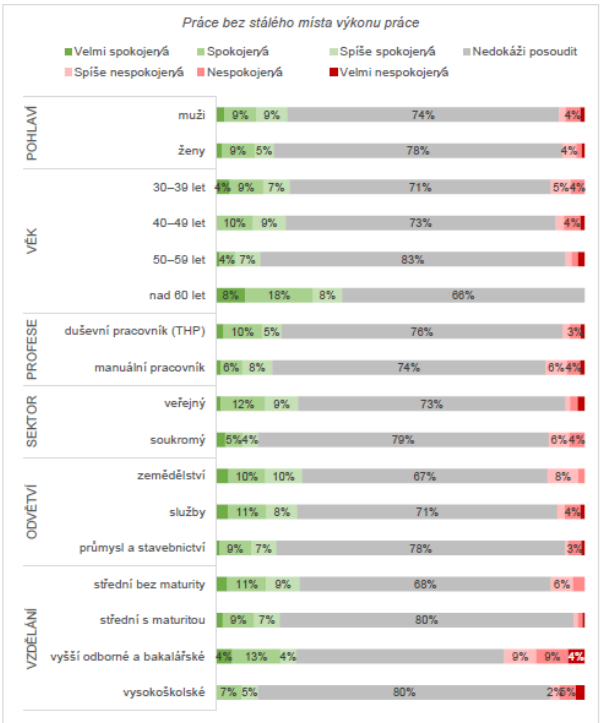
Zdroj: Šetření Vliv kolektivního vyjednávání na postavení zaměstnanců na trhu práce v České republice, výpočty TREXIMA.

Work from home



Zdroj: Šetření Vliv kolektivního vyjednávání na postavení zaměstnanců na trhu práce v České republice, výpočty TREXIMA.

Job sharing



Zdroj: Šetření Vliv kolektivního vyjednávání na postavení zaměstnanců na trhu práce v České republice, výpočty TREXIMA.

Work without a permanent place of work

The assessment of satisfaction with the results of collective bargaining in the area of flexible forms of work shows that they are not commonly included in collective agreements and are more a matter of recent years. Moreover, flexible forms of work are specific and often only applicable to certain groups of employees. Thus, the evaluation has a high proportion of respondents who are unable to assess their satisfaction with the arrangements.

Figure 10 focuses on 'working from home', the use of which has increased in practice over the past year in the context of the Covid-19 epidemic. However, there is a delay in the results of collective bargaining due to the fact that most collective agreements are negotiated on a yearly basis. Satisfaction with the results of collective bargaining in the area of "working from home" is thus significantly lower than in the case of arrangements that have been standard in collective agreements for a long time. Around 30% of respondents on average are satisfied with the results of collective bargaining in the homeworking sector, while just under a fifth (19%) of manual workers are satisfied.

As Figures 11 and 12 show, respondents are even slightly less aware of job sharing and working without a permanent workplace than they are of 'working from home'.

8. Limits to collective bargaining

In the previous chapters, several points have been identified as limits to the intensified development and deepening of collective bargaining. In addition to these, other aspects of the legislation that limit collective bargaining can undoubtedly be considered. The aim of this chapter will be to analyse these limits of collective bargaining in more detail and at the same time to offer a possible perspective on the removal or mitigation of these limits. If these limits could be overcome, collective bargaining could have an even greater impact than before on improving working conditions and contributing to employee and employer satisfaction with its results.

In Chapter 2, it was pointed out that the level of coverage of employees by collective agreements in the Czech Republic does not reach the level considered as a target in the Minimum Wage Directive. On the basis of the implementation of this Directive, it will be necessary for the Czech Republic to adopt an action plan to promote collective bargaining. This action plan could and should include steps to remove the limits that currently prevent or make it difficult to start or effectively conduct collective bargaining or conclude a collective agreement.

8.1. Absence of sanctions in collective bargaining regulations

The rules for initiating and conducting collective bargaining are concentrated in the Collective Bargaining Act. This is a special regulation which deviates in some aspects from the general rules of concluding contracts in the Civil Code (see Chapter 3 for more details).

Paragraphs 2 and 3 of Section 8 of the Collective Bargaining Act can be described as the core of the legal regulation of collective bargaining. The parties to the collective bargaining agreement are required to respond in writing to the proposal for a collective agreement without undue delay, within seven working days at the latest, unless a different period is agreed, and to comment on any proposals with which they

disagree. Furthermore, the parties are obliged to deal with each other and to provide other required cooperation.

What is missing in relation to both of these key obligations, however, is the addition of any sanction in the event that the collective bargaining party fails to comply with them. These are therefore imperfect norms, the actual enforcement of which is very problematic, if not almost impossible under current legal conditions.

It is possible to encounter cases of violation of these obligations and unfortunately these are not isolated excesses. Probably the mildest, but widespread, form of violation of these obligations is the failure to comply with the 7-day period for responding to the sent drafts for concluding a collective agreement. When a proposal for a collective agreement is sent by a trade union to an employer, the employer often points out the need to become properly acquainted with the proposal, to consider its implications, and sometimes even to arrange for a translation into another language so that non-Czech-speaking management or the foreign parent company can become acquainted with the proposal.

On the one hand, it must be admitted that the statutory 7-day period may be perceived as unreasonably short. Surely, in order to prevent infringements, consideration could be given to extending this time limit to make it more realistic. On the other hand, failure to respond to the initiation of collective bargaining should be sanctioned with a fine.

The enforceability of the obligation of the parties to collective bargaining to negotiate with each other and to provide other required cooperation can be described as very complicated. This is a relatively general rule, the specific content of which may be subject to subjective assessment in each individual situation.

There are cases where one of the parties essentially pretends to participate in collective bargaining without actually negotiating. Obstruction of this type of bargaining can be encountered by employers who, while physically participating in the bargaining

process, do not actually seek to find a compromise and reach an agreement. In some cases, they admit that they have no real interest in concluding a collective agreement and rely on the trade union not to force them to conclude one. However, obstruction also occurs on the part of trade unions when they have obviously unrealistic demands from which they refuse to budge (with the apparent ulterior motive of blocking negotiations), or when they a priori reject any compromise proposals from another trade union, which is typical of the so-called yellow-collar unions.

Unfortunately, it is also possible to come across cases of open, "hard" rejection of collective bargaining legislation. The absence of the threat of sanctions means that the mere submission of a collective bargaining obligation in the Collective Bargaining Act is not effective and the purpose of the regulation is not achieved. Indeed, even the survey results (see in Chapter 4) show that a full 25% of respondents from employers where a collective agreement is not concluded answered that the reason for not concluding a collective agreement is that "The employer refuses to negotiate a collective agreement".

The inspection bodies in the field of labour relations are the labour inspection bodies pursuant to Act No. 251/2005 Sb., on Labour Inspection, as amended. Pursuant to Section 3(1)(a) of the Labour Inspection Act, the labour inspection authorities shall inspect compliance with obligations arising from legal regulations which give rise to rights or obligations in labour relations for employees, the relevant trade union body or works council or the representative for occupational safety and health. Such legislation includes the Collective Bargaining Act and the obligations described above.

However, the labour inspection authority may only impose a fine on an employer for committing one of the offences listed in Part Four of the Act. However, none of the offences are referred to in the facts of the Collective Bargaining Act. If the labour inspection body finds, for example, that the employer has not responded to a proposal to conclude a contract or has refused to bargain collectively, it can at most conclude that there has been a breach of a legal obligation. However, it cannot impose any fine on the

employer. Nor can a fine be imposed on a trade union for any failure to comply with its obligations under the collective bargaining rules.

We do not consider this situation to be correct. Given the importance of collective bargaining and the obligation of the Czech Republic to actively promote collective bargaining, the Inspection Act should also include the offence of misconduct committed by an employer or trade union in the event of a failure to comply with the obligations arising from Section 8(2) and (3) of the Collective Bargaining Act.

8.2. Trade union pluralism

One of the most pressing problems of the current legislation on collective labour relations is the treatment of cases where more than one trade union is active at the employer. This situation is referred to as trade union plurality.

Pursuant to Section 24(2) of the Labour Code, *if an employer has more than one trade union, the employer must negotiate a collective agreement with all the trade unions; the trade unions shall act and negotiate with legal consequences for all employees jointly and in concert, unless they and the employer agree otherwise.*

All trade unions and the employer must agree on the wording of a collective agreement, otherwise it cannot be validly concluded. This gives a de facto "veto right" that any trade union can exercise, regardless of the strength of its membership base. Such a stalemate will only find a solution if the trade unions concerned, and the employer agree on a different procedure for negotiating the collective agreement. Such a different procedure may also consist, for example, in the fact that only one specific trade union concludes the collective agreement for all employees, or that each trade union negotiates its own collective agreement. In such a case, however, it would be necessary to define the personnel and, if necessary, the local scope of the individual collective agreements.

In some cases, the current legislation leads to a definitive and essentially irreparable blockage of collective bargaining and thus to the employer's failure to conclude a collective agreement. This is also confirmed by the survey results (see Chapter 4), as 6% of respondents from employers where there is no collective agreement responded that the reason for not concluding a collective agreement is that "There are several trade unions in the company that have not agreed".

The original version of Section 24(2) of the Labour Code, approved in 2006, included a second sentence wording: *"If the trade unions do not agree on the procedure under the first sentence, the employer shall be entitled to conclude a collective agreement with the trade union or trade unions having the largest number of members in the employer."*

However, this second sentence was annulled by the Constitutional Court's ruling of 12 March 2008, case ref. no. Pl. ÚS 83/06. The Constitutional Court annulled the rule primarily because of the unequal status of individual trade unions. The Constitutional Court stated that the employer's ability to conclude a collective agreement with the trade union with the largest number of members led to the exclusion of another trade union from further negotiations in the event of disagreement with the majority draft collective agreement and to collective bargaining and conclusion of a collective agreement without the possibility of such trade union to influence its content. In this regard, the Constitutional Court pointed in particular to the prohibition of favouritism of certain trade unions in a company or in an industry, which is derived from the Charter of Fundamental Rights and Freedoms.

Although the issue of the plurality of trade unions has been widely discussed professionally and since 2008 there have been some legislative attempts to address it, there has been no change so far and the legislation remains in the state in which it was introduced in 2008 by the above-quoted ruling of the Constitutional Court.

In order to remove the legal obstacles limiting collective bargaining, further efforts should be made to find a workable solution that would make it possible to

unblock the situation and conclude collective agreements in the event of disagreement between several trade unions (which may sometimes be deliberate). Failure to conclude a collective agreement is ultimately a loss for all the parties involved, and especially for the employees, for whom the collective agreement is intended to guarantee satisfactory working conditions and to contribute to increasing their level of satisfaction. In view of the above-mentioned ruling of the Constitutional Court, it is probably necessary to look for a model that would allow all trade union organisations to participate in collective bargaining or strengthen democratic elements so that no employees or their representatives could be excluded from the possibility of influencing collective bargaining. A more detailed breakdown of the various solutions on offer would be beyond the scope of this study to reach consensus on a better solution to trade union plurality in the foreseeable future in the context of the necessary strengthening of collective bargaining.

8.3. Employers' organisations without collective bargaining rights at sectoral level

The Collective Bargaining Act obliges employers to respond to a proposal aimed at concluding a collective agreement, to negotiate and to provide the necessary cooperation to the other party. Despite the fact that, according to Section 1, the Act on Collective Bargaining regulates collective bargaining between trade unions and employers or their organisations, the aim of which is to conclude a collective agreement, the regulation on the obligation to conduct collective bargaining has been interpreted as not directly applying to employers' organisations which have not explicitly stated in their founding document that they have also been established for the purpose of collective bargaining at sectoral level.

In a dispute between a trade union and an employers' organisation concerning the obligation of the employers' organisation to participate in collective bargaining following the submission of a proposal for a higher-level collective agreement by the

trade union, the Supreme Administrative Court, in its judgment of 10 December 2019, case No. 4 Ads 226/2019-47, confirmed that the employers' organisation was not obliged to respond to the proposal for a collective agreement and bargain collectively. It follows from the decision of the Supreme Administrative Court that if an association of undertakings claims and proves that *the reason for its formation is not to defend the interests of its members as employers but as entrepreneurs*, then it is not obliged to participate in collective bargaining. The Supreme Administrative Court stressed that the *court considers the only relevant and essential question to be the purpose for which the legal entity was established by its members and for the fulfilment of which it has been carrying out its activities to date. The key is therefore the expression of the will of the employers affiliated to the relevant legal entity to engage in collective bargaining through it in order to conclude a higher-level collective agreement*. Therefore, if such an association was not (also) established for the purpose of participating in social dialogue, it is not an employers' organisation within the meaning of Section 23(2) of the Labour Code.

In the cited judgment, the Supreme Administrative Court emphasized the aspect of autonomy of will and freedom of association, which includes freedom of non-association. For collective bargaining, however, this view carries a significant risk of weakening it, especially at the sectoral level. In terms of the desired level of coverage of employees by collective agreements, higher-level collective agreements are of key importance. In the EU Member States with the highest collective agreement coverage rates, this result is in most cases achieved through higher level collective agreements. Within the framework of the forthcoming action plan to promote collective bargaining, which the Czech Republic will have to adopt following the implementation of the minimum wage directive, it would therefore be appropriate to consider strengthening bargaining at sectoral level. However, if the current legal situation is maintained, where employers' associations can easily achieve that they are not obliged to participate in collective bargaining, then it can be expected that instead of increasing the importance

of collective bargaining at least at the sectoral level, it will rather decline in the long term.

8.4. Lack of a definition of a trade union and related issues

Collective bargaining in our conditions is also limited by the fact that the Czech legal code does not contain a definition of a trade union. This has led to the creation of various quasi-union bodies that are established for purposes other than defending the economic and social interests of workers. The existence and activities of these associations casts a bad light even on standard functioning trade union organisations and can be obstructive or even blocking to collective bargaining.

National legislation in the Czech Republic uses the term trade union without considering it necessary to define what a trade union is. The provisions of Section 3025(1) of Act No. 89/2012 Sb., the Civil Code, as amended, imply that the legislation on associations applies to trade unions as well as to employers'[15] organisations, but only to the extent that it does not conflict with the nature of trade unions as representatives of employees under international treaties to which the Czech Republic is bound. A trade union is therefore similar in nature to an association, but also in view of the wording of Section 3046 of the Civil Code, it is rather a distinct and special association[16].

The international treaties referred to in Section 3025(1) of the Civil Code include in particular International Labour Organisation Convention No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organise[17] ("Convention No. 87"). This important document guarantees, in particular, the right to form trade unions freely and without interference from the public authorities, as well as the autonomy of

[15] Pro zjednodušení a vzhledem k celkovému zaměření textu bude dále řeč jen o odborových organizacích ve smyslu zástupců zaměstnanců.
[16] Blíže viz GALVAS, Milan a kol. Pracovní právo. 2., dopl. a přeprac. vyd. Brno: Masarykova univerzita, 2015, s. 735-736.
[17] Sdělení Federálního ministerstva zahraničních věcí č. 489/1990 Sb.

their internal organisation. Primarily for these purposes, Article 10 of Convention No. 87 provides that any organization *of workers or employers which has as its object the promotion and defence of the interests of workers or employers* is to be regarded as an organization. From this definition and taking into account the other principles underlying Convention No. 87, the characteristics of a trade union can be deduced quite clearly. These are features that correspond to the principles through which the Czech collective labour law doctrine defines trade union organisation, i.e.:

- *freedom of association,*
- *protecting the economic and social rights and interests of its members,*
- *legal and economic independence,*
- *state record keeping bodies*[18].

The absence of a positive regulation of the defining characteristics of a trade union organisation seems at first sight to be in line with the principle of freedom of association. If the characteristics that a trade union would have to meet are not anchored in the legislation, it cannot happen that a possible formation of a trade union would be blocked by the "authorities" under the pretext of non-compliance with one of the conditions.

However, another problem arises, namely, how to view an entity that declares itself a trade union but does not meet the above-mentioned characteristics, or any of them. It turns out that this is definitely not just a theoretical assignment. So-called yellow-collar trade unions are emerging, which formally unite several employees (often from the company's management), but their aim is not to defend their economic and social interests, but rather to block social dialogue and prevent the conclusion of a collective agreement[19].

[18] GALVAS, Milan. K problematice odborů jako subjektů kolektivního pracovního práva. Brno: Masarykova univerzita, 1993, s. 9.
[19] Blíže viz HORECKÝ, Jan. Operation and Action of a Trade Union (in Terms of Czech Republic Labour Law). Central European Journal of Labour Law and Personnel Management. 2018, vol. 1, No. 1, s. 24.

Based on the above definitional features of a trade union, a simple conclusion is that an entity that does not meet one or more of the features cannot be considered a trade union, even though it has designated itself as such. For example, such a view has been published in relation to the latter case, where a trade union was established for the sole purpose of protecting an officer from termination by notice or summary dismissal[20].

The lack of a positive legal definition of a trade union can be considered a shortcoming of Czech collective law and an element that limits the development of collective bargaining. Given that Convention No. 87 is part of the Czech legal order within the meaning of Article 10 of the Constitution of the Czech Republic, it could be argued that there is a definition of a trade union organisation in the aforementioned Article 10 of Convention No. 87. However, this is probably a rather general and somehow "distant" rule. Indeed, the International Labour Organisation itself, through the decision-making work of the Committee on Freedom of Association, encourages Member States to define, through national legislation, the conditions that a trade union must meet in order to be registered and established as a legal person.[21]. The International Labour Organisation has thus remained fairly consistent on the principled basis that only an association which defends the economic and social interests of its members should be considered a trade union.

If the courts in a hypothetical conflicting case were to focus on the fulfilment of the material characteristics of a trade union organisation, i.e. in particular the activities carried out to defend the economic and social interests of employees[22], the question would arise as to how to deal with an association which, although it describes itself as a trade union, is not in fact one. In such a case, it would not necessarily be the case that the court would dissolve such an organisation by its decision. It could only state that it

[20] Viz ŠTEFKO, Martin. Ochrana odborových funkcionářů v České republice. In: Pracovní právo 2011 - Sborník příspěvků z mezinárodní vědecké konference na téma Sociální dialog. Brno: Masarykova univerzita, 2011, s. 106.
[21] Rozhodnutí č. 458 in: Freedom of Association. Compilation of decisions of the Committee on Freedom of Association. International Labour Office. Geneva: ILO, 6th edition, 2018, s. 83.
[22] Ačkoli nelze upozaďovat i další znaky, jako třeba právní a ekonomickou nezávislost.

is not a trade union but an ordinary association subject to the rules contained in section 214 et seq. of the Civil Code.

There is no reason to fear that such competence of the court would undermine the principles underlying Convention No. 87. Again, reliance can be placed on the findings of the Committee on Freedom of Association's jurisprudence, which shows that where an interference with the legal personality or registration of a trade union has been justified and carried out by an independent tribunal, it does not violate Convention No. 87[23]. Another decision even shows that the Committee on Freedom of Association directly calls on Member States to allow the courts to intervene where a trade union *has lost sight of the fact that the fundamental aim of its activities is to defend economic and social interests* (here specifically in relation to the exercise of political activities)[24].

In view of the above, it would therefore not only be possible, but also highly appropriate, to enshrine the defining features of a trade union organisation and an employers' organisation in the Czech legal order. In the case of the employers' organisation, the situation is similar, i.e., there is no positive regulation of the defining characteristics, which is one of the causes of the problem described above in section 8.3. For example, the solutions in Art. 1 of the Polish Ustawa o związkach zawodowych (Act on Trade Union Organizations), which defines a trade union as follows: *A trade union is a voluntary and self-governing organisation that is responsible for representing and defending the rights of employees and their professional and social interests*. Such a regulation could contribute to increasing the importance of collective bargaining and social dialogue more broadly, so that it can have a greater impact on working conditions and increase the level of employee satisfaction with those conditions.

[23] Rozhodnutí č. 990 a 1005 in: Freedom of Association. Compilation of decisions of the Committee on Freedom of Association, op. cit. (viz poznámka pod čarou č. 21), s. 185 a 187.
[24] Rozhodnutí č. 726 in Freedom of Association. Compilation of decisions of the Committee on Freedom of Association, op. cit. (viz poznámka pod čarou č. 21), s. 137.

9. Conclusion

The study highlighted the undisputed importance of collective bargaining in securing employees' working conditions and increasing their level of satisfaction in the workplace. The importance of collective bargaining will continue to grow in this respect, as a functional social dialogue between the social partners is intended to contribute to achieving and maintaining adequate minimum wages and to play an important role in guaranteeing the social rights of workers and in co-creating the overall labour market picture.

Using data based on the published results of a survey of employees, the study presented how collective bargaining affects the working conditions of employees in the Czech Republic, with a particular focus on working hours, health and safety promotion at the workplace, and how collective bargaining responds to the effects of the COVID-19 pandemic. In this context, the possibilities open to collective bargaining in these areas were also described. This perspective is currently very relevant not only in view of the recent experience with the pandemic, but also in view of the changes made to the regulation of occupational health examinations and the forthcoming changes to the Labour Code, which are to be brought about by the so-called transposition amendment.

The study also focused on the bottlenecks in collective bargaining that reveal the practical experience of negotiators. These are limits that in effect prevent the wider application of collective bargaining. Let us hope that at least some of the obstacles described above will be overcome in the coming periods so that collective bargaining can play its role effectively.

Annex

Brussels, 25.1.2023
COM(2023) 38 final

2023/0012 (NLE)

Proposal for a

COUNCIL RECOMMENDATION

on strengthening social dialogue in the European Union

FOR THE PURPOSES OF THIS RECOMMENDATION, THE FOLLOWING DEFINITIONS APPLY:

(1) ‘Social dialogue’ means all types of negotiation, consultation or exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy, that exist as bipartite relations between labour and management, including collective bargaining, or as a tripartite process, with the government as an official party to the dialogue and can be informal or institutionalised or a combination of the two, taking place at the national, regional or at enterprise level cross-industry, sectoral or a combination of these.

(2) ‘Collective bargaining’ means all negotiations which take place according to national laws and practices in each Member State between an employer, a group of employers or one or more employer organisations, on the one hand, and one or more trade unions, on the other, for determining working conditions and terms of employment.

(3) 'Collective agreement' means a written agreement regarding provisions on working conditions and terms of employment concluded by the social partners

having the capacity to bargain on behalf of workers and employers respectively, according to national law and practices, including those that are made universally applicable.

(4) 'Derogations' from higher-level agreements mean opening or derogation clauses that make it possible to set setting alternative standards or conditions to those contained in the agreement, where justified and agreed by social partners.

(5) 'Capacity building' means enhancement of the skills, abilities and powers of the social partners to engage effectively and at different levels in social dialogue, including collective bargaining, (co)regulating the employment relationship, bipartite and tripartite consultations and public policy making.

HEREBY RECOMMENDS THAT MEMBER STATES, IN ACCORDANCE TO NATIONAL LAW AND/OR PRACTICE, AFTER CONSULTATION AND IN CLOSE COOPERATION WITH SOCIAL PARTNERS, WHILE RESPECTING THEIR AUTONOMY:

(1) ensure an enabling environment for bipartite and tripartite social dialogue, including collective bargaining, in the public and private sectors, at all levels, including cross-industry, sectoral, company, or regional level that:

  (a) respects the fundamental rights of freedom of association and collective bargaining;

  (b) promotes strong, independent trade unions and employers' organisations;

  (c) includes measures to strengthen their capacity;

  (d) ensures access to the relevant information needed in order to participate in social dialogue;

  (e) promotes engagement in social dialogue on the part of all the parties;

  (f) adapts to the digital age, promotes collective bargaining in the new world of work and a fair and just transition towards climate neutrality;

  (g) ensures appropriate institutional support.

as further detailed in the present Recommendation.

(2) ensure that social partners are systematically, meaningfully and in a timely manner involved in the design and implementation of employment and social policies and, where relevant, economic and other public policies, including in the context of the European Semester.

(3) ensure that social partners have access to relevant information on the overall economic and social situation of their Member State and on the relevant situation and policies for the respective sectors of activity needed in order to participate in social dialogue and in collective bargaining.

(4) ensure that representative employers' organisations and trade unions are recognised for the purposes of social dialogue and collective bargaining, including by:

(a) ensuring that, where the competent authorities apply procedures for recognition and representativeness with a view to determining the organisations to be granted the right to bargain collectively, this determination is open and transparent, based on pre-established and objective criteria with regard to the organisations' representative character and that such criteria and procedures are established in consultation with trade unions and employers' organisations;

(b) where, both trade union representatives and elected representatives are present in the same undertaking, taking appropriate measures whenever necessary to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives;

(c) ensuring that the specific role of social partner organisations is fully recognised and respected in social dialogue structures and processes, while recognising that civil dialogue, involving a broader set of stakeholders, is a separate process.

(5) ensure that workers and workers' representatives, including those who are trade union members or representatives, are, when exercising their right(s) to collective bargaining, protected against any measure that may be harmful to them or may have a negative impact on their employment. They should also ensure that employers are protected against any unlawful measures, when exercising their right(s) to collective bargaining.

(6) foster trust in and between social partners and promote the conclusion of collective agreements. In case of dissents and, without affecting the right to access adequate administrative and judicial procedures to enforce rights and obligations stemming from law or collective agreements, and taking into account any procedures set by the social partners, they should encourage and promote mechanisms to resolve them, including:

(a) the use of conciliation, mediation and arbitration, with the agreement of both parties, with a view to facilitating negotiations and improving the application of collective bargaining and of collective agreements;

(b) where not already in place, the establishment of mediators who can act in case of conflict between trade unions and employers' organisations.

(7) ensure that collective bargaining is possible at all appropriate levels, including company, sector, regional or national levels, and encourage coordination between these levels.

(8) promote a higher coverage of collective bargaining and enable effective collective bargaining, including by:

(a) removing institutional or legal barriers to social dialogue and collective bargaining covering new forms of work or atypical employment;

(b) ensuring that the negotiating parties have the freedom to decide on the issues to be negotiated;

(c) ensuring that any possibility to derogate from collective bargaining agreements is agreed between the social partners and limited with regard to the conditions under which it can apply, ensuring at the same time flexibility to adapt to evolving labour market and economic conditions, sufficient stability to enable planning for both employers and workers, and the protection of workers' rights. In Member States where collective bargaining is based on a legislative framework, such derogations should be established in consultation with trade unions and employers' organisations;

(d) ensuring and implementing a system of enforcement of collective agreements, including, where appropriate, inspections and sanctions. Rules and practices of enforcement can also be agreed by collective agreement, according to national law or practice.

(9) actively promote the benefits and the added value of social dialogue and collective bargaining, in particular by targeted communication and means. They should encourage social partners to make the text of collective agreements widely accessible, including by digital means and public repositories.

(10) support national social partners to participate successfully in social dialogue, including in collective bargaining and in the implementation of Union level autonomous social partner agreements, including by:

(a) promoting the building and strengthening of their capacity at all levels, depending on their needs;

(b) using different forms of support, including logistical support, training and the provision of legal and technical expertise;

(c) encouraging joint projects between social partners in various fields of interest, such as the provision of training;

(d) encouraging and, where appropriate, supporting social partners to put forward initiatives and develop new and innovative approaches and strategies to increase their representativeness and membership;

(e) supporting social partners to adapt their activities to the digital age as well as to explore new activities fit for the future of work, the green and demographic transitions and new labour market conditions;

(f) promoting gender equality and equal opportunities for all in terms of representation and thematic priorities;

(g) promoting and facilitating their collaboration with the Union level social partners, particularly with a view to enabling them to implement at national level the agreements concluded by social partners at Union level;

(h) providing appropriate support to implement in the Member States social partners agreements concluded at Union level;

(i) making the best use of the available national and Union funding, such as support under ESF+ and the Technical Support Instrument encouraging social partners to use the existing national and Union funding, including the prerogative budget lines dedicated to 'specific competences in the area of social policy, including social dialogue' and to 'information and training measures for workers' organisations'.

(11) submit to the Commission by [ADD date 18 months from the publication of the Recommendation] a list of measures, drawn up in consultation with social partners, which are taken or have already been taken in each Member State to implement this Recommendation.

(12) may entrust the social partners with the implementation of the relevant parts of this Recommendation, where applicable in accordance with national law or practice.

WELCOMES THE COMMISSION'S INTENTION TO:

(13) develop commonly agreed indicators by [ADD date 12 months from the publication of the Recommendation] to monitor the implementation of this Recommendation jointly with the Employment Committee and with relevant social partners and improve the scope and relevance of data collection at Union and national level on social dialogue, including on collective bargaining.

(14) monitor regularly the implementation of this Recommendation at national and Union level, jointly with Member States and relevant social partners, through regular tripartite meetings or at least once a year, in the context of the multilateral surveillance activities of the Employment Committee, in the context of the European Social Dialogue Committee, and in the context of the European Semester. This monitoring should allow social partners to, among other things, identify situations where they have been excluded or inadequately involved in national level consultations on Union and national policy.

(15) evaluate, in cooperation with Member States, social partners, and after consulting other relevant stakeholders, the actions taken in response to this Recommendation, and report to the Council by [ADD date 4 years from the publication of the Recommendation]. On the basis of the results of the evaluation, the Commission may consider making further proposals.

Done at Brussels

For the Council
The President

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